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EBA launches 2018 EU-wide stress test

The European Banking Authority (EBA) has launched the 2018 EU-wide [stress test exercise](#) and released the [macroeconomic scenarios](#). The stress test is intended to provide supervisors, banks and other market participants with a common analytical framework to compare and assess the resilience of EU banks and the EU banking system to shocks. It incorporates, for the first time, IFRS 9 accounting standards.

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The baseline scenario is in line with the December forecast published by the European Central Bank (ECB). The adverse scenario implies a deviation of EU gross domestic product (GDP) from its baseline level by 8.3% in 2020, which is the most severe scenario to date. It has been designed by the European Systemic Risk Board (ESRB) and the ECB to reflect four systemic risks that are currently deemed as representing the most material threats to stability in the EU banking sector:

- an abrupt and sizable repricing of risk premia in global financial markets;
- an adverse feedback loop between weak bank profitability and low nominal growth as a result of a decline in EU economic activity;
- public and private debt sustainability concerns amid potential repricing of risk premia and increased political uncertainty; and
- liquidity risks in the non-bank financial sector with potential spill-overs to the broader financial system.

The methodology to be applied to these scenarios was published in November 2017, ahead of the launch of the 2018 exercise, in order to provide banks with sufficient time to prepare.

The EBA expects to publish the results by 2 November 2018.

Capital Markets Union: Sustainable finance report published

The EU Commission's High-Level Expert Group on Sustainable Finance (HLEG), established to help develop an EU roadmap on sustainable finance, has published its [final report](#).

The report sets out the HLEG's recommendations for a financial system that supports sustainable investments, which include:

- establishing and maintaining an EU sustainability taxonomy to define where investments are most needed;
- developing official European sustainability standards for some financial assets, starting with green bonds;
- linking investor duties to investment horizons and sustainability preferences;
- introducing an EU climate-disclosure regime that is compliant with the FSB's Task Force on Climate-related Financial Disclosures (TCFD) recommendations; and
- making sustainability part of the mandates of the European Supervisory Authorities (ESAs).

The report will form the basis of the EU Commission's Action Plan on sustainable finance due in the coming weeks. Both items will then be discussed at a high-level conference on 22 March 2018 in Brussels.

Recovery and resolution of CCPs: EU Parliament publishes report

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its [report](#) on the proposal for a regulation on a framework for the recovery and resolution of central counterparties (CCPs).

EMIR Review: EU Parliament publishes draft report

The ECON Committee has published its [draft report](#) on the proposed regulation amending the European Market Infrastructure Regulation (EMIR) as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (REFIT proposal).

EMIR: ESMA publishes results of second CCP stress test

The European Securities and Markets Authority (ESMA) has published the [results](#) of its second EU-wide stress test exercise regarding CCPs. The test is intended to assess the resilience and safety of the EU CCP industry and to identify any vulnerabilities. It builds on the first exercise, carried out in 2016, which focused on counterparty credit risk only, by also examining whether CCPs would meet their liquidity needs under different stress scenarios.

16 European CCPs with approximately 900 clearing members (CMs) EU-wide were tested using a combination of multiple CM defaults and extreme market stress scenarios. The results of the 2017 exercise demonstrate that, as with the 2016 exercise, EU CCPs are overall resilient to common shocks and multiple defaults. The liquidity stress tests revealed that CCPs use different tools to cover their liquidity needs, some more reliable than others, but no particular deficiency was found in the management of liquidity risks.

ESMA has issued an accompanying [questions and answers \(Q&A\) document](#) setting out the overall scope of the exercise and methodologies applied.

PSD2: EBA writes to Commission regarding RTS on strong customer authentication and common and secure communication

The Chair of the EBA, Andrea Enria, has written a [letter](#) to the EU Commission Director General for Financial Stability, Services and Capital Markets Union about the regulatory technical standards (RTS) on strong customer authentication (SCA) and common and secure communication (CSC) under the recast Payment Services Directive (PSD2), which were adopted by the Commission on 27 November 2017.

In particular, Enria highlights that the version of the RTS adopted by the Commission contains significant changes that were neither in the final draft RTS that the EBA submitted, nor in the amendments that the EU Commission proposed to the EBA, nor in the formal opinion containing revised RTS that the EBA submitted in response to the Commission's proposals. The EBA takes the view that the omission of a formal consultation is not in line with the due process set out in the EBA Regulation (1093/2010). Overall, the letter welcomes the timely adoption of the RTS but notes that:

- discussions with competent authorities have highlighted concern that the changes in the RTS may impose significant additional administrative and operational burdens on payment service providers (PSPs) as well as authorities; and
- a number of the changes contained in the adopted RTS leave significant room for interpretation, and increase the risk of an unlevel playing field.

As such, the EBA stands ready to assist further with technical issues, including through the extension of its Q&A process to PSD2.

Brexit: EU Council and UK Government set out transition period positions

The EU Council, meeting in EU27 format, has adopted supplementing [negotiating directives](#) which provide the Commission, as EU negotiator, with a mandate to open discussions with the UK on the transition period following Brexit.

Among other things, the directives set out the EU's stance that during the transition period:

- the whole EU acquis, and any changes to the acquis, would continue to apply to the UK as if it were a Member State, and all existing EU regulatory, budgetary, supervisory, judicial and enforcement instruments and structures would continue to apply;
- the UK would remain bound by the obligations stemming from international agreements concluded by the EU, but will no longer participate in bodies established by those agreements;
- the UK would continue to participate in the customs union and single market, including all four freedoms of the EU;
- the UK would no longer participate in the institutions of the EU, but exceptionally on a case-by-case basis may be invited to attend a Commission meeting where Member States are represented but without voting rights; and
- the transition period would have an end date of 31 December 2020.

The UK Government has also commented on the transition period in a [letter](#) to business leaders, setting out three principles for ensuring that people and businesses have sufficient time to prepare for the arrangements that will be required to adjust to the UK's future relationship with the EU. The Government has set out its intention that:

- terms of trade should remain unchanged during the implementation period, based on the continuity of existing EU rules and regulations;
- no business should worry that it may fall outside of the scope of the implementation period, which should mimic the breadth of the UK's current arrangements; and
- EU citizens should continue to be able to come and live and work in the UK with no new barriers to taking up employment.

The Government expects that the implementation will be time-limited, and should be determined by how long it will take for the changes to be arranged, so that there is only one set of changes at the end of the implementation period, at the point when the UK moves into its future partnership with the EU.

IOSCO publishes recommendations and final report on liquidity risk management for investment funds

The International Organization of Securities Commissions (IOSCO) has issued [final recommendations](#) on liquidity risk management practices of open-ended collective investment schemes (CIS) and a [supplemental final report](#) setting

out examples and good practices of open-ended fund liquidity risk management.

The final report replaces the liquidity risk framework set out in IOSCO's 2013 report. The recommendations are intended to assist entities responsible for managing the liquidity of CIS to ensure that liquidity is managed to safeguard and protect the interests of investors, including in stressed market conditions. This report constitutes the final step in IOSCO's response to address potential structural vulnerabilities in the asset management sector as identified by the Financial Stability Board (FSB) and has been prepared in light of the FSB's January 2017 recommendations to address structural vulnerabilities from asset management activities.

IOSCO's final report on good practices is intended to assist regulators, investors, and the industry by setting out how liquidity risk practices vary by jurisdiction, describing good practices for liquidity risk management throughout the entire life cycle of a fund, and scenarios where an asset manager may use liquidity management tools to manage liquidity issues in certain funds.

AMF consults on new national threshold for requirement to publish a prospectus and disclosure regime applicable below that threshold

As certain provisions of the Prospectus Regulation will become applicable on 21 July 2018, the Autorité des Marchés Financiers (AMF) has launched a [consultation](#) on a new national threshold above which the publication of a prospectus will be mandatory and on the specific disclosure regime for offers to the public below this threshold.

Comments are due by 21 February 2018.

BaFin publishes guidance note on WpDPV

The German Federal Financial Supervisory Authority (BaFin) has published a [guidance note](#) on the revised Investment Services Audit Ordinance (Wertpapierdienstleistungs-Prüfungsverordnung, WpDPV).

The purpose of the revision of the WpDPV was to implement recent changes introduced by the MiFID2 regime.

PRIIPs: Consob extends deadline of temporary regime applicable to submission of KIDs

As of 1 January 2018, the Commissione Nazionale per le Società e la Borsa (Consob) has to be notified of key information documents (KIDs) relating to packaged retail and insurance-based investment products (PRIIPs) made available to retail investors in Italy.

Consob published a set of [operational instructions](#) to be followed for the purposes of submitting these notices and provided for a temporary regime for PRIIPs already available to retail investors in Italy. The original deadline for these PRIIPs was 31 January 2018, but the deadline has now been extended to 31 March 2018.

Amendment Ordinance aligning Hong Kong's regulatory regime with latest international standards on recovery planning and large exposure limits for banks gazetted

The Hong Kong Government has gazetted the [Banking \(Amendment\) Ordinance 2018](#). The Amendment Ordinance amends the Banking Ordinance to bring Hong Kong's regulatory regime up to date with the latest international standards on recovery planning and large exposure limits for banks.

The Amendment Ordinance is intended to implement the latest standards issued by the Basel Committee on Banking Supervision (BCBS) in relation to financial exposure limits of authorised institutions by empowering the Hong Kong Monetary Authority (HKMA) to prescribe rules for such limitations.

In accordance with the recommendations of the Financial Stability Board (FSB), the Amendment Ordinance also empowers the HKMA to require authorised institutions to maintain, revise or implement a recovery plan, which should set out the measures that the institution can take to stabilise and restore its financial resources and viability in the event that it comes under severe stress.

The Amendment Ordinance will come into effect on a day to be designated by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

SFC provides guidance on best execution

The Securities and Futures Commission (SFC) has issued a [circular](#) setting out guidance on the standards of conduct and internal controls the SFC expects of licensed corporations (LCs) in delivering best execution for clients. The circular follows a thematic review of selected LCs which assessed the effectiveness and adequacy of arrangements for delivering best execution.

The circular reminds LCs that they should execute client orders on the best available terms and emphasises that this is particularly important in light of the increased speed and complexity of trading, with execution now mainly automated and electronic and LCs offering multifaceted products and services including many with unique features.

The SFC expects LCs to put in place arrangements, including controls, monitoring and management supervision, to obtain the best available terms. LCs should subject these arrangements to periodic review to ensure best execution is delivered consistently.

The SFC has also issued its [report](#) on the thematic review of best execution to provide detailed observations from the thematic review and highlight good industry practices for LCs to take into consideration.

HKEX publishes results of latest review of disclosure in issuers' annual reports

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has published a [report](#) on the findings and recommendations from its review of issuers' annual reports for the financial year ended between January and December 2016.

As part of its regular regulatory activities, the SEHK reviews issuers' annual reports to monitor their compliance with its listing rules, corporate conduct and

disclosure of material events and developments, and releases its findings and recommendations to improve transparency and promote a fair, orderly and informed market.

The SEHK found that issuers have generally provided relevant information to the independent directors for their review of continuing connected transactions and the adequacy of internal controls. Amongst other things, issuers are advised to take note of the following recommendations discussed in the review report:

- financial statements with auditors' modified opinions – issuers are advised to provide progress updates on a timely basis to explain how the board of directors can, based on the audit committee's recommendations, promptly resolve the issues that gave rise to the audit modifications;
- newly listed issuers – in reviewing the post-listing developments of newly listed issuers in light of market concerns about new applicants which exhibit 'shell' characteristics, the SEHK has noted an increase in these issuers engaging in activities involving changes in major shareholders, the boards of directors and their major businesses through a series of transactions or arrangements. The SEHK will continue to monitor these issuers closely and, where justified, apply the reverse takeover rules in extreme cases; and
- business review in management discussion and analysis – the SEHK found that a majority of issuers continued to provide only generic disclosure. Issuers are advised to disclose not only the principal risks faced by their businesses but also how they would affect their business operations and financial conditions, and measures taken to manage these risks.

RECENT CLIFFORD CHANCE BRIEFINGS

Fintech in 2018 — five trends to watch

We have only just begun to scratch the surface when it comes to the impact of technology on financial services but that small abrasion is revealing.

This briefing paper makes five bold predictions for the future of fintech – from how banks will re-imagine themselves, to where risks may arise and contaminate the financial system.

https://www.cliffordchance.com/briefings/2018/01/fintech_in_2018_-_fivetrendstowatch.html

Regulation of Bitcoin — the role of the CFTC

The remarkable growth and volatility of Bitcoin and other virtual currencies has raised the question of how these markets are regulated. While the Securities and Exchange Commission (SEC) and bank regulators supervise specific institutions and discrete activities, and state regulators have jurisdiction in their states over money transmission, it is the US Commodity Futures Trading Commission (CFTC) that has emerged as 'the federal overseer of digital currencies like bitcoin'.

This briefing paper outlines the implications of CFTC Bitcoin regulation, focusing on CFTC regulation of virtual currency spot and the derivatives markets.

https://www.cliffordchance.com/briefings/2018/01/regulation_of_bitcointherole_ofthecftc.html

US Federal Trade Commission announces annual revisions to thresholds of HSR Act and prohibition against interlocking directors

Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, parties to an acquisition or merger meeting certain annually adjusted thresholds must make a pre-closing notification to the US antitrust authorities and abide by a mandatory waiting period, barring the applicability of one of numerous exemptions. These adjusted thresholds also determine the HSR filing fee that the parties must pay.

On 26 January 2018, the US Federal Trade Commission announced this year's revised thresholds, which will apply to any transaction that closes on or after a currently unspecified date, which we expect to likely be the end of February 2018.

Clifford Chance has prepared a briefing paper setting out the new thresholds for the HSR Act, as well as the annual revision to the thresholds applicable to Section 8 of the Clayton Act (the bar on horizontal interlocks).

https://www.cliffordchance.com/briefings/2018/01/u_s_federal_tradecommissionannouncesannua.html

C L I F F O R D C H A N C E

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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