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Briefing note

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Bulgarian EU Council Presidency sets out its programme

The Bulgarian EU Council Presidency has published its work programme for the next sixth months. The EU Council Presidency rotates among Member States, with the Bulgarian Presidency being the second under the current 18-month trio programme approved in June 2017 by the General Affairs Council covering the Presidencies of Estonia, Bulgaria and Austria.

Bulgaria has set out four priority areas:

- economic and social cohesion including a focus on the next EU multiannual financial framework and a deeper Economic and Monetary Union (EMU);
- stability and security, including work on the EU's external borders and migration issues;
- European prospects and connectivity of the Western Balkans, including support for accession-related reforms; and
- the digital economy and skills, including work on the cyber security package.

The work programme sets out details of its priorities for each Council configuration. For the Economic and Financial Affairs Council (ECOFIN), Bulgaria intends to:

- prioritise the establishment of a Financial Union as part of the completion of the EMU and encourage debate on deepening the EMU;
- find a compromise on the legislative package for risk reduction in the banking sector;
- make progress on the proposal for the establishment of a European Deposit Guarantee Scheme (EDIS);
- start work on measures for completing the Banking Union announced by the EU Commission on 11 October 2017;
- begin substantive discussions on the review of the European System of Financial Supervision (ESFS) and the proposal for a new prudential regime for investment firms;
- work towards finding a general approach on the proposed Administrative Cooperation Directive regarding the automatic exchange of information in the area of taxation, as well as progress on the draft Directive on a common corporate tax base; and
- continue work on the Capital Markets Union (CMU), proposals on clearing obligations and derivatives reporting, recovery and resolution of central counterparties (CCPs), third country CCPs, the pan-

European personal pension product (PEPP), and measures on VAT.

Directive on creditor hierarchy and Regulation on IFRS 9 transitional arrangements published in Official Journal

The fast-tracked risk-reduction measures, which make certain amendments to the Capital Requirements Regulation (CRR) and Bank Recovery and Resolution Directive (BRRD), have been published in the Official Journal.

Regulation (EU) 2017/2395 amends the CRR as regards transitional arrangements to phase in the regulatory capital impact of the IFRS 9 international accounting standard. It entered into force on 28 December 2017 and applied from 1 January 2018.

Directive (EU) 2017/2399 amends the BRRD as regards the ranking of unsecured debt instruments in insolvency hierarchy. It entered into force on 28 December 2017 and has a deadline for transposition into the national law of Member States by 29 December 2018.

Capital Markets Union: Securitisation rules published in Official Journal

Two regulations setting out measures for simple, transparent and standardised (STS) securitisation have been published in the Official Journal:

- Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation; and
- Regulation (EU) 2017/2401 amending the CRR with regard to capital requirements for positions in securitisation.

These regulations 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 new rules will enter into force on 17 January 2018 and apply from 1 January 2019.

Benchmarks Regulation: Commission Implementing Regulation adding LIBOR to list of critical benchmarks published in Official Journal

Commission Implementing Regulation (EU) 2017/2446 of 19 December 2017, which amends Commission Implementing Regulation (EU) 2016/1368 on the list of critical benchmarks used in financial markets pursuant to the Benchmarks Regulation, has been published in the Official Journal.

In particular, Commission Implementing Regulation (EU) 2017/2446, which entered into force on 29 December 2017, amends the list of critical benchmarks established by Commission Implementing Regulation (EU) 2016/1368 by adding LIBOR.

IOSCO issues statement on matters to consider in use of benchmarks

The International Organization of Securities Commissions (IOSCO) has published a statement setting out matters for users of financial benchmarks to consider in selecting an appropriate benchmark and in contingency planning, particularly for scenarios in which a benchmark is no longer available.

The matters to consider fall into two categories:

- matters related to assessing the appropriateness of a benchmark, in both its initial selection and ongoing use; and
- matters related to contingency planning, such as if the selected benchmark becomes unavailable.

The statement is directed at users of benchmarks and does not supersede IOSCO's Principles for Financial Benchmarks, which was published in July 2013 and directed at the administrators of benchmarks and submitters to benchmarks.

In publishing the statement IOSCO aims to increase the awareness of the risks involved for users of benchmarks and to encourage their mitigation, where appropriate.

MiFID2: FCA publishes general guidance note on authorisation issues

The Financial Conduct Authority (FCA) has published a general guidance note on MiFID2. The note covers the authorisation process, forms and prudential categories for first time applicants, and information on varying the scope of permissions for existing investment firms. Alongside the publication, the FCA has also updated its webpage setting out guidance on applications and notifications under MiFID2.

MiFIR: BoE and FCA approve transitional arrangements for exchange-traded derivatives

The Bank of England (BoE) has decided that two CCPs supervised by the BoE can make use of transitional arrangements in order that Article 35 MiFIR regarding non-

discriminatory access to a CCP will not apply in respect of exchange-traded derivatives until 3 July 2020.

Both the CCPs made applications under Article 54(2) of MiFIR. Having taken into account the relevant risks resulting from the application of the access rights under Article 35 as regards exchange-traded derivatives to the orderly functioning of the CCP, the BoE has decided that Article 35 will not apply to ICE Clear Europe Ltd or LME Clear Ltd during the transitional period.

The FCA has also announced that two trading venues, ICE Futures Europe and the London Metal Exchange (LME), will be subject to transitional arrangements and will not be required to consider open access requests made under Article 36 of MiFIR in respect of exchange-traded derivatives until 3 July 2020. Both trading venues made applications to the FCA under Article 52(2) of MiFIR and the FCA has taken into account the risks resulting from the application of the access rights under Article 36 as regards exchange-traded derivatives to the orderly functioning of the trading venues when making its decision.

Ministerial Order on approval of amendments to AMF General Regulation published

A Ministerial Order of 20 December 2017 approving amendments to the General Regulation of the Autorité des Marchés Financiers (AMF), relating to investment service providers and portfolio management companies of FIA, has been published in the Official Journal.

The amendments, corresponding to Schedule 1, came into force on 3 January 2018.

AMF modifies its instruction on authorisation procedure for investment management companies, disclosure obligations and passporting

AMF has updated its instruction DOC-2008-03, which provides details of the authorisation procedures and processes for investment management companies, certain disclosure obligations and passporting procedures for French investment management companies and foreign management companies.

This version of the instruction entered into force on 1 January 2018.

AMF consults on amendments to its General Regulation with regard to central securities depositories

AMF has launched a public consultation on amendments to Book V of its General Regulation, on market infrastructures, in light of the EU Central Securities Depositories Regulation (CSDR).

Comments are due by 28 February 2018.

Ordinance on reorganisation of financial markets stabilisation duties published in German Federal Gazette

The ordinance on the reorganisation of financial markets stabilisation duties (Verordnung über die Neuordnung der Aufgaben der Finanzmarktstabilisierung) has been published in the German Federal Gazette (Bundesgesetzblatt).

As of 1 January 2018, the German Federal Financial Supervisory Authority (BaFin) has taken over the duties of the German Federal Agency for Financial Market Stabilisation (FMSA) as the competent national resolution authority (NRA).

In this context, the articles of the FMSA have been revised by the ordinance on the reorganisation of financial markets stabilisation duties to reflect the new position of the FMSA. The FMSA will, among other things, decide on the transfer of risk positions and non strategic business units of transferring entities to deconsolidated environments (Abwicklungsanstalten) previously created by the FMSA and on the granting of guarantees by the relevant deconsolidated environment. It will also be tasked with the supervision of the deconsolidated environments.

The FMSA will be supported by the privately organised Financial Agency of Germany (Bundesrepublik Deutschland – Finanzagentur GmbH), which is also responsible for the administration and winding up of the German Single Resolution Fund.

Revised Liquidity Ordinance published in German Federal Gazette

The revised German Liquidity Ordinance (Liquiditätsverordnung) has been published in the Bundesgesetzblatt. The Liquidity Ordinance has been revised in light of Article 460 of the Capital Requirements Regulation (CRR), which sets the liquidity coverage requirement at 100% as of 1 January 2018.

Consequently, the Liquidity Ordinance has been amended to impose 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 (Kreditwesengesetz). These entities

may, in certain circumstances, apply for an exemption where they form part of a group required to maintain the liquidity coverage ratio (LCR) at group level.

The revised Liquidity Ordinance came into force on 1 January 2018.

Revised GroMiKV published in German Federal Gazette

The revised German Regulation Governing Large Exposures and Loans of EUR 1 million or more (Großkredit- und Millionenkreditverordnung – GroMiKV) has been published in the Bundesgesetzblatt. At the same time, the country risk regulation (Länderrisikoverordnung) has been repealed, as the corresponding information obligations are contained in the reporting regime for million loan exposures.

The amendments to the GroMiKV provide that groups of institutions with centralised risk management for large exposures will benefit from the same flexibility as regards risk positions towards other group companies as groups of institutions with centralised liquidity management.

In addition, the revised GroMiKV waives the use of new reporting templates (which would have become mandatory from 1 January 2019). Instead, the currently available reporting templates will be supplemented and continue to be used.

The revised GroMiKV came into force on 1 January 2018.

BaFin exempts systematic internalisers from quoting obligation under MiFIR

BaFin has published a general decree (Allgemeinverfügung) pursuant to Article 18 paragraph 2 sentence 2 in connection with Article 9 paragraph 1 of MiFIR, exempting systematic internalisers from the obligation to disclose quotes to their clients in respect of bonds, structured finance products, emission allowances and derivatives.

Pursuant to Article 18 paragraph 2 sentence 1 of MiFIR, systematic internalisers are generally required to disclose quotes to their clients upon request in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market. BaFin has decided to exempt systemic internalisers from this obligation.

Post-trade transparency: BaFin authorises deferred publication

BaFin has published general decrees (Allgemeinverfügungen) authorising market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions.

The general decrees are published as follows:

- authorisation of deferred publication of the details of transactions on a trading venue in relation to non-equity instruments (Art. 11 MiFIR);
- authorisation of deferred publication of the details of OTC-transactions in relation to non-equity instruments (Art. 21 MiFIR); and
- authorisation of deferred publication of the details of transactions on a trading venue in relation to equity instruments (Art. 7 MiFIR).

The general decrees are valid until 1 January 2019.

Investment firms: BaFin issues guidance on new requirements for licence application procedure

From 3 January 2018, investment firms (Wertpapierhandelsunternehmen) and securities trading banks (Wertpapierhandelsbanken) seeking to obtain a licence have to comply with new requirements imposed by Delegated Regulation (EU) 2017/1946. Section 32 para. 1 of the German Banking Act, in connection with section 14 of the German Notification Ordinance (AnzV), is no longer applicable in this respect.

BaFin has published a guidance note on its website clarifying the requirements imposed by Delegated Regulation (EU) 2017/1946 as well as template forms which have to be used in connection with the application.

BaFin applies position limits in commodity derivatives

As of 4 January 2018, BaFin is applying position limits to the following commodity derivatives:

- French Power Future (Base) contracts and French Power Option (Base) contracts;
- French Power Future (Peak) contracts;
- illiquid commodity contracts;
- Italian Power Future (Base) contracts and Italian Power Option (Base) contracts;
- Phelix Power Future DE/AT (Base) contracts and Option DE/AT (Base) contracts;
- Phelix Power Future DE/AT (Peak) contracts;

- Spanish Power Future (Base) contracts and Option (Base) contracts; and
- Swiss Power Future (Base) contracts.

MiFID2: CONSOB publishes amendments to Markets Regulation

The Commissione Nazionale per le Società e la Borsa (CONSOB) has adopted a new set of provisions intended to amend its Markets Regulation (no. 16191/2007) following the amendments made to Legislative Decree no. 58 of 24 February 1998 (Italian Financial Act) in the context of the implementation of MiFID2 and MiFIR.

CONSOB's new Markets Regulation, which repeals and replaces the current version, will come into force on the day following its publication in the Italian Official Gazette (Gazzetta Ufficiale).

PRIIPs: CONSOB publishes operational instructions on submission of KIDs

From 1 January 2018, CONSOB will have to be notified of key information documents (KIDs) relating to packaged retail investment and insurance-based investment products (PRIIPs) made available to retail investors in Italy.

To this end, CONSOB has published a set of operational instructions to be followed for the purposes of submitting these notices. These instructions also provide for a temporary regime for PRIIPS already available to retail investors in Italy.

Polish Council of Ministers adopts draft Act Amending Act on Trading in Financial Instruments and Certain Other Acts

The Polish Council of Ministers has adopted the draft Act Amending the Act on Trading in Financial Instruments and Certain Other Acts, which is intended to implement the provisions of MiFID2 into Polish law. The draft will now be sent to the Sejm for discussion.

Fintech: Polish Financial Supervision Authority launches Innovation Hub Programme to support development of financial innovation

The Polish Financial Supervision Authority (PFSA) has launched the Innovation Hub Programme to support the development of financial innovation (fintech). Under the programme, the PFSA will conduct a dialogue with fintech companies, answering their questions on legal and regulatory issues, to support the development of new technologies on the financial market.

The programme is addressed to:

- entities planning to begin activity in the part of the financial market supervised by the PFSA (including start-ups), which have an innovative financial product or service based on modern information technologies; and
- entities supervised by the PFSA planning to implement an innovative financial product or service based on modern information technologies.

Royal Decree-Law on urgent measures adapting Spanish law to EU regulation of capital markets published

Royal Decree-Law 21/2017, of 29 December, on urgent measures to adapt Spanish law to the EU regulation of capital markets, has been published. The Royal Decree implements certain provisions of MiFiD2 and MiFIR in Spain.

The main provisions that the Royal Decree is intended to implement are those relating to the regulatory regime applicable to Spanish trading venues regarding financial instruments. In particular, these provisions relate to:

- organisational measures on algorithmic trading techniques; and
- the required authorisations and operating conditions for trading venues.

In addition, the Royal Decree incorporates the concept of organised trading systems alongside regulated markets and multilateral trading systems, which are subject to obligations designed to preserve the efficient and orderly functioning of financial markets and to ensure that such organised trading systems do not benefit from regulatory loopholes. The main trading methods that the Royal Decree incorporates, which are available within the EU as of 3 January 2018, relate to public debt and derivatives.

Finally, in order to ensure compliance with the provisions and obligations included in the new Royal Decree, the regulation includes a wide new sanctions regime.

The Royal Decree entered into force on 3 January 2018.

Draft Spanish law on payment services market published

Draft Law XX/2018 on the payment services market has been published. The principal aim of the law is to transpose the revised Payment Services Directive (PSD2).

The Directive and the Draft Law XX/2018 are intended to support the creation of a common payment services

market. In order to achieve this, the regulation of the payment services market should foster an environment that facilitates electronic payment transactions, common rules regarding how to operate, a wide range of possibilities of payments for individuals, and effective rules on the protection of customers.

Draft Law XX/2018 regulates:

- services to be provided and the entities which can provide each service;
- transparency with regard to customers; and
- the rights and obligations of each party to the transaction.

Amongst other things, Draft Law XX/2018:

- increases the scope of application of the law by including two new services – payment initiation services and account information services;
- simplifies the procedure for authorising small sized entities that operate domestically;
- limits the maximum liability amount of the payer relating to losses derived from payment transactions that have not been authorised from EUR 150 to EUR 50;
- strengthens the identification procedures for clients operating from an online platform; and
- reduces the period for responding to customer complaints from 2 months to 15 business days.

Draft Law XX/2018 will be subject to a public consultation until 16 January 2018.

Draft Spanish law amending Law 10/2010 on prevention of money laundering and terrorist financing published

Draft Law XX/2018 amending Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing has been published. The draft law is intended to complete the transposition of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Among other modifications, Draft Law XX/2018 introduces the following changes:

- regarding sanctions, it increases the maximum amount imposed although the minimum amount remains unchanged;
- regarding the publicity of sanctions, an additional element is to be incorporated which relates to sanctions imposed on an anonymous basis in case publication has not been agreed;
- Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage the reporting to competent authorities of potential or actual breaches of the national provisions transposing the Directive; and
- Draft Law XX/2018 unifies the regime applicable to persons with public responsibility, without distinguishing between Spanish nationals and foreigners and assigning a high risk profile to both.

Additionally, Draft Law XX/2018 incorporates two new obliged entities to which sanctions and measures can be applied:

- a management company of a securitisation fund; and
- a participating financing platform.

Draft Law XX/2018 will be subject to a public consultation until 16 January 2018.

FINMA revises circulars on credit risks and leverage ratio

The Swiss Financial Market Supervisory Authority (FINMA) is updating its banking circulars on credit risks and leverage ratio to reflect the amended Capital Adequacy Ordinance.

On 22 November 2017, the Federal Council amended the Capital Adequacy Ordinance to the effect that banks will be permitted to continue applying the current mark-to-market method for derivatives and the current capital adequacy rules for investments in funds for a further two years. This amendment necessitates a change to Circular 2017/7 'Credit risks – banks' for the calculation of the minimum capital requirement for the default fund of a central counterparty. The amended Capital Adequacy Ordinance also requires all institutions to maintain a 3% minimum leverage ratio on Tier 1 capital, effective 1 January 2018. FINMA is updating Circular 2015/3 'Leverage Ratio' so that banks can also apply the Basel III standard approach for derivatives when calculating the leverage ratio. It has done so in response to concerns raised by the industry.

The consultation period for these changes will end on 15 February 2018.

FINMA publishes list of significant group companies for resolution purposes

FINMA has published a list of significant group companies of banks, insurance companies and financial infrastructure companies that will fall under its supervisory remit for resolution purposes.

Swiss-domiciled companies that are part of banking, insurance and financial market infrastructure groups and which carry out significant functions for activities requiring authorisation (significant group companies) are now subject to the rules of banking, insurance or financial market infrastructure law respectively in the event of reorganisation or bankruptcy. If protective measures are imposed on a licence holder because of the risk of insolvency or serious liquidity issues, or if restructuring or bankruptcy proceedings have to be initiated, FINMA has the authority to impose such measures also in respect of the significant group companies of the affected licence holder. To the extent provided for under the specific legislation, FINMA has sole responsibility for imposing such measures. FINMA having resolution authority over both licence holders and significant group companies is intended to allow for coordinated restructuring or liquidation, making financial institutions more resilient in the event of a crisis.

The key functions performed by significant group companies for banks and financial market infrastructure groups include cash management, treasury, risk management, master data management and accounting, human resources, information technology, trading and settlement and legal and compliance.

For insurance companies, these significant functions are the holding company function, underwriting, existing policy management, claims settlement, accounting, human resources, information technology and investments.

Under the general information and reporting requirements, supervised institutions must report to FINMA the outsourcing of significant functions to group companies. This also applies to any changes made to these arrangements.

CBRC consults on revised licensing requirements for foreign-funded banks.

The China Banking Regulatory Commission (CBRC) has published the 'Decision on Amending the CBRC Implementing Measures for Administrative Licensing Matters Relating to Foreign-funded Banks (Consultation Draft)', seeking public comments by 27 January 2018. The amendments proposed in the consultation draft are intended to reduce and/or streamline the administrative licensing matters for foreign-funded banks (FIBs) in China.

Amongst other things, the following key aspects are worth noting:

- establishing or investing in a PRC bank – the consultation draft introduces a new section entitled 'Establishing or Investing in a Domestic Banking Financial Institution'. This sets out the eligibility requirements, application procedures and application documents for a wholly foreign-owned bank (WFOE Bank) or a Sino-foreign joint venture bank (JV Bank) to apply to establish or invest in a domestic banking financial institution (PRC Bank). This reinforces the 'Circular on Relevant Issues Regarding Certain Business Activities Undertaken by Foreign-invested Banks' released by CBRC earlier in 2017, which in principle and for the first time allowed WFOE Banks and JV Banks to use proprietary funds to invest in PRC Banks. In addition, the consultation draft further provides that WFOE Banks and JV Banks will, as a result, be subject to certain requirements applicable where foreign financial institutions invest in a domestic banking institution. One point that remains unclear is whether FIBs' investments in domestic banking institutions will be treated as foreign investment and thus need to be aggregated for the purpose of calculating foreign shareholding limits;
- prior approval to post reporting for certain new businesses and for repatriation – previously, there was a prior approval requirement from the relevant PRC regulators for (i) WFOE Banks and JV Banks to engage in new businesses such as overseas wealth management, custody business for overseas wealth management and securities investment funds and (ii) a liquidated foreign bank branch to repatriate interest-bearing assets. This prior approval requirement will be removed and be replaced by a requirement to report such activities to the relevant PRC regulators afterwards; and
- streamlining of certain requirements – certain other approval and procedural requirements, including (a) the approval on the establishing a sub-branch, (b) qualifications of senior management members of FIBs and (c) issuance of debt instruments and supplementary capital, have been relaxed and streamlined.

SFC and CSRC sign MoU to enhance supervisory and enforcement cooperation in futures markets

The Hong Kong Securities and Futures Commission (SFC) and the China Securities Regulatory Commission (CSRC)

have signed a memorandum of understanding (MoU) to enhance their supervisory and enforcement cooperation concerning the futures markets.

The MoU facilitates regulatory and enforcement cooperation in the Mainland and Hong Kong futures markets, and enhances supervisory assistance, enforcement cooperation and information exchange on various matters including cross-boundary derivatives, futures exchanges and futures brokers.

In July 1995, the CSRC and the SFC signed a regulatory cooperation memorandum to facilitate the exchange of information and assistance. With the increasing interaction between the futures markets of Hong Kong and the Mainland, and the need for a closer regulatory cooperation between them, the CSRC and the SFC consider it necessary to amend the 1995 MoU. This latest MoU supersedes the 1995 MoU.

Investment agreement under CEPA framework implemented on 1 January 2018

The Hong Kong Special Administrative Region Government and the Ministry of Commerce have signed an investment agreement under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA). The agreement is intended to promote and protect the investment flows between the two places and contribute to the establishment of a more certain and stable investment environment. The investment agreement was implemented on 1 January 2018.

This is the first investment agreement with the Mainland with pre-establishment national treatment commitments for admission of investments adopting a negative listing approach. It includes commitments from both sides with respect to substantive obligations on admission of investments of 'non-services sectors' (including manufacturing sectors, mining sectors and investment in assets). The Mainland commits to providing national treatment to Hong Kong investments and investors on a par with Mainland investments and investors, except for the 26 measures listed in the agreement. Hong Kong can also enjoy more preferential investment access than other external investors in specific sectors.

To facilitate the implementation of the agreement and assist Hong Kong enterprises in making use of the preferential treatment to establish companies or invest in the Mainland, the Trade and Industry Department (TID) will issue Hong Kong Investor Certificates to the enterprises concerned, starting from 1 January 2018.

HKMA announces launch of enhanced competency framework for retail wealth management

The Hong Kong Monetary Authority (HKMA) has issued a circular to announce the launch of its enhanced competency framework for retail wealth management (ECF-RWM) on 2 January 2018. The framework is intended to enable talent development and facilitate the building of professional competencies and capabilities of those staff engaged in retail wealth management duties.

The ECF-RWM is a collaborative effort of the HKMA, the Hong Kong Institute of Bankers (HKIB) and the banking sector in establishing a set of common and transparent competency standards for raising and maintaining the professional competence of relevant practitioners of the retail wealth management functions in authorised institutions.

As the supervisory policy manual module CG-6 'Competence and Ethical Behaviour' emphasises the importance of ensuring continuing competence of staff members, the HKMA encourages authorised institutions to adopt the ECF-RWM as a benchmark for enhancing the level of professional competence of retail wealth management practitioners. Apart from supporting their staff to attend training and examinations that meet the ECF certification, authorised institutions have also been advised to keep records of the relevant training and qualification of their staff and to provide them with necessary assistance in relation to applications for grandfathering and certification, and fulfilment of continuing professional development (CPD) training under the ECF-RWM.

The HKMA will take into account the progress of implementation of the ECF-TM by authorised institutions and authorised institutions' effort in enhancing staff competence and on-going development during its supervisory process.

MAS revises notices on credit files, grading and provisioning

The Monetary Authority of Singapore (MAS) has revised the following notices on credit files, grading and provisioning:

- Notice 612, which applies to banks in Singapore;
- Notice 811, which applies to finance companies in Singapore; and
- Notice 1005, which applies to merchant banks in Singapore.

The Singapore Accounting Standards Council (ASC) has adopted the International Financial Reporting Standard (IFRS) 9 Financial Instruments and issued the standard as Singapore Financial Reporting Standard (SFRS) 109 Financial Instruments. SFRS 109 will replace SFRS 39 Financial Instruments: Recognition and Measurement and will be effective for annual periods beginning on or after 1 January 2018. Banks in Singapore are therefore required to apply SFRS 109, or IFRS 9 for locally-incorporated banks that are listed on the Singapore Exchange, in the preparation of their financial statements for reporting periods beginning on or after 1 January 2018.

The amendments to the MAS notices relate to, amongst other things, the changes in the recognition and measurement of allowance for credit losses introduced in IFRS 9 and SFRS 109.

The revisions follow the MAS' October 2017 responses to the feedback it received on its May 2017 public consultation on proposed amendments to regulatory requirements on credit loss provisioning by banks and merchant banks.

MAS amends Notice 652 on net stable funding ratio

The MAS has published amendments to Notice 652 on net stable funding ratio requirements for domestic systemically important banks in Singapore.

The amendments have been made to delay the implementation of the Required Stable Funding add-on for derivatives liabilities until a date to be specified by the MAS in writing.

The effective date for the rest of the Notice does not change and remains 1 January 2018.

MAS responds to feedback on proposed amendments to disclosure requirements under notices 637, 651 and 653

The MAS has published its responses to the feedback it received on its July 2017 public consultation on proposed amendments to the disclosure requirements under MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore, MAS Notice 651 on the Liquidity Coverage Ratio (LCR) and MAS Notice 653 on the Net Stable Funding Ratio (NSFR).

The consultation paper sets out the MAS' proposed amendments to Notice 637 to implement requirements for Singapore-incorporated banks that are consistent with the revised standards issued by the Basel Committee on Banking Supervision (BCBS). The MAS also proposed amendments to the disclosure frequencies under Notice 651 and Notice 653 in accordance with the BCBS' revised standards.

Amongst other things, the MAS has clarified:

- with respect to MAS Notice 637, how the countercyclical buffer amount should be calculated;
- with respect to MAS Notice 637, that the required frequency of disclosure of the composition of regulatory capital and leverage ratio common disclosure template is consistent with the frequencies set out in the revised Pillar 3 disclosure requirements issued by the BCBS;
- with respect to MAS Notices 651 and 653, that for LCR and NSFR disclosures required to be made on a quarterly or semi-annual basis, a reporting bank which issues quarterly financial statements shall publish the information concurrently with the publication of its quarterly financial statements, and no later than 45 days after the end of each quarter. A reporting bank which does not issue quarterly financial statements shall publish the information no later than 45 days after the end of each quarter; and
- a reporting bank that publishes its financial statements annually instead of quarterly may publish the quantitative and qualitative information on its website on a quarterly basis, and provide a link to the information in its financial statements.

The revised Notices 637 and 651 are effective from 31 December 2017 unless otherwise stated, while Notice 653 is effective from 1 January 2018.

MAS responds to feedback on proposed amendments to MAS Notice 637 on capital requirements for Singapore-incorporated banks

The MAS has published its responses to the feedback it received on its July 2017 public consultation on proposed amendments to MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore to introduce a minimum leverage ratio requirement of 3% and clarify the capital treatment of equity investments and the definition of default under the Internal Ratings Based Approach for credit risk.

The MAS has considered the feedback it received and, where appropriate, has incorporated them into the revised MAS Notice 637. The revisions to the MAS Notice 637 relating to the proposals in the 25 July 2017 consultation paper are effective from 1 January 2018. The MAS will consult the industry prior to implementing any further

changes to the definition of the leverage ratio, including the revisions published by the BCBS on 7 December 2017.

The MAS has also launched a public consultation on proposed amendments to MAS Notice 637 that revise the list of eligible collateral that may be recognised for credit risk mitigation purposes. Amongst other things, the MAS proposes to:

- recognise commodities as eligible physical collateral for banks using the foundation Internal Ratings Based Approach for credit risk;
- widen the scope of eligible equity securities to those listed on any regulated exchange (i.e. an exchange regulated by the MAS or other financial services regulatory authority); and
- in relation to eligible equity securities included in a main index which qualify for a 15% haircut, clarify the definition of 'main index' as one which is referenced by futures or options traded on a regulated exchange.

Comments on the consultation paper are due by 19 January 2018.

MAS responds to feedback on proposed amendments to Code on Collective Investment Schemes

The MAS has published its response to the feedback it received on its November 2016 public consultation on the proposed amendments to the Code on Collective Investment Schemes (CIS Code). The MAS has also published a revised CIS Code, which shall take effect from 1 January 2018, except as noted in the preamble to the CIS Code.

Amongst other things, the MAS has confirmed that:

- the proposed requirements for Precious Metals Funds, i.e. schemes investing solely in physical gold, silver and/or platinum, will be implemented from 1 January 2018 through a new Appendix 7 to the CIS Code;
- the period for payment of redemption proceeds for all authorised schemes (except property funds and hedge funds) will be aligned to T+7 from 1 January 2018 (i.e. redemption proceeds must be paid within 7 business days from the receipt of the redemption request);
- from 1 July 2018, fund managers are required to establish a set of internal credit assessment standards and put in place a credit assessment process to ensure that their investments are in line with these standards, and provide statements in the prospectus (i) disclosing the foregoing fact, and (ii) that information on their credit assessment process would be made available to investors upon request;
- from 1 February 2018, prospectus disclosure requirements under the CIS Code that are applicable to authorised schemes will, where relevant, be applicable to the prospectuses of recognised schemes as well;
- when a fund intends to carry out securities lending or repurchase transactions, additional disclosures will be required in the fund's semi-annual and annual reports. These additional disclosure requirements will take effect for the first annual reports of authorised schemes relating to their respective financial year ending on or after 31 December 2018;
- from 1 July 2018, managers of authorised and recognised schemes are required to ensure that the advertisements they publish comply with the Code of Best Practices in Advertising Collective Investment Schemes and Investment-Linked Life Insurance Policies and the Guidance Note on Recommended Disclosures to Support the Presentation of Income Statistics in Advertisements; and
- a Real Estate Investment Trust will be required to calculate the weighted average lease expiry of its portfolio and new leases (and disclose the same in its annual report) based on the date of commencement of the leases. This requirement will take effect from the first annual report relating to the financial year ending on or after 31 December 2018.

RECENT CLIFFORD CHANCE BRIEFINGS

UN Security Council ratchets up North Korea sanctions in Resolution 2397

On 22 December 2017, the fifteen members of the United Nations Security Council unanimously adopted Resolution 2397 to enhance sanctions against North Korea in response to its 28 November 2017 launch of a Hwasong-15 intercontinental ballistic missile, bringing international multilateral sanctions closer in line with existing US sanctions against the North Korean regime.

Under the new sanctions, UN member states will further restrict sales of oil and refined petroleum products to North Korea, repatriate North Korean workers earning income abroad, and cease trading in several other sectors critical to the North Korean economy. UN member states are also now authorised to seize vessels in their territorial waters

engaged in smuggling of oil or other commodities for the benefit of North Korea.

This briefing discusses the resolution and its likely effects.

https://www.cliffordchance.com/briefings/2017/12/un_security_counselratchetsupnorthkore.html

Belgian 2018 corporate tax reform published — what's the impact for our clients' businesses?

The long-awaited 2018 Belgian corporate tax reform has finally been approved and published in the Belgian State Gazette. Whilst many of the measures are in line with earlier government proposals, important questions remain open for a few of the new measures.

This briefing summarises key elements of the reform and their effects for businesses.

https://www.cliffordchance.com/briefings/2017/12/belgian_2018_corporatetaxreformpublishedtoda.html

New OFAC Executive Order targeting human rights abuses, corruption, and the transfer of the proceeds of corruption has broad implications

On 20 December 2017, the President significantly extended the potential extraterritoriality of US foreign bribery laws by issuing an executive order, 'Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'.

The executive order implements the Global Magnitsky Human Rights Accountability Act, targeting serious human rights abuses, corruption, and the transfer of the proceeds of corruption. The order authorises the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to designate and sanction non-US persons that have engaged in bribery and corruption.

This briefing provides an overview of the executive order, designations made to date, and its implications.

https://www.cliffordchance.com/briefings/2017/12/new_ofac_executiveordertargetinghumanright.html

SEC renews focus on cryptocurrencies and Initial Coin Offerings

On 11 December 2017, the SEC filed a cease-and-desist order against Munchee Inc. to halt its Initial Coin Offering. This was the first SEC enforcement action brought on the basis that the ICO was an unregistered offer and sale of securities in violation of the registration requirements of the Securities Act, and not on a fraud-related claim. The cease-and-desist order came just a week after the SEC secured an emergency asset freeze against PlexCorps for making materially false and misleading statements in addition to failing to comply with securities registration requirements in the context of an ICO.

Following these two enforcement actions, SEC Chairman Jay Clayton released a statement reemphasising the SEC's view that simply ascribing the adjective 'utility' to a token (or even structuring it to provide some redemption-related use) does not insulate the offer and sale of the token from being subject to the registration requirements of the Securities Act. Chairman Clayton's statement and these actions reveal that ICOs will continue to be an area of focus for the SEC.

This briefing discusses the SEC's actions, Chairman Clayton's statement, and the business considerations surrounding ICOs as a vehicle for raising funds.

https://www.cliffordchance.com/briefings/2017/12/sec_renews_focusoncryptocurrenciesandinitia.html

House and Senate vote to enact the Tax Cuts and Jobs Act — impact on offshore reinsurers

On 20 December 2017, the United States Congress voted to enact the most sweeping tax reform bill in decades. Among other things, the Tax Cuts and Jobs Act will impose significant new restrictions on offshore reinsurers.

This briefing discusses the most prominent of these restrictions and provides some ideas for how they may be managed with careful tax planning.

https://www.cliffordchance.com/briefings/2017/12/house_and_senatevotetoenactthetaxcutsan.htm

NYSE restricts material news releases shortly after official close

A recently approved rule change now restricts companies listed on the New York Stock Exchange from releasing material news for a period of up to five minutes after the exchange's official closing time.

This briefing explains the rule change, its purpose, and its exceptions.

https://www.cliffordchance.com/briefings/2017/12/nyse_restricts_materialnewsreleasesshortl.html

Challenges to recent transactions are a reminder that antitrust risks can remain if closing has already

occurred (and even if pre-merger notification filings were made)

In December 2017, the US Federal Trade Commission and Department of Justice each separately challenged recently closed transactions that they claim would harm competition in the US. The DOJ filed suit in relation to TransDigm Group's recent acquisition of two businesses from Takata Corporation. The FTC issued an administrative complaint challenging Otto Bock's acquisition of FIH Group Holdings, the owner of Freedom Innovations. The latter transaction had closed approximately three months ago, while the former transaction has been closed since February 2017.

These actions come less than three months after the DOJ's lawsuit against Parker-Hannifin regarding its closed acquisition of CLARCOR Inc. The parties in the Parker-Hannifin deal had even made the requisite pre-merger notification filings and abided by the mandatory waiting period pursuant to the Hart-Scott-Rodino Act of 1976, as amended. All three cases should remind companies that the US antitrust authorities can and will file suit to enjoin transactions they believe are anticompetitive, even if it requires unscrambling the proverbial egg.

This briefing reviews the authorities' actions.

https://www.cliffordchance.com/briefings/2017/12/challenges_to_recenttransactionsareareminde.html