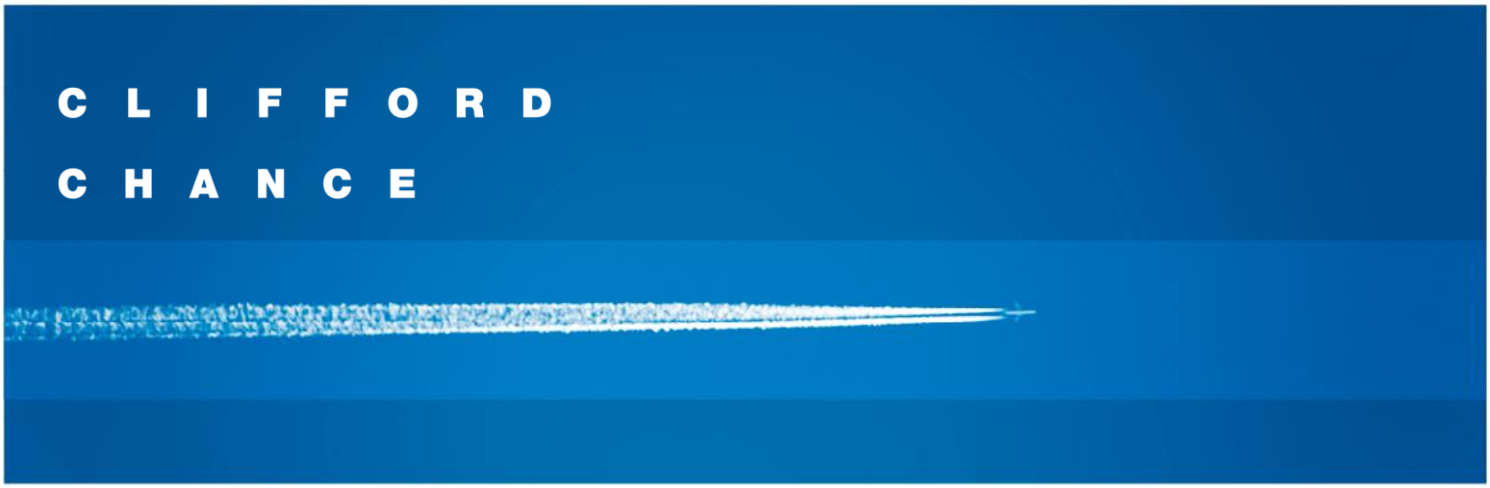

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Capital Markets Union: EU Commission issues legislative proposals on covered bonds

The EU Commission has adopted a proposal for a directive on covered bonds, which lays down the conditions that these bonds have to respect in order to be recognised under EU law. The proposed directive is also intended to strengthen investor protection by imposing specific supervisory duties.

In particular, the proposed directive:

- provides a common definition of covered bonds, which will represent a consistent reference for prudential regulation purposes;
- defines the structural features of the instrument (dual recourse, quality of the assets backing the covered bond, liquidity and transparency requirements, etc.);
- defines the tasks and responsibilities for the supervision of covered bonds; and
- sets out the rules allowing the use of the 'European Covered Bonds' label.

The proposed directive is complemented by a proposal for a regulation amending the Capital Requirements Regulation (CRR) as regards exposures

in the form of covered bonds, which seeks to strengthen the conditions for granting preferential capital treatment by adding further requirements.

The proposals are part of the Commission's Capital Markets Union (CMU) action plan and are intended to foster the development of covered bonds across the EU, particularly in those Member States where no market currently exists, and increase cross-border flows of capital and investments.

Capital Markets Union: EU Commission issues legislative proposals on cross-border distribution of investment funds

The EU Commission has adopted legislative proposals for a regulation and a directive on the cross-border distribution of investment funds as part of the CMU action plan. The Commission is concerned that Member States' marketing requirements, regulatory fees and administrative and notification requirements represent a significant disincentive to the cross-border distribution of funds.

The proposals are intended to:

- amend certain provisions in the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive with the purpose of reducing regulatory barriers to the cross-border distribution of investment funds in the EU;
- reduce the cost for fund managers of going cross-border;
- support a more integrated single market for investment funds; and
- support more cross-border marketing of investment funds.

The proposals were identified as a priority action in the CMU mid-term review as they contain measures intended to remove capital market barriers and contribute to the development of more integrated capital markets by making it easier for investors, fund managers and invested undertakings to benefit from the single market.

Capital Markets Union: EU Commission issues legislative proposal on assignment of claims and communication clarifying conflict-of-law rules for securities

The EU Commission has adopted a proposal for a regulation on the law applicable to the third-party effects of assignments of claims. The proposal is part of the Commission's CMU action plan.

The assignment of a claim refers to a situation where a creditor transfers the right to claim a debt to another person in exchange of a payment. The Commission notes that, at the moment, there is no legal certainty as to which national law applies when determining who owns a claim after it has been assigned in a cross-border case. The proposed regulation is intended to clarify according to which law such disputes are resolved. Under the proposal, as a general rule, the law of the country where creditors have their habitual residence would apply, regardless of which Member State's courts or authorities examine the case. The proposal is intended to promote cross-border investment, access to cheaper credit and prevent systemic risks.

The Commission has also adopted a communication on the applicable law to the proprietary effects of transactions in securities, which is intended to clarify which country's law applies when determining who owns a security in a cross-border transaction.

Banking Union: Commission adopts legislative proposals on tackling non-performing loans

The EU Commission has published its second progress report on the reduction of non-performing loans (NPLs) and has adopted two legislative proposals intended to create an EU-wide legal framework to encourage the resolution of NPLs. The Commission takes the view that addressing the high stock of NPLs and their possible future accumulation is essential to complete the Banking Union. The second progress report sets out progress made in the implementation of the actions set out in the Commission's action plan to tackle NPLs published in July 2017, and follows up on actions reported in the first progress report in January 2018. The Commission reports that the high stocks of NPLs are being reduced and the average ratio of NPLs is on a steady downward trend. The package adopted by the Commission is intended to accelerate the resolution of NPLs and prevent their build-up in future.

The legislative package comprises:

- a proposal for a directive on credit servicers, credit purchasers and the recovery of collateral, which is intended to increase the efficiency of debt recovery procedures through the availability of a distinct common accelerated extrajudicial collateral enforcement procedure (AECE) and by encouraging the development of a secondary market of NPLs; and
- a proposal for a regulation amending the CRR as regards minimum loss coverage for non-performing exposures, which will provide for a statutory prudential backstop against any excessive future build-up of NPLs without sufficient loss coverage on banks' balance sheets.

The package also includes a staff working document on a blueprint for providing non-binding technical guidance for how national asset management companies (AMCs) can be set up by Member States.

The legislative proposals have been published for feedback from stakeholders. Comments are due by 9 May 2018.

EU Commission consults on finalisation of Basel III

The EU Commission has published a consultation paper on the finalisation of Basel III, which considers the amendments to current banking regulations required, in particular to the CRR, following implementation of this agreement. The consultation discusses the potential impact that amendments may have on the EU banking sector and the wider economy, as well as possible implementation challenges.

Comments are due by 12 April 2018.

CRR: EU Commission adopts Delegated Regulation on advanced measurement approaches for operational risk

The EU Commission has adopted a Delegated Regulation, supplementing the CRR, with regard to the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk. The Delegated Regulation forms part of an

effort to harmonise practices for the approval of internal models in the area of credit, market and operational risk models across the EU banking sector.

The Delegated Regulation will enter into force 20 days after its publication in the Official Journal and will be directly applicable in all Member States.

Banking reform package: EU Council Presidency publishes compromise texts

The EU Council Presidency has published compromise texts, dated 6 March 2018, on the legislative proposals forming the banking reform package.

The texts relate to the:

- proposed Directive to amend the Bank Recovery and Resolution Directive (BRRD 2);
- proposed Regulation to amend the Capital Requirements Regulation (CRR 2);
- proposed Directive to amend the Capital Requirements Directive (CRD 5); and
- proposed Regulation to amend the Single Resolution Mechanism Regulation (SRMR 2).

BRRD: RTS on valuation before and after resolution published in Official Journal

The following Delegated Regulations under the Bank Recovery and Resolution Directive (BRRD) have been published in the Official Journal:

- Commission Delegated Regulation (EU) 2018/345 on regulatory technical standards (RTS) specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities; and
- Commission Delegated Regulation (EU) 2018/344 on RTS specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution.

The RTS are intended to promote the consistent application of methodologies for valuations in relation to the principles upon which an independent valuer must apply their own judgment and expertise to valuations.

Both Delegated Regulations will enter into force on 29 March 2018.

PSD2: RTS on customer authentication and standards of communication published in Official Journal

Commission Delegated Regulation (EU) 2018/389 setting out RTS for strong customer authentication and common and secure open standards of communication has been published in the Official Journal.

The RTS specify the requirements payment service providers must comply with when implementing security measures under the recast Payment Services Directive (PSD2) covering, amongst other things:

- the procedure for strong customer authentication;
- exemptions from strong customer authentication;
- how the confidentiality and integrity of the user's personalised security credentials should be protected; and

- common and secure open standards for communication between payment service providers.

The Regulation entered into force on 14 March 2018 and applies from 14 September 2019.

Joint Committee of the ESAs publishes final report on big data

The Joint Committee of the European Supervisory Authorities (ESAs) has published its final report on big data. The final report includes, in part, a feedback statement to the ESAs' December 2016 discussion paper on the use of big data by financial institutions.

Responses from stakeholders generally agreed with the content of the discussion paper. In particular, stakeholders agreed with the ESA's definition of big data while highlighting that any definition of a fast evolving phenomenon such as big data should remain flexible to accommodate adjustments.

While raising concerns regarding potential consequences of the segmentation of customers enabled by big data on the comparable availability, affordability and pricing practices of products and services, and that the growing use of big data could increase the breadth of consequences of cyber attacks, a large number of respondents agreed that big data could help financial institutions develop products better tailored to their target market and help foster broader supervision of product governance requirements.

The ESAs believe that existing legislation in the areas of financial regulation, data protection and consumer protection are sufficient to mitigate the risks identified in its work, and also note that the impending application of key legislation in the financial and data protection sectors will further strengthen the framework.

Until these key pieces of legislation have been implemented or entered into application, the ESAs consider that further legislative proposals in this area would be premature.

Fintech: EBA publishes roadmap

The European Banking Authority (EBA) has published a fintech roadmap setting out its priorities for 2018/2019.

The roadmap takes account of the feedback to the EBA's 2017 discussion paper on fintech and the new mandates for the EBA set out in the EU Commission's fintech action plan, and also sets out the establishment of a fintech knowledge hub to enhance knowledge sharing and foster technological neutrality in regulatory and supervisory approaches.

The EBA's priorities for 2018/2019 are:

- monitoring the regulatory perimeter, including assessing current authorisation and `licencing approaches to fintech firms, and analysing regulatory sandboxes and innovation hubs in order to identify a set of best practices to enhance consistency and facilitate supervisory coordination;
- monitoring emerging trends and analysing the impact on incumbent institutions' business models and the prudential risks and opportunities arising from the use of fintech;

- promoting best supervisory practices on assessing cybersecurity and promoting a common cyber threat testing framework;
- addressing consumer issues arising from fintech, in particular in the areas of unclear regulatory status of fintech firms and related disclosure to consumers, potential national barriers preventing fintech firms from scaling up services to consumers across the single market, and the appropriateness of the current regulatory framework for virtual currencies; and
- identifying and assessing money laundering/terrorist financing risks associated with regulated fintech firms, technology providers and fintech solutions.

Non-performing loans: ECB publishes addendum to guidance for banks

The European Central Bank (ECB) has published an addendum to its guidance to banks on non-performing loans. The addendum specifies the ECB's supervisory expectations for prudent levels of provisions for new NPLs. These expectations will apply to all loans classified as non-performing in line with the EBA definition from 1 April 2018 onwards.

The ECB intends to use the addendum as a starting point for a supervisory dialogue between significant banks and the ECB Banking Supervision. During this dialogue the ECB will discuss with each bank any divergences from the prudential provisioning expectations and then decide, on a case-by-case basis, whether and which supervisory measures are appropriate. The results of the dialogue will be incorporated in the 2021 supervisory review and evaluation process (SREP) and therefore, from early 2021 onwards, banks will be expected to inform the ECB of any differences between their practices and the prudential provisioning expectations. The ECB requests that banks prepare themselves and review their credit underwriting policies and criteria in an effort to reduce the creation of new NPLs.

Alongside the addendum, the ECB has published responses it received to the consultation on the proposed draft addendum and a feedback statement setting out the ECB's consideration of those responses.

ECB consults on euro unsecured overnight interest rate

The ECB has launched a second consultation on the detailed features of a new euro unsecured overnight interest rate.

This consultation follows the ECB's decision to develop a euro unsecured overnight interest rate based on data already available to the Eurosystem, and builds on the findings of its first consultation in November 2017.

In this consultation the ECB is consulting on the rate methodology and its operational and technical parameters, including:

- assessing data sufficiency;
- calculation methodology;
- operational design features; and
- ensuring broad-based adoption of the rate.

The ECB intends to finalise the new euro unsecured overnight interest rate before 2020.

Comments are due by 20 April 2018.

BIS publishes report on central bank digital currencies

The Committee on Payments and Market Infrastructures (CPMI) and the Markets Committee of the Bank for International Settlements (BIS) have published a joint report on central bank digital currencies.

The report looks at two types of central bank digital currency:

- a wholesale currency limited to select financial institutions; and
- a general purpose currency accessible to the public.

The report analyses the implications of both types in payments, monetary policy implementation and financial stability.

It finds that wholesale central bank digital currencies might be useful for payments but more work is needed to assess their full potential. Although a central bank digital currency would not alter the basic mechanics of monetary policy implementation, its transmission could be affected.

The report further notes that a general purpose central bank digital currency could have wide-ranging implications for banks and the financial system. Commercial banks' reliance on customer deposits may become less stable, as deposits could more easily take flight to the central bank in times of stress. In addition to consequences for financial stability, the report warns that the effects on the efficiency of financial intermediation should be carefully considered.

The report concludes that each jurisdiction considering the launch of a central bank digital currency should carefully and thoroughly consider the implications before making any decision.

Brexit: FCA launches survey for EEA inbound passported firms

The Financial Conduct Authority (FCA) has launched a survey for EEA firms and funds passporting into the UK.

The survey follows the UK Government's announcement in December 2017 of its intention to provide a temporary permission scheme for EEA firms and funds to access the UK market when the UK withdraws from the EU.

The survey seeks information from firms who passport into the UK (either via a branch or on a cross-border services basis) or market funds in the UK on, amongst other things:

- the directives under which they passport; and
- how they intend to access the UK market post-exit.

The FCA intends to use the information provided to inform its communications on the scheme and to identify firms potentially relevant to the scheme.

The survey closes on 11 May 2018.

FCA publishes discussion paper on culture in financial services

The FCA has published a discussion paper (DP18/2) on transforming culture in financial services.

The paper contains a collection of essays written by industry leaders and academics on the following four themes:

- whether there is a 'right' culture;
- the role of regulation;
- the role of reward, capabilities and environment in driving behaviours; and
- leading culture change.

No specific feedback is sought on the views presented. Instead, the essays are intended to provide a basis for stimulating further debate on what constitutes a healthy culture in financial services and how to promote it.

BoE consults on fees regime for financial market infrastructure supervision

The Bank of England (BoE) and HM Treasury have jointly published a consultation paper proposing a new funding structure for the supervision of financial market infrastructures and service providers to recognised payment systems (FMIs).

Following its August 2017 consultation on the broad approach to levying fees for the supervision of FMIs the BoE has decided to progress with developing a fee-charging regime. The consultation comprises three parts:

- Part 1 presents feedback to the BoE's August 2017 consultation;
- Part 2 consults on the detail of the proposed fee levying regime; and
- Part 3 consults on HM Treasury's draft SI setting out the scale of fees to which fees levied on recognised payment systems and specified service providers must relate.

Comments are due by 9 May 2018. The BoE will consider the feedback received and issue a policy statement in due course. The regime is expected to come into force after the HMT SI has taken effect, which is not expected before Q3 2018.

BoE publishes details of 2018 stress test

The BoE has published details of the key elements of the 2018 annual cyclical scenario (ACS) stress test for the UK banking system. The stresses applied to the economic and financial market prices and measures of activity in the 2018 ACS will be the same as for the 2017 test, in order to isolate, as far as possible, the impact on the stress test results of the new IFRS 9, which came into effect on 1 January 2018.

The hurdle rates for the 2018 test will differ from those used in earlier years in the following ways:

- the BoE will hold banks of greater systemic importance to higher standards;
- hurdle rates will use buffers to capture domestic systemic importance as well as global systemic importance;
- the calculation of minimum capital requirements incorporated in the hurdle rates will more accurately reflect how they would evolve in a real stress; and

- adjustments will be made to reflect the increased loss absorbency that will result from higher provisions in stress under the new IFRS 9 accounting standard.

The BoE intends to publish the results of the tests in the fourth quarter of 2018.

HM Treasury launches call for evidence on role of cash and digital payments in new economy

HM Treasury has launched a call for evidence on the role of cash and digital payments in the new economy. In particular, the government is seeking to gather evidence on the impact the transition from cash to digital payments has on different sectors, regions and demographics. It also intends to explore how the government can support digital payments, while ensuring that cash remains accessible and secure for those who need to use it but is not used as a means to evade tax and launder money. It is seeking both domestic and international views.

Comments are due by 5 June 2018.

Polish Financial Supervision Authority sets out position on dividend policy

The Polish Financial Supervision Authority (KNF) has published its standpoint on the assumptions of the dividend policy of commercial banks in the medium-term, in which it sets out its recommendations with regard to the payment of a dividend by banks.

Polish Senate adopts Act Amending the Act on Trading in Financial Instruments and Certain Other Acts

On 15 March the Senate adopted the draft Act Amending the Act on Trading in Financial Instruments and Certain Other Acts. The Act implements the provisions of MiFID2 into Polish law.

The Act will now be sent to the President for signature and will then be published in the Journal of Laws.

AMF and ACPR clarify legal categorisation of M&A advisory activities

The French Autorité des marchés financiers (AMF) and Autorité de contrôle prudentiel et de résolution (ACPR) have published a position document clarifying the conditions and the extent to which the activities commonly referred to as 'M&A advice' or 'corporate finance advice' and falling within the scope of the MiFID2 ancillary investment service (B) (3) may be carried out in France without a license or regulated status.

The position is intended to delineate M&A advisory activity, which may be carried out freely, from the placing of financial instruments without a firm commitment basis and investment advice regulated services. The distinctive criteria set out address the nature of the due diligence implemented to understand the needs of the client and meet those needs, the determined or undetermined character of the financial terms of the planned transaction and the intuitu personae related to the transaction. The French regulators further specify that it is the responsibility of the professionals to determine the

category of the service provided and ensure that, where applicable, they have the appropriate authorisation or professional status to provide that service.

MiFID2 and separation of investment firms and asset management companies: AMF General Regulation published

Following the modification of the French Monetary and Financial Code and in order to transpose the provisions MiFID2, and to implement the separation of the legal regimes for investment firms and asset management companies, the AMF conducted a public consultation on amending its General Regulation to complete both of these projects.

Now that this consultation has concluded, the AMF has published the latest version of its General Regulation, which has been applicable since 3 January 2018.

Bank of Italy provides guidance to electronic money institutions and payment institutions on their licensing regime

Following the introduction of Legislative Decree no. 218 of 15 December 2017, which implemented the recast Payment Services Directive (PSD2) in Italy, the Bank of Italy has issued a communication dated 12 March 2018 providing operational instructions to electronic money institutions and payment institutions regarding the maintenance of their license and the related steps to be taken.

Bank of Italy consults on amendments to its circular on remuneration policies and practices

The Bank of Italy has launched a public consultation on a set of proposed amendments to Part I, Title IV, Chapter 2 of its Circular no. 285 of 17 December 2013 concerning the remuneration policies and practices applicable to banks and banking groups.

Amongst other things, these amendments are intended to adapt the Italian regulatory framework to the European Banking Authority's (EBA's) guidelines of 27 June 2016 on sound remuneration policies under Articles 74(3) and 75(2) of the Capital Requirements Directive (CRD 4) and disclosures under Article 450 of the Capital Requirements Regulation (CRR).

Comments need to be submitted by 14 May 2018.

HKMA and KNF sign MoU to strengthen fintech co-operation

The Hong Kong Monetary Authority (HKMA) and the Polish Financial Supervision Authority (KNF) have signed a memorandum of understanding (MoU) to enhance their fintech collaboration, with a view to strengthening co-operation between the two jurisdictions in promoting innovative financial services. Under the MoU, the HKMA and the KNF will collaborate on joint research projects, information exchange, mutual consultations and expertise sharing.

Japanese Ministry of Finance and Bank of Thailand sign memorandum of cooperation to promote use of local currencies

The Ministry of Finance (MOF) of Japan and the Bank of Thailand have signed a memorandum of cooperation for the establishment of a framework of cooperation to promote the use of their local currencies in order to settle bilateral trade and investment.

Both authorities have mutually reached agreement on initiatives relating to the promotion of the use of local currencies for trade and investment settlement, which include, among others, the promotion of the direct exchange rate quotation and interbank trading between the Japanese Yen and the Thai Baht. This cooperation will be enhanced through information sharing and periodical discussions between Japanese and Thai authorities.

MAS moves towards zero duplication of data requests to and automation of data submission by financial institutions

The Monetary Authority of Singapore (MAS) has unveiled its roadmap on transforming its data collection approach from financial institutions (FIs).

The roadmap includes measures progressively to reduce duplication and automate data submission by FIs. This is intended to reduce the resources and preparation time needed by FIs to produce data requested by MAS, and make it more efficient for MAS to process and analyse the data collected.

Amongst other things, the roadmap includes the following measures:

- non-duplication of data requests – the MAS will enshrine data reusability in its data collection approach so that data collected will be used for multiple purposes, and ensure that FIs need not submit the same data to the MAS twice. The MAS aims to eliminate all duplication in data requests by the end of 2019;
- machine readability of data submissions – all new regulatory returns from FIs to the MAS from 1 April 2018 that meet certain criteria will have to be made in machine-readable formats. This will be extended to new surveys and ad-hoc data requests from 2019 onwards. The MAS will seek feedback from FIs on providing data in the machine-readable templates prior to 2019 and take into account any feedback before the second phase of implementation; and
- granular data collection – the MAS will change how it defines its data requirements. For data that can be aggregated in different ways, the MAS intends to collect more detailed data on the underlying transactions instead of the aggregate statistics. The MAS has indicated that it is working with the industry to determine the appropriate levels of granularity in its data collection.

The measures are effective from 31 March 2018.

MAS and Bank of Lithuania sign agreement on fintech cooperation

The MAS and the Bank of Lithuania have signed a Fintech Co-operation Agreement under which they agree to work together to support the

development of the fintech ecosystems and encourage greater financial innovation in the two countries.

The agreement will allow both regulators to explore joint innovation projects and share information on emerging market trends. It also enables fintech companies to receive the support of the respective regulators to better understand the regulatory regime in each country, and helps companies in both countries access each other's resources to expand into new markets.

SGX signs MoU with New Zealand Stock Exchange to cooperate in Asia- Pacific markets

The Singapore Exchange (SGX) and the NZX Limited (NZX) have signed a Memorandum of Understanding (MoU) to expand co-operation in Asia-Pacific markets.

Under the terms of the MoU, the SGX and the NZX will promote market development initiatives across a range of areas including the promotion of derivatives products, dual and secondary listings, exchange traded funds and investor participation. The SGX and the NZX will also share relevant information as required and partner on green finance and sustainability initiatives.

SGX consults on proposed refinements to SGX-DC clearing fund structure

The Singapore Exchange (SGX) has launched a public consultation on proposed amendments to the SGX-DC Clearing Rules to refine the SGX-DC Clearing Fund structure and contribution requirements on Clearing Members. The proposed amendments are intended to enhance the robustness of the Clearing Fund as well as simplifying its structure in line with practices of global clearing houses. These changes will also enable the Clearing Fund to reflect more accurately the risk to SGX-DC in the clearing system and mutualise losses in a more consistent manner.

Amongst other things, the proposed amendments include:

- combining exchange-traded derivatives (ETD) contracts and non-relevant market contracts such as over the counter commodity contracts (NMC) into a single contract class. The merger of the two contract classes is intended to enable a more appropriate and equitable allocation of losses;
- refining the methodology used to determine Clearing Members' Clearing Fund contributions. Currently, a Clearing Member's Clearing Fund contributions consist of (1) a security deposit and (2) a further assessment amount. SGX-DC proposes to replace these components with a single Clearing Fund Deposit requirement, while retaining the right to call for a further assessment that is capped at one time of the Clearing Member's Clearing Fund Deposit; and
- determining the Clearing Members' Clearing Fund Deposit based on a risk-based allocation of the Clearing Fund requirement derived from stress test losses, and apportioning the Clearing Fund requirement to individual Clearing Members within each applicable contract class on a pro-rata basis in proportion to the risk that the Clearing Member brings to the clearing system. In determining the apportionment, SGX-DC may consider Clearing Members' risk margin requirements as well as trading or clearing volume.

Subject to regulatory clearance, SGX intends to implement the proposed refinements in the third quarter of 2018.

Comments on the consultation paper are due by 3 April 2018.

RECENT CLIFFORD CHANCE BRIEFINGS

European Court of Justice rules on investor-State arbitration under an intra-EU BIT

In a much-anticipated decision, the European Court of Justice (ECJ) holds that the arbitration agreement in the Slovakia – Netherlands bilateral investment treaty (BIT) is incompatible with EU law.

This briefing paper discusses the ruling.

https://www.cliffordchance.com/briefings/2018/03/european_court_ofjusticerulesoninvestor-stat.html

First contested prosecution for failure to prevent bribery — jury rejects 'adequate procedures' defence

The first company to plead not guilty to the corporate offence of failing to prevent bribery (under section 7 of the Bribery Act 2010) since it came into force in July 2011 has failed to persuade a jury that it had 'adequate procedures' in place. The case is an indicator of the continuing will of prosecutors to pursue corporates (even where they cooperate), but leaves most questions about when the offence will be prosecuted and when companies may be able to successfully defend prosecutions unanswered.

This briefing paper discusses the case.

https://www.cliffordchance.com/briefings/2018/03/first_contested_prosecutionforfailuret.html

Disclosure — technology assisted review and the courts — Where are we now?

The Pyrrho and Brown decisions in 2016 represented a watershed moment in litigation as the High Court approved, for the first time, the use of technology assisted review, or TAR, as part of the disclosure process. Judicial attitudes towards TAR have moved forward rapidly since then as the courts seek to find ways to streamline disclosure and encourage accurate, cost effective and timely document review. The courts have now said that parties no longer need the approval of the court to deploy TAR.

This briefing paper discusses TAR and the courts, including information on Clifford Chance's TAR capabilities.

https://www.cliffordchance.com/briefings/2018/03/disclosure_technologyassistedreviewandth.html

More than a token risk – ICO trading platforms and promoters in SEC crosshairs

Since issuing its DAO Report in July 2017, the US Securities and Exchange Commission (SEC) has aggressively asserted jurisdiction over the products sold through initial coin offerings (ICOs). The SEC has now issued a public statement cautioning investors and online platform operators that many

platforms may be operating unlawfully. And with increasing frequency, the SEC has brought enforcement actions in the digital asset space. These actions have focused principally on violations of the securities offering registration and disclosure requirements of the Securities Act of 1933 in the context of primary market ICOs. The DAO Report and public statement underscore a second front in the SEC's push to regulate the digital asset markets – enforcement actions against intermediaries that distribute or provide trading platforms for products issued in ICOs, but fail to register as securities exchanges and/or broker-dealers under the Securities Exchange Act of 1934. For example, the SEC and US Department of Justice (DOJ) recently filed civil and criminal complaints against an exchange operator. ICO trading platforms and other digital asset market participants also received SEC subpoenas earlier this year requesting information about ICO structures, investors, and transactional activity. We expect the SEC's regulatory and enforcement focus in this area to continue unabated.

This briefing paper discusses the SEC's actions.

https://www.cliffordchance.com/briefings/2018/03/more_than_a_tokenriskicotradingplatform.html

Supreme Court opines on scope of safe harbor provisions

In a decision entered last week, the Supreme Court determined to disregard intermediaries in connection with an 'overarching transfer' between two parties that are not expressly protected by the Bankruptcy Code's Section 546(e) 'safe harbour.' The outcome was contrary to earlier decisions issued by the Second, Third, Sixth, Eighth and Tenth Circuits, which had found the safe harbor to be applicable where a protected entity was an intermediary.

This briefing paper discusses the decision.

https://www.cliffordchance.com/briefings/2018/03/supreme_court_opinesonthescopeofthesaf.html