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International Regulatory Group Contacts

Chris Bates +44 (0)20 7006 1041
Nick O'Neill +1 212 878 3119
Marc Benzler +49 69 7199 3304
Steven Gatti +1 202 912 5095
Paul Landless +65 6410 2235
Mark Shipman + 852 2826 8992
Donna Wacker +852 2826 3478

International Regulatory Update Editor

Joachim Richter +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname @cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

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Banking reform package: EU Council reaches political agreement

The EU Council meeting in the Economic and Financial Affairs Council (ECOFIN) has agreed its stance on the package of risk reduction measures for the banking industry.

The package relates to:

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

Among other things, the proposal for BRRD 2 implements the Financial Stability Board's (FSB's) total loss absorbing capacity (TLAC) standard and the proposals on capital requirements include measures to introduce a binding leverage ratio and a binding net stable funding ratio.

In reaching its position, the Council has reached a compromise position on:

- the necessary level and quality of the subordination of liabilities in the event of global systemically important institutions (G-SIIs), or other bank of systemic importance to financial stability, having to be resolved;
- implementation of the new market risk capital requirements and the Basel Committee on Banking Supervision (BCBS) fundamental review of the trading book; and
- and adjusted methodology for calculation of the G-SII score.

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Green finance: EU Commission adopts legislative package and consults on MiFID2 and IDD sustainability requirements

The EU Commission has adopted a package of legislative proposals following-up on the EU action plan on sustainable finance in order to meet the EU's 2030 targets under the Paris Agreement. The proposals are intended to encourage investments channelled into sustainable activities, help investors identify green investments, and support job creation by developing the EU financial sector as a global leader in sustainable finance. The Commission also views its proposals as supporting the Capital Markets Union (CMU) by connecting finance with the needs of the European economy, in particular its sustainable development agenda.

The legislative proposals comprise three regulations on:

- the establishment of a framework to facilitate sustainable investment, which would set a harmonised framework for gradually creating a unified classification system (taxonomy) for determining whether an economic activity is environmentally-sustainable;
- disclosures relating to sustainable investment and sustainability risks and amending the IORP II Directive (2016/2341) to introduce disclosure obligations on how institutional investors and asset managers integrate environmental, social and governance (ESG) factors in their risk processes; and
- amending the Benchmarks Regulation (2016/1011) to create a new category of benchmarks that are low-carbon or 'decarbonised' versions of standard indices and the positive-carbon benchmarks, in order that investors have more information on the carbon footprint of their investments.

Alongside the proposals, the Commission has launched two consultations to assess how best to include ESG considerations into the advice that investment firms and insurance distributors offer to individual clients. As such, the Commission is seeking views on its proposals to amend Delegated Regulations under MiFID2 and the Insurance Distribution Directive (IDD).

Comments on the consultations are due by 21 June 2018.

EU Commission consults on proposed sovereign bond-backed securities regulation

The EU Commission has published a proposal for a regulation on sovereign bond-backed securities (SBBSs).

Aimed at enabling demand-led market development of SBBSs and the emergence of an efficient market over time, the proposed regulation sets out a general framework for a new financial instrument where credit risk is associated with exposures to a portfolio of euro-area sovereign bonds. Among other things, the regulation sets out a harmonised definition, qualifying criteria and specific regulatory treatment.

The legislative proposal follows the completion of a feasibility study into SBBSs carried out by a high-level task force established by the European Systemic Risk Board (ESRB), and is accompanied by an impact assessment

of the available policy options and an opinion from the Regulatory Scrutiny Board (RSB).

Comments on the proposal are due by 19 July 2018.

Capital Markets Union: EU Commission adopts legislative proposal on SME financing

The EU Commission has adopted a proposal for a regulation intended to give small and medium sized enterprises (SMEs) better access to financing through public markets under the Capital Markets Union (CMU). The proposed regulation would introduce proportionate requirements for SMEs listing and issuing securities on SME Growth Markets, a new market of trading venue dedicated to small issuers.

The legislative proposal includes technical amendments to the Market Abuse Regulation (MAR) and Prospectus Regulation in order to:

- adapt current obligations on keeping registers of persons with access to price-sensitive information to ease the administrative burden on SMEs, while ensuring that competent authorities can investigate cases of insider trading;
- allow issuers with at least three years listing on SME Growth Markets to produce a simpler prospectus when transferring to a regulated market beyond existing requirements for a simplified prospectus;
- make it easier for trading venues specialised in bond issuance to register as SME Growth Markets by setting a new definition of debt-only issuers, which could apply to companies issuing less than EUR 50 million of bonds over a twelve-month period; and
- creating common rules for SME Growth Markets relating to agreements between issuers and financial intermediaries.

The Commission is also consulting on further technical amendments to delegated acts under MiFID2 on certain registration conditions to promote the use of SME Growth Markets for the purposes of MiFID2. Comments on the consultation are due by 21 June 2018.

EMIR: ECON Committee publishes report on REFIT proposal

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its report on the proposal for a regulation amending the European Market Infrastructure Regulation (EMIR) as regards the clearing obligation, reporting requirements, risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, and the supervision of trade repositories (EMIR REFIT).

The Parliament is scheduled to consider the proposal at its plenary session on 11 June 2018.

CRR: EBA consults on RTS for estimation and identification of economic downturn in IRB modelling

The European Banking Authority (EBA) has published two consultation papers on draft regulatory technical standards (RTS) and guidelines on identifying economic downturns and estimating loss given default (LGD) in relation to internal ratings-based (IRB) approaches under the Capital Requirements

Regulation (CRR). The draft RTS specify the nature, severity and duration of an economic downturn, while the draft guidelines focus on the appropriate estimation of the LGD in a situation of economic downturn.

The draft RTS focus solely on the identification approach, requiring institutions to consider relevant macroeconomic and credit factors when specifying the nature of an economic downturn. The draft guidelines have been developed to supplement the RTS and clarify how institutions should quantify LGD estimates appropriate for an economic downturn. The draft guidelines focus on the methods institutions should use to quantify downturn LGD estimates. The RTS and guidelines aim to harmonise the modelling approach across IRB institutions.

Comments on both consultations are due by 22 June 2018.

Fair and Effective Markets Review publishes progress report

The Fair and Effective Markets Review (FEMR) has published a progress report on work following its review of the wholesale fixed income, currency and commodities (FICC) markets, which was published in June 2016.

The report sets out an initial assessment of the impact of FEMR's recommendations and additional work done, including:

- HM Government's work on extending the senior managers and certification regimes (SM&CR) to all other authorised financial firms;
- the involvement of the Bank of England (BoE), Financial Conduct Authority (FCA) and market participants in the Global FX Committee (GFXC) and development of the FX Global Code;
- the establishment of the FICC Markets Standards Board (FMSB);
- the BoE's and FCA's forward-looking initiatives to identify and mitigate risks through the creation of a central hub on issues relating to fairness and effectiveness in FICC markets;
- the FCA's approach to supervision, which is intended to be more forward looking and pre-emptive, as well as its work on competition in wholesale FICC markets; and
- work on benchmarks, in particular HM Treasury's (HMT's) introduction of a criminal regime for manipulating a benchmark and the BoE's reform of SONIA to become the risk-free interest rate benchmark over the next four years.

Overall, the BoE, FCA and HMT have concluded that industry must take a leading role in monitoring developments and ensuring that market infrastructures and practices keep pace with innovation and the authorities stand ready to support such work.

Securitisation Regulation: PRA consults on EU framework and significant risk transfer

The Prudential Regulation Authority (PRA) has published a consultation paper (CP12/18) on its approach to the EU framework and significant risk transfer in relation to securitisation. CP12/18 covers the Securitisation Regulation and aspects of the revised CRR banking securitisation capital framework.

The consultation covers the PRA's approach and expectations in relation to:

- provisions of the incoming Securitisation Regulation applicable to all securitisations;
- firms that intend to sponsor Simple, Transparent and Standardised (STS) Asset Backed Commercial Paper (ABCP) programmes; and
- the incoming securitisation capital framework introduced via amendments to the CRR.

Comments are due 22 August 2018.

BaFin consults on draft Voting Rights Notification Regulation

The German Federal Financial Supervisory Authority (BaFin) has launched a consultation on a draft Ordinance to introduce a Voting Rights Notification Regulation and to amend the Counterparty Review and Certification Regulation (Verordnung zur Einführung einer Stimmrechtsmitteilungsverordnung und zur Ergänzung der Gegenpartei-Prüfbescheinigungsverordnung). Feedback statements to the draft ordinance may be submitted until 8 June 2018.

Pursuant to sections 33, 38 and 39 of the German Securities Trading Act (Wertpapierhandelsgesetz – WpHG), natural and legal persons are obliged to notify BaFin and the listed company in question of the percentage of their holdings of voting rights or certain financial instruments specified in section 38 WpHG as soon as these rise above, fall below or reach certain thresholds. BaFin may specify the requirements concerning the mode and form of such notifications by way of issuing a respective regulation. The proposed Voting Rights Notification Regulation specifies the future requirements regarding mode and form of notifications pursuant to sections 33, 38 and 39 WpHG and, in particular, introduces the possibility of electronic notifications.

As of 3 January 2018, certain classes of derivatives must be traded on a trading venue pursuant to Article 28 of MiFIR. Derivatives that are subject to the trading obligation may only be traded on a regulated market, multilateral trading facility, organised trading facility or an equivalent third country trading venue. Respective review and certification of compliance requirements were implemented by way of the Second German Act Amending Financial Market Regulations (Zweites Finanzmarktnovellierungsgesetz) in section 32 WpHG and are now also to be reflected in the Counterparty Review and Certification Regulation by way of the proposed amendment.

Internal Capital Adequacy Assessment Process: BaFin publishes revised guidelines

BaFin has published revised guidelines on the Internal Capital Adequacy Assessment Process (ICAAP).

The material review carried out by BaFin and Deutsche Bundesbank was necessary due to significant amendments in the European banking supervisory structure and practice. Changes include, in particular, the introduction of two different complementary perspectives in assessing internal capital adequacy, with one taking a normative and the other taking an economic perspective.

AML: Italian Council of Ministers approves decree on access to anti-money-laundering information by tax authorities

The Italian Council of Ministers has approved the final decree intended to implement Directive (EU) 2016/2258 concerning access to anti-money-laundering information by tax authorities to ensure an effective administrative cooperation among Member States.

The decree provides for the introduction of a system enhancing exchange of information amongst European authorites and the use of data included in local archives or collected by the Italian tax authority.

The final decree will be published in the Italian official gazette shortly.

CSDR: Consob notifies intention to comply with ESMA guidelines

The Commissione Nazionale per le Società e la Borsa (Consob) has notified its intention to comply with three sets of ESMA guidelines under the Central Securities Depository Regulation (CSDR).

The three guidelines are the following:

- guidelines on the process to determine the most relevant currencies in which settlement takes place;
- guidelines on the process to determine the substantial importance of a CSD for a host Member State; and
- guidelines on cooperation between authorities.

Luxembourg bill implementing Bank Creditor Hierarchy Directive published

A new bill (document parlementaire no. 7306/00) implementing the Bank Creditor Hierarchy Directive (EU) 2017/2399 by amending the Law of 18 December 2015 on the failure of credit institutions and certain investment firms and various provisions of the Financial Sector Law of 5 April 1993 has been lodged with the Luxembourg Parliament.

The objective of the bill and the underlying directive is to provide clarity on, and establish, the eligibility criteria for subordinated liabilities which may notably be used to comply with MREL and TLAC requirements. Accordingly, the bill sets out provisions on the ranking of unsecured debt instruments in insolvency for the purpose of the recovery and resolution framework and aims to improve the efficiency of the bail-in tool.

The bill also amends the Financial Sector Law of 5 April 1993. Amongst other things, the proposed amendments reflect the changes brought about by the Corrigendum of 25 January 2017 to the Capital Requirements Directive 2013/36/EU (CRD 4).

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

CSSF updates Q&A paper on MiFID2/MiFIR

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has updated its Q&A paper on

MiFID2/MiFIR (version of 15 May 2018). The updated Q&A paper introduces a new section 4 relating to post-trade transparency and in particular whether the CSSF authorises the deferred publication of the details of transactions in non-equity instruments under MiFIR by (i) trading venues and (ii) investment firms performing transactions outside of a trading venue.

The new Q&As specify, amongst other things, the types of deferrals authorised by the CSSF and the process to be followed in order to obtain prior CSSF approval for making use of the deferred publication regime, depending on whether such requests are made by market operators or investment firms operating a trading venue or by investment firms that perform transactions outside trading venues.

The CSSF will evaluate the application of post-trade transparency deferrals under MiFIR in light of market developments on a yearly basis and reserves the right to reassess its position regarding deferrals.

Polish Financial Supervision Authority sets out position on dividend policy

The Polish Financial Supervision Authority has published its standpoint on the assumptions of the dividend policy for cooperative and associated banks, brokerage houses, investment fund managers, pension fund managers and insurance/reinsurance companies in the medium term, in which it sets out its recommendations with regard to the payment of a dividend by those entities.

CBIRC issues guidelines on data management by banking financial institutions

The China Banking and Insurance Regulatory Commission (CBIRC) has issued guidelines on data management by banking financial institutions to provide guidance for banking financial institutions on strengthening data management, improving data quality and maximising data value.

In particular, the guidelines cover:

- the impact of mergers, acquisitions and asset divestments – banking financial institutions should fully assess the impact of any mergers, acquisitions and asset divestments on their data management capability. Where the impact is material, banking financial institutions should put in place a remediation plan and timetable;
- personal data – where personal data is obtained during the course of data collection and utilisation, banking financial institutions should observe the relevant personal data protection rules and regulations, and comply with the national standards relating to the security of personal data; and
- data management structure – banking financial institutions should deploy adequate resources for data management, specify the responsibilities of the board of directors, the board of supervisors and senior management on data management, and may, where a need is identified, create a post for Chief Data Officer.

SFC concludes consultation on disclosure requirements for discretionary accounts

The Securities and Futures Commission (SFC) has published its November 2017 consultation conclusions on proposed disclosure requirements for intermediaries providing discretionary account management services. The

proposed disclosure requirements are intended to address potential conflicts of interest arising from incentives provided by product issuers and enhance transparency whilst enabling investors to make better informed decisions.

Under the proposed requirements, these intermediaries will be required to disclose benefits receivable from product issuers as well as trading profits they make from products purchased from or sold to third parties for their clients. Having regard to the majority support for the proposed requirements and to facilitate comparison of remuneration arrangements by investors, the SFC has decided to adopt the specific disclosure requirements under option 1 for monetary benefits under an explicit remuneration arrangement. The SFC will proceed with the proposed amendments to the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) with certain clarifications to the application of the disclosure requirements.

The amendments to the Code of Conduct will come into effect six months following their gazettal on 25 May 2018.

In addition, the SFC has indicated that it will publish frequently asked questions to provide further guidance to the industry.

FSC outlines plan to facilitate use of movable assets as collateral

The Financial Services Commission (FSC) has outlined its plan to make it easier for small and medium-sized enterprises to borrow from banks, using their movable properties as collateral. The plan is intended to focus on addressing problems that make banks reluctant to accept movable properties as collateral and boost the provision of loans secured against movables to KRW3 trillion in 3 years and KRW6 trillion in 5 years.

The plan includes the following policy schemes:

- improvement in infrastructure and legal framework:
  - the FSC and banks will jointly develop infrastructure such as database, monitoring and tracking systems that will make it easier for banks to evaluate, monitor and manage movable assets offered as collateral – the pilot operations are expected to launch in the second half of 2018, aiming to be fully operated in 2019; and
  - the FSC and the Ministry of Justice will form a taskforce to propose a revision to the Act on Security Over Movable Property and Claims, which came into force in June 2012, in order to better protect the rights of the security holder and to facilitate wider use of movable assets as collateral – a draft bill in this regard is expected to be proposed by the end of 2018;
- expansion and flexibility in acceptance of movable property as collateral – the Korea Federation of Banks will amend relevant standards in the second half of 2018:
  - the FSC will broaden the range of companies allowed to offer movable assets as collateral, currently limited to manufacturers, to include those in the retail and services sector;
  - the type of movable property recognised as collateral will be expanded to a variety of movable items including motor vehicles, half-finished and finished products;

  - the acceptance of movables as collateral, currently limited to only one type, will be expanded into all types of loans; and
  - the loan-to-value ratio on movable assets, currently capped at 40%, will be eased to allow banks more flexibility in evaluating movable property as a security; and
- incentives for both banks and companies – the FSC will devise incentives for both companies and banks to encourage the use of movable assets as collateral, e.g. government-backed loans of KRW 1.5 trillion over the next 3 years for companies, and preferential on-lending limits and interest rates for banks. The incentives are expected to be introduced in the second half of 2018.

MAS consults on draft notice on listing, de-listing or trading of products for approved exchanges and recognised market operators and on review of recognised market operators regime

The Monetary Authority of Singapore (MAS) has published the following two consultation papers to improve market operators' business flexibility when establishing new centralised trading facilities and speed to market when launching new products:

- a consultation paper on the review of the recognised market operators (RMO) regime (RMO CP); and
- a consultation paper on the draft notice for the product notification regime (Product Notification CP).

The proposals set out in the consultation papers are intended to further the MAS' broader objectives of facilitating innovation in financial services by recognising emerging new business models while safeguarding investors' interest.

With respect to the RMO CP, the MAS is seeking feedback on, amongst other things, the following specific proposals relating to its proposed expansion of the current RMO regime from a single tier to three separate tiers to better match regulatory requirements to the risks posed by different types of market operators:

- to introduce the RMO Tier 1 category for market operators that wish to target retail investors, but which are smaller in scope and have less retail investor participation than traditional stock and derivatives exchanges;
- for a Tier 1 RMO to be subject to additional requirements to limit the potential impact of its failure (such as product governance requirements and pre and post-transparency requirements) and subject to a cap on its level of business activity;
- to let a Tier 1 RMO provide investors with direct participation without financial intermediaries, subject to the RMO complying with additional requirements in place of the financial intermediaries;
- to let a Tier 1 RMO accept listings of securities for trading on their markets, subject to the RMO and the issuers complying with certain key investor protection requirements;

- to introduce the RMO Tier 3 category for market operators that have a significantly smaller scale of business compared to more established operators and only target non-retail persons; and
- for a Tier 3 RMO to be subject to simplified requirements, including a streamlined self-certification process, but prohibited from providing direct access to individuals and subject to a cap on the maximum volume of business it may transact.

The prospective changes to the Securities and Futures Act under the Securities and Futures (Amendment) Act 2017 include the replacement of the product approval regime for approved exchanges and Singapore-incorporated RMOs (Relevant Entities) with a self-certification process. The Product Notification CP sets out the MAS' proposed criteria and process in this regard, the details of which are set out in the draft notice annexed to the Product Notification CP. Amongst other things, the MAS is seeking feedback on the following proposals:

- the key risks that Relevant Entities need to address as part of the self-certification process;
- the notification and self-certification process;
- the proposed de-listing criteria; and
- the proposed notice on listing, de-listing or trading of relevant products on an organised market of an approved exchange or a recognised market operator incorporated in Singapore.

Comments on both consultation papers are due by 22 June 2018.

MAS introduces revised reporting standards for banks and merchant banks to reduce duplicate data submissions

The MAS has issued revised regulatory requirements that set out revised reporting standards for banks and merchant banks, which are intended to collect data in machine-readable format and to reduce duplicate data submissions by financial institutions. The MAS has also published its responses to the feedback received on its February 2017 second consultation paper on proposed revisions to the MAS Notice 610 and the MAS Notice 1003, which respectively provide for the submission of statistics and returns by banks and merchant banks.

Amongst other things, the key changes to the regulatory requirements include:

- collecting more granular data of banks' assets and liabilities by currency, country and industry, which allows better identification of potential risks to the banking system;
- rationalising the collection of data on RMB business activities and deposit rates, so as to achieve greater consistency and reusability of data; and
- removing the Domestic Banking Unit and Asian Currency Unit and for banks to report their regulatory returns in Singapore dollar and foreign currency instead.

The MAS indicated that it had earlier provided banks and merchant banks with the finalised template for their data submissions on 29 March 2018, which will provide them with 24 months to make the necessary changes to their systems

and processes to meet the new requirements. They can continue to use the existing reporting forms for data submission prior to 1 October 2020.

The revised MAS Notice 610, MAS Notice 1003 and regulatory requirements will take effect on 1 October 2020.

MAS warns digital token exchanges and ICO issuer

The MAS has warned eight digital token exchanges in Singapore not to facilitate trading in digital tokens that are securities or futures contracts without the MAS' authorisation. The MAS has also reminded the eight exchanges that if the traded digital tokens constitute securities or futures contracts under the Securities and Futures Act (SFA), they should immediately cease trading and seek the MAS's authorisation.

The MAS has also warned an initial coin offering (ICO) issuer to stop the offering of its digital tokens in Singapore. The MAS has taken the view that the tokens represent equity ownership in a company and would be considered as securities under the SFA.

Further, the MAS has reiterated that digital token issuers, intermediaries and platforms that offer, facilitate or trade digital tokens are responsible for ensuring that they comply with all relevant laws.

CFTC proposes amendments to its margin requirements in light of recently adopted QFC Rules

The Commodity Futures Trading Commission (CFTC) has proposed amendments to its margin requirements for uncleared swaps to mitigate the impact of amendments called for by rules recently adopted by US prudential regulators that impose restrictions on certain uncleared swaps and other financial contracts (QFC Rules).

As proposed, the CFTC's definition of 'eligible master netting agreement' would be amended to ensure that master netting agreements are not excluded from the definition of 'eligible master netting agreement' based solely on such agreements' compliance with the QFC Rules. In addition, legacy swaps currently not subject to certain CFTC margin requirements (because they were entered into before the applicable compliance date and not subsequently amended) would not become subject to those requirements if they are amended solely to comply with the QFC Rules.

The CFTC is seeking public comments on these proposed amendments. The comment period will end 60 days after publication in the Federal Register.

North American regulators conduct 'Operation Cryptosweep' to police initial coin offerings and cryptocurrencies fraud

The North American Securities Administrators Association (NASAA) has announced a coordinated series of enforcement actions by state and provincial securities regulators in the United States and Canada to crack down on fraudulent activities related to ICOs or cryptocurrency-related investment products. 'Operation Cryptosweep' has resulted in nearly 70 inquiries and investigations and 35 pending or completed ICO or cryptocurrency enforcement actions. In addition, related ongoing investigations into potential fraud may result in more enforcement actions.

Chairman Jay Clayton of the US Securities and Exchange Commission (SEC) praised NASAA's enforcement efforts and characterized Operation Cryptosweep as 'a strong warning to would-be fraudsters in this space that many sets of eyes are watching, and that regulators are coordinating on an international level to take strong actions to deter and stop fraud'. He also noted that the SEC's Office of Investor Education and Advocacy recently launched a sample ICO website to illustrate the common 'red flags' of fraud in the ICO markets.

ASIC and RBA welcome new bank bill swap rate calculation methodology

The Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (RBA) have welcomed the new bank bill swap rate (BBSW) calculation methodology.

The new BBSW methodology calculates the benchmark directly from market transactions during a longer rate-set window and involves a larger number of participants. This means that the benchmark is anchored to real transactions at traded prices. Previously, BBSW was calculated from the best executable bids and offers for Prime Bank securities. The new BBSW calculation methodology became effective from 21 May 2018.

The Australian Securities Exchange (ASX), the administrator of BBSW, consulted market participants and published the BBSW Trade and Trade Reporting Guidelines (ASX BBSW Guidelines) in October 2017. The ASX BBSW Guidelines provide guidance on the trading of bank bills during the rate set window and set out how these trades should be reported to the ASX to support the timely calculation and publication of BBSW.

ASIC and the RBA expect all bank bill market participants – including the banks that issue the bank bills, as well as the participants that buy them – to adhere to the ASX BBSW Guidelines and support the new BBSW methodology.

ASIC intends to make the financial benchmark rules on which it consulted in 2017 shortly. ASIC also expects to declare BBSW, and a number of other financial benchmarks, as 'significant benchmarks' in Australia and to license the administrators of those significant benchmarks.

ASIC consults on short selling proposals

ASIC has launched a public consultation on various proposals relating to both naked and covered short selling. ASIC's consultation coincides with the sunsetting of a number of related class orders, providing an opportunity to review its regulatory approach to short selling.

Specifically, ASIC seeks feedback on its proposals to:

- grant legislative relief to allow market makers of certain exchange-traded products to naked short sell units in an exchange traded fund or a managed fund in the course of making a market in those products;
- grant legislative relief, in the context of corporate actions, to allow naked short sales of unissued products during a deferred settlement trading period;
- grant legislative relief to allow naked short sales in connection with initial public offering (IPO) selldowns made through a special purpose vehicle

(where existing shareholders of a company sell their shares through a special purpose on the condition that the company conducting the IPO is listed on the Australian Securities Exchange);

- change the relevant time that short positions are calculated; and
- remake a number of short selling class orders that are due to 'sunset'.

Following consultation, ASIC aims to consolidate all short selling-related relief into a single instrument and issue that final consolidated instrument before 1 October 2018.

Comments on the consultation paper are due by 20 June 2018.

ASIC consults on code of ethics compliance schemes for financial advisers

ASIC has published a consultation paper outlining its proposed approach to approving and overseeing compliance schemes for financial advisers.

Incoming training and education requirements for financial advisers include obligations to comply with a code of ethics that is being developed by the Financial Adviser Standards and Ethics Authority (FASEA). Under the new legislative regime for adviser professional standards, compliance with this code of ethics will be enforced by ASIC-approved compliance schemes.

The proposals under the consultation paper include:

- the process for applying for approval of a compliance scheme;
- ASIC's expectations for the governance and administration, monitoring and enforcement processes, and ongoing operation of compliance schemes;
- how ASIC proposes to exercise its powers to revoke the approval of a compliance scheme and to impose or vary conditions on the approval;
- ASIC's proposal to modify the law to ensure that monitoring bodies can gather the information from Australian Financial Services (AFS) licensees and authorised representatives that they need to carry out proactive monitoring activities; and
- draft guidance about the notifications that monitoring bodies must make to ASIC.

Comments on the consultation paper are due by 28 June 2018. ASIC intends to release a regulatory guide setting out its final policy by the end of September 2018.

RECENT CLIFFORD CHANCE BRIEFINGS

The New Spring for Securitisation

There have, over the last year, been clear signs of a sustainable revival in the securitisation markets. Even though the Securitisation Regulation does not apply until next year, there has already been a notable increase in the use of securitisation techniques, both for more traditional public securitisations and for financing portfolio acquisitions and private transactions generally. This is partly to do with the improved political environment for securitisation, but also helped along by macroeconomic factors, such as improvements in global

economic growth, rate rises in the United States and expected rate rises in Europe.

This series of articles covers topics that give a flavour of the current issues in the market and where things might be going.

https://www.cliffordchance.com/briefings/2018/05/the_new_spring_forsecuritisation.html

Directors' Contracts – Clarity at long last

In its April 2018 judgment in the *MIDESTA* case, the Grand Chamber of the Czech Supreme Court reversed its long-held – and rather notorious – view on the interplay between corporate and employment law in the field of contracts governing the terms of office of directors of Czech corporations. The issue, known on the local market colloquially as 'concurrency of positions', has haunted Czech companies and their directors for many years, and has been subject to a number of twists and turns in both statutory and case law.

It seems now that, at long last, the story might finally be over, with the *MIDESTA* judgment bringing both clarity and practical workability to Czech corporate practice.

This briefing discusses the judgment, its background, and implications for current corporate practice.

https://www.cliffordchance.com/briefings/2018/05/directors_contractsclarityatlonglast.html

Mexico: Anti-corruption tsunami alert (lessons learned from the Operação Lava Jato Investigation)

Strong presidential campaign rhetoric may be an indicator of future increased anti-corruption enforcement activity, both in Mexico and the US, when the new administration takes office in Mexico.

This briefing discusses the key considerations for foreign companies with operations in Mexico and what they can do right now to evaluate and mitigate risk.

https://www.cliffordchance.com/briefings/2018/05/mexico_anti-corruptiontsunamialertlesson.html

DOJ announces policy to discourage law enforcement agencies and regulators from 'piling on' duplicative and parallel penalties

On 9 May 2018, Deputy Attorney General Rod Rosenstein announced that the United States Department of Justice (DOJ) would implement a new policy discouraging regulators and law enforcement agencies engaged in parallel investigations from 'piling on' multiple penalties for the same misconduct.

Although it remains to be seen whether the DOJ's new approach will lower the total dollar value of high-profile corporate settlements, particularly those that test the enforcement mandates of parallel US regulatory agencies (let alone law enforcement and regulatory agencies in multiple jurisdictions), it could provide companies with some new ammunition in their negotiations with the DOJ.

This briefing discusses the announcement and what companies should expect from the new policy.

https://www.cliffordchance.com/briefings/2018/05/doj_announces_policytodiscouragela.html

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