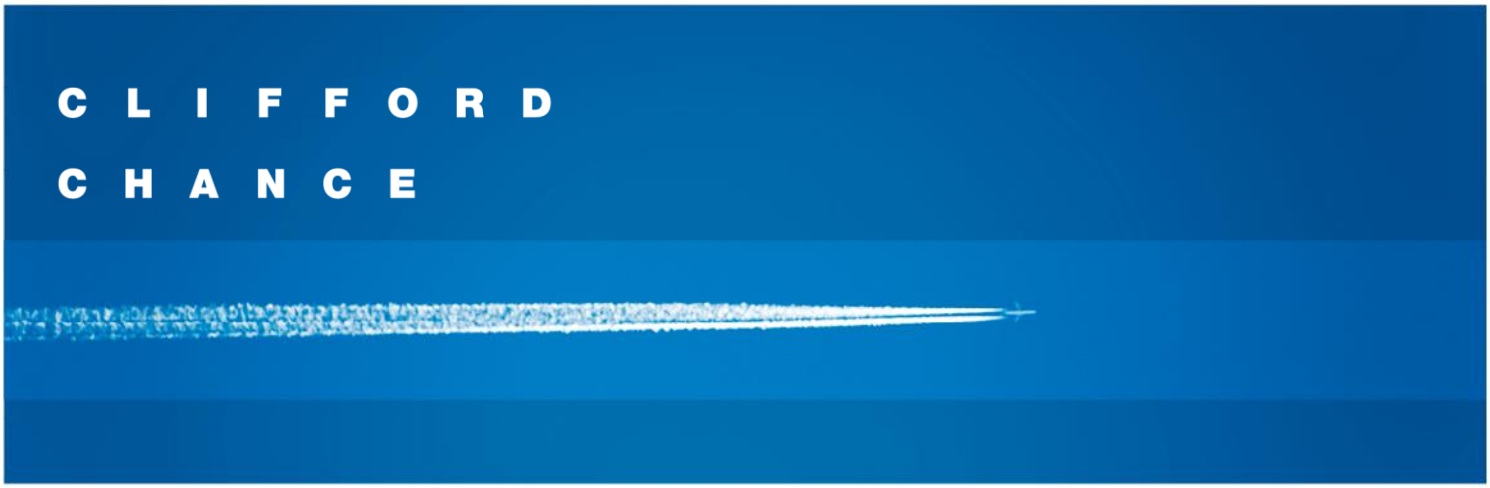

INTERNATIONAL REGULATORY UPDATE 23 – 27 APRIL 2018

- **Prospectus Regulation: EU Commission consults on simplified prospectus**
- **CRR and Solvency II: Implementing Regulations on credit assessments of external credit assessment institutions published in Official Journal**
- **PSD2: Corrigendum published in Official Journal**
- **EBA consults on guidelines on disclosure of non-performing and forborne exposures**
- **Securitisation Regulation: EBA consults on guidelines for STS criteria**
- **ESAs conclude multilateral MoU with EFTA Surveillance Authority**
- **IOSCO consults on audit committee practices**
- **FSB consults on governance arrangements for unique product identifier for OTC derivatives**
- **Brexit: EU Commission Vice-President and FCA Chief discuss equivalence and mutual recognition in financial services**
- **Brexit: ECB and BoE invited to convene technical risk management working group**
- **Benchmarks: BoE implements SONIA reform**
- **CSDR: BaFin applies ESMA guidelines on cooperation between authorities**
- **BaFin consults on minimum requirements for safe custody business**
- **New Luxembourg law implementing PRIIPs Regulation published**
- **New Luxembourg bill on Financial Intelligence Unit published**
- **MiFID2: CSSF updates circular on ESMA guidelines on calibration of circuit breakers and publication of trading halts and details on reporting of circuit breakers' parameters**
- **CSSF-CODERES circular on raising of 2018 ex-ante contributions to Single Resolution Fund published**
- **CSSF issues circular on ESMA guidelines on management body of market operators and data reporting services providers**

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- **CSSF to conduct survey on fight against money laundering and terrorist financing**
- **SAFE increases QDLP and QDIE quotas to USD 5 billion for each programme**
- **FSA consults on corporate disclosure**
- **MOF commences new sections of Companies (Amendment) Act 2014**
- **Singapore Foreign Exchange Market Committee publishes revised Singapore guide to conduct and market practices for wholesale financial markets**
- **MAS supports use of Correspondent Banking Due Diligence Questionnaire**
- **MAS consults on proposed guidelines to strengthen individual accountability of senior managers in financial institutions**
- **CFTC publishes white paper evaluating US swap market regulations and recommending rule changes**
- **Recent Clifford Chance briefings: EU measures for NPLs, UAE Financial Restructuring Committee, US data privacy & more. Follow this link to the briefings section**

Prospectus Regulation: EU Commission consults on simplified prospectus

The EU Commission has published a roadmap for a Delegated Regulation under the Prospectus Regulation (2017/1129). The Commission intends the delegated act to provide clarity on the provisions of the Prospectus Regulation and its interpretation by national competent authorities and companies making a public offer or seeking admission of their securities to regulated markets.

The delegated act would complement the policy framework laid down in the Prospectus Regulation to address:

- the reduced content, standardised format and sequence for the EU Growth prospectus;
- the format of the standard prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included;
- the reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances;
- the schedule defining the minimum information contained in the universal registration document;
- criteria for scrutinising the universal registration document and the procedures for its approval, filing and review; and
- criteria for the approval of the prospectus.

Comments on the roadmap are due by 22 May 2018.

CRR and Solvency II: Implementing Regulations on credit assessments of external credit assessment institutions published in Official Journal

Commission Implementing Regulations (EU) 2018/633 and (EU) 2018/634 amending implementing technical standards (ITS) with regard to mapping credit assessments of external credit assessment institutions (ECAIs) for credit risk and securitisation positions under the Capital Requirements Regulation (CRR) and the allocation of credit assessments of ECAIs under Solvency II have been published in the Official Journal.

The Regulations update the ITS to reflect the registration or certification of five new ECAIs and the withdrawal of the registration of one ECAI. The amendments set out the allocation of appropriate risk weights to the newly established ECAIs and remove the reference to the de-registered ECAI. Details of mapping the other ECAIs remain unchanged.

The Regulations will enter into force on 15 May 2018.

PSD2: Corrigendum published in Official Journal

A corrigendum to the recast Payment Services Directive (2015/2366 - PSD2) has been published in the Official Journal. The corrigendum makes certain corrections to the original text of PSD2.

EBA consults on guidelines on disclosure of non-performing and forborne exposures

The European Banking Authority (EBA) has launched a consultation on guidelines on disclosure by credit institutions of information on non-performing and forborne exposures. The guidelines specify the information related to non-performing (NPE) and forborne exposures and foreclosed assets that banks should disclose and provide uniform disclosure formats.

The guidelines apply to credit institutions that are subject to all or part of the disclosure requirements specified in the Capital Requirements Regulation (CRR). These requirements, including the frequency of the disclosure, are applied in a proportionate manner based on the significance of the credit institution and the level of NPEs.

The guidelines include ten disclosure templates, of which four are applicable to all credit institutions and six apply only to significant institutions with a high level of NPEs. Overall, this uniform disclosure is intended to provide meaningful information to market participants on credit institutions' asset quality. In addition, for those institutions with high level of NPEs, the guidelines seek to help gain a better insight into the features and distribution of their problematic assets, the quality and value of their collaterals and the efficiency of their recovery function.

The content of the templates included in the guidelines has been developed in parallel with the amendments to the reporting framework on non-performing exposures, which the EBA will consult on. Although the two consultations will be run separately, the EBA intends to ensure consistency between the disclosure guidelines and the amended FINREP framework.

Comments are due 27 July 2018.

Securitisation Regulation: EBA consults on guidelines for STS criteria

The EBA has published two consultation papers on draft guidelines on the criteria for securitisations to be eligible as simple, transparent and standardised (STS) under the Securitisation Regulation (Regulation (EU) 2017/2402). The guidelines are intended to provide a consistent interpretation of the STS criteria for originators, sponsors, investors and competent authorities.

One set of guidelines have been developed for asset-backed commercial paper (ABCP) securitisation and a second set for non-ABCP securitisation. Both sets seek to clarify and ensure common understanding of all the STS criteria, and the EBA intends the guidelines to apply on a cross-sectoral basis throughout the EU.

Comments on the consultations are due by 20 July 2018.

ESAs conclude multilateral MoU with EFTA Surveillance Authority

The European Supervisory Authorities (ESAs), comprising the EBA, European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA), have concluded a multilateral Memorandum of Understanding (MoU) with the EFTA Surveillance Authority, which monitors compliance with the EEA Agreement in Iceland, Liechtenstein and Norway, enabling those states to participate in the internal market of the EU.

The MoU covers cooperation, exchange of information and consultation and establishes practical arrangements between the ESAs and the EFTA Surveillance Authority for the adoption of acts by the EFTA Surveillance Authority on product intervention, breach of EEA law, action in emergency situations, mediation, as well as on the adoption of specific opinions, effective within the EEA-EFTA States.

IOSCO consults on audit committee practices

The Board of the International Organization of Securities Commissions (IOSCO) has published a consultation report (CR04/2018) on proposed good practices for audit committees of issuers of listed securities.

The report, which follows reviews by audit regulators indicating a need to improve audit quality and consistency, sets out proposals on the role and features audit committees should have to support audit quality and increase market confidence in the quality of information in financial reports.

Comments on the consultation are due by 24 July 2018.

FSB consults on governance arrangements for unique product identifier for OTC derivatives

The Financial Stability Board (FSB) has published a consultation on certain governance considerations for the unique product identifier (UPI), which will identify the product that is the subject of an OTC derivatives transaction. The UPI is intended to help facilitate aggregation of transaction reports from OTC derivative markets, in order to help authorities assess systemic risk and perform other market oversight functions.

The FSB published a first consultation in October 2017. The second consultation focuses on aspects of the governance arrangements for the UPI system, and will also guide the FSB when preparing documentation for entities that wish to become UPI service providers. Among other things, the consultation questions relate to:

- fee models and cost recovery;
- intellectual property;
- standardisation;
- competition among UPI service providers; and
- arrangements for a UPI reference data library.

Comments on the consultation are due by 28 May 2018. The FSB expects to reach its conclusions on these issues and to designate one or more UPI service providers by mid-2019.

Brexit: EU Commission Vice-President and FCA Chief discuss equivalence and mutual recognition in financial services

EU Commission Vice-President Valdis Dombrovskis and the Chief Executive of the Financial Conduct Authority (FCA), Andrew Bailey, have delivered speeches on financial stability, the future of financial services and Brexit.

The EU Commissioner's speech set out two types of risk associated with Brexit uncertainty, relating to outstanding issues in the Withdrawal Agreement on the Irish border and governance of the Withdrawal Agreement, and the future relationship between the EU and the UK. Dombrovskis focused on the EU's equivalence framework in financial services and his view that it is proven to be a pragmatic solution that works in many different circumstances that could work for the UK after Brexit. However, the speech also noted the limits to equivalence, in particular that:

- equivalence decisions are and will remain unilateral and discretionary EU acts;
- equivalence does not cover all parts of the financial sector; and
- equivalence is only possible if there is a close convergence of rules and supervision.

Among other things, Andrew Bailey's speech covered the future relationship between the UK and EU in the context of what it means to have open markets and how these can be preserved. Bailey called for an approach that can support mutual recognition of EU and UK standards to support cross-border business. He set out his view that this could work by recognising that the regulatory frameworks will be equivalent on day one of Brexit, followed by cooperating and coordinating structures to ensure that both the EU and UK future autonomous frameworks remain materially consistent. The speech outlined a vision of developing a set of principles by which outcomes-based equivalence of UK and EU rules could be assessed, in order to give both sides comfort about risks, including financial stability, market integrity, consumer protection, and competition.

Brexit: ECB and BoE invited to convene technical risk management working group

The EU Commission and HM Treasury (HMT) have published terms of reference for a technical working group on risk management in the period around 30 March 2019 in the area of financial services, which will be convened by the European Central Bank (ECB) and the Bank of England (BoE).

The European Commission and HM Treasury intend to attend the group as observers and other relevant authorities will be invited on an issue-specific basis. The notice sets out the expectation that the ECB and BoE will report regularly to the Commission and HMT, and that primary responsibility to prepare for Brexit remains with market participants.

Benchmarks: BoE implements SONIA reform

The BoE has implemented its reforms to the SONIA interest rate benchmark.

The benchmark was previously based on a market for brokered deposits, but now captures a broader scope of overnight unsecured deposits by including bilaterally negotiated transactions alongside brokered transactions. Additionally, the publication time of SONIA has been moved, such that the SONIA rate for a given London business day is now published at 09:00 on the following London business day.

The SONIA rate for 23 April will be calculated by the Bank using the reformed methodology and published at 09:00 on Tuesday 24 April.

The BoE intends to publish an assessment of its compliance with IOSCO's Principles for Financial Benchmarks in the summer.

CSDR: BaFin applies ESMA guidelines on cooperation between authorities

The German Federal Financial Supervisory Authority (BaFin) has announced the application of guidelines published by the ESMA on the cooperation between authorities under Articles 17 and 23 of the Central Securities Depositories Regulation (909/2014 - CSDR).

The ESMA guidelines apply in relation to the cooperation requirements applicable to competent authorities when involved in the procedure for granting authorisation to an applicant CSD laid down in Article 17 and in the procedure relating to the provision of services in another Member State.

BaFin consults on minimum requirements for safe custody business

BaFin has published a consultation paper on minimum requirements for the proper conduct of the safe custody business and the protection of client financial instruments for investment services firms (Mindestanforderungen an die ordnungsgemäße Erbringung des Depotgeschäfts und den Schutz von Kundenfinanzinstrumenten für Wertpapierdienstleistungsunternehmen - MaDepot).

The circular is intended to provide an overview of the relevant regulatory provisions relating to rules of conduct and organisational requirements for safe custody business and to reflect the general administrative practice of BaFin on

selected matters. The circular is based on MiFID2 requirements relating to the protection of client assets.

Comments on the draft MaDepot may be submitted to BaFin until 8 June 2018.

New Luxembourg law implementing PRIIPs Regulation published

A new law of 17 April 2018 implementing the PRIIPs Regulation and amending the Luxembourg law of 17 December 2010 relating to undertakings for collective investment has been published in the Luxembourg official journal (Mémorial A).

The law is intended to make the PRIIPs Regulation operational in Luxembourg by introducing into the Luxembourg legal framework new provisions in relation to:

- the appointment of the Luxembourg Financial Sector Regulator, the Commission de Surveillance du Secteur Financier (CSSF), (for CSSF supervised entities and other persons or entities other than CAA supervised entities) and the Luxembourg Insurance Sector Regulator, the Commissariat aux Assurances (CAA), (for CAA supervised entities only) as competent authorities to ensure compliance with the PRIIPs Regulation in Luxembourg; and
- the control and investigation powers of the CSSF and the CAA that are necessary for the exercise of their respective competences within the framework of the PRIIPs Regulation.

The law also specifies a set of sanctions and penalties that may be applied by the CSSF and the CAA for certain breaches of the PRIIPs Regulation, including pecuniary fines for both natural and legal persons (of up to EUR 700,000 or equivalent or up to twice the amount of the profit gained or losses avoided if they can be determined for natural persons, and for legal persons up to EUR 5,000,000 or 3% of turnover or twice the amount of the profit gained or losses avoided if they can be determined).

Finally, the law implements the national discretion option under Article 32(2) of the PRIIPs Regulation, allowing SICARs and UCIs other than UCITS to use a UCITS KIID (Key Investor Information Document) rather than a PRIIPs KID (Key Information Document) until 31 December 2019, provided that such UCITS KIID expressly mentions that the relevant SICAR/UCI does not qualify as a UCITS.

The law entered into force on 23 April 2018.

New Luxembourg bill on Financial Intelligence Unit published

A new bill (no. 7287) organising the Financial Intelligence Unit (FIU), the Cellule de renseignement financier, and amending the Code of criminal procedure, the amended law of 7 March 1980 on the judiciary organisation, and the amended law of 12 November 2004 on the prevention of money laundering and financing of terrorism (AML/CTF), has been lodged with the Luxembourg Parliament.

The bill restructures the functioning of the FIU in order to adapt it to the evolving environment and needs. In particular, the bill provides that the FIU

shall be integrated into the General Prosecutor's (Parquet general's) office instead of that of the District Prosecutor. It also reinforces the FIU's independence and operational autonomy, and increases the FIU's human resources. In addition, the bill takes into account the development of international requirements resulting from Financial Action Task Force (FATF) standards - notably FATF Recommendations 20, 29, and 40 - and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, with regard to suspicious transaction reporting, FIUs and international cooperation.

MiFID2: CSSF updates circular on ESMA guidelines on calibration of circuit breakers and publication of trading halts and details on reporting of circuit breakers' parameters

The CSSF has issued a new circular (18/691) which amends circular 17/668 concerning the ESMA's guidelines on the calibration of circuit breakers and publication of trading halts under MiFID2 and details on reporting of circuit breakers' parameters (ESMA70-156-181).

The new circular takes into account the publication by ESMA of the revised procedure on reporting of circuit breakers' parameters by NCAs to ESMA (ESMA70-156-181) published on 19 December 2017 and the revised form, which are attached as an annex to the circular.

CSSF-CODERES circular on raising of 2018 ex-ante contributions to Single Resolution Fund published

The CSSF and the Luxembourg Resolution Board (Conseil de Résolution, CODERES) have issued a circular (18/06) providing information on the raising of the 2018 ex-ante contributions to the Single Resolution Fund (SRF).

The circular is addressed to all credit institutions established in Luxembourg and subject to Regulation (EU) 806/2014, with the exception of Luxembourg branches of credit institutions established outside the EU. Luxembourg branches of credit institutions which have their head office in another Member State of the EU are covered by their head office.

The circular indicates that the 2018 ex-ante contributions to the SRF are due by 7 June 2018. The corresponding individual invoices will be distributed by the CSSF in the coming days. Concerned credit institutions have to transfer the requested amounts to an account of the Fonds de résolution Luxembourg, which will in turn transfer the collected amounts to the SRF. The circular provides technical details on the calculation of the contribution amount and informs relevant credit institutions of a substantial increase in most cases of the contribution compared to the 2017 ex-ante contribution.

The circular further notes that the conditions concerning irrevocable payment commitments (IPCs) remain unchanged compared to the 2017 contribution cycle. Credit institutions wishing to apply for IPCs in 2018 need to send the completed application form to the CSSF and the Single Resolution Board by 23 May 2018.

CSSF issues circular on ESMA guidelines on management body of market operators and data reporting services providers

The CSSF has issued a circular (18/690) on the ESMA's guidelines on the management body of data reporting services providers (DRSPs) and market operators to implement the guidelines into Luxembourg regulation.

The aim of the guidelines is to develop common standards to be taken into consideration by market operators and DRSPs when appointing new and assessing current members of the management body and to provide guidance on how information should be recorded by market operators and DRSPs in order to make it available to the competent authorities for the exercise of their supervisory tasks.

The CSSF notes that market operators and DRSPs authorised in Luxembourg are obliged to inform the CSSF of the identity of the members of their management body and of any change in the composition of the management body. The management bodies also have to notify the CSSF (by post) of any important conflicts of interest as well as of the mitigating measures which they adopt in order to address such conflicts.

The circular is addressed to all market operators and DRSPs and will enter into force on the date of entry into force of the Luxembourg MiFID2 implementing bill.

CSSF to conduct survey on fight against money laundering and terrorist financing

The CSSF has issued a press release announcing its plan to conduct an annual online survey collecting standardised key information concerning money laundering and terrorist financing risks (ML/FT risk) to which the professionals under its supervision are exposed, as well as the implementation of related risk mitigation and targeted financial sanctions measures.

The CSSF notes that this survey forms part of the AML/CFT risk-based supervision approach put in place by the CSSF over the course of the last years following initiatives both at an EU and international level (Directive (EU) 2015/849 of 20 May, further specified by joint guidelines issued by the European Supervisory Authorities and the Financial Action Task Force recommendations adopted in February 2012 respectively).

In this context, the CSSF has elaborated new sector specific questionnaires supporting the identification of ML/FT risk factors (notably related to clients, countries and geographical areas, delivery or distribution channels, products and services of supervised entities) and the measures put in place to mitigate these risks.

SAFE increases QDLP and QDIE quotas to USD 5 billion for each programme

The State Administration of Foreign Exchange (SAFE) has released a circular on supporting domestic institutions to innovate in overseas investment and promote the qualified domestic limited partner (QDLP) and qualified domestic investment enterprise (QDIE) pilot programmes.

The circular indicates that, in response to the need for cross-border asset allocation by market players, the SAFE has recently increased the outbound investment quota to USD 5 billion for each of the programmes. Both programmes have been implemented in Shanghai and Shenzhen respectively since 2013.

As a next step the SAFE, together with other relevant departments and local governments, intends to further improve the macro-prudential management of the QDLP and QDIE pilot programmes, aiming to further facilitate the liberalisation of outbound investment under these schemes.

FSA consults on corporate disclosure

The Financial Services Agency (FSA) has invited public comments on current issues relating to corporate disclosure. The Working Group on Corporate Disclosure at the Financial System Council has been reviewing corporate disclosure requirements, including the contents to be disclosed and how corporate information should be provided, since December 2017.

The Working Group is considering the following key issues:

- enhancing financial and narrative (non-financial) information, in particular how to supplement financial information and enhance narrative information such as business strategy, management discussion and analysis (MD&A), and risk information, in order to provide investors with more insights regarding long-term vision, trends, and analysis of companies;
- how to enrich governance-related information, including cross-share holdings and executive remuneration, to promote constructive dialogues between investors and companies; and
- what information should be included to enhance reliability and timeliness of disclosure, such as information on audit, timing of disclosure.

Comments on the issues are due by 19 May 2018.

MOF commences new sections of Companies (Amendment) Act 2014

The Ministry of Finance (MOF) has published the Companies (Amendment) Act 2014 (Commencement) Notification 2018, which implements Section 121 of the Companies (Amendment) Act 2014.

Section 121 introduces new sections 202A and 202B, which came into effect on 20 April 2018. Concurrently the Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-Sheet) Regulations 2018, and the Companies (Fees and Late Lodgement Penalties) (Amendment) Regulations 2018 have been published to operationalise sections 202A and 202B of the Act.

Among other things, sections 202A and 202B of the Act provide that:

- directors are able to voluntarily revise the company's financial statements in respect of any financial year of the company without the need to obtain a court order. The revision must be confined to such aspects where the financial statements do not comply with the Act (including compliance with accounting standards) and any necessary consequential revisions;

- the revised financial statements are taken as having been prepared on the date of the original financial statements and accordingly, do not deal with events occurring after the date of the original financial statements;
- the requirements of the accounting standards that were applied in the original financial statements will continue to be applied in the revised financial statements;
- relief from requirements granted by the Registrar on the original financial statements do not automatically apply to the revised financial statements and new directors' statement. Directors will have to make new applications to the Registrar;
- a new directors' statement and amended auditor's report must be attached to the revised financial statements;
- directors must take reasonable steps to ensure that the revised financial statements, together with the new directors' statement and the amended auditor's report, are sent within 30 days after the date of revision, to all persons who had received the original financial statements and all persons entitled to receive the notice of general meeting as at the date of revision;
- the revised financial statements must be filed with the Registrar within 30 days after the date of revision and laid at the next general meeting held after the date of revision; and
- the Registrar may also apply to court to require a company to revise its defective financial statements where such defects had been detected.

Singapore Foreign Exchange Market Committee publishes revised Singapore guide to conduct and market practices for wholesale financial markets

The Singapore Foreign Exchange Market Committee has published a revised Singapore guide to conduct and market practices for the wholesale financial markets (the 'Blue Book') and related updated FAQs.

The Blue Book is a set of principles of good practice that applies to all market participants in Singapore that are engaged in the wholesale financial markets. The FX Global Code is a set of global principles of good practice in the FX market to promote the integrity and effective functioning of the wholesale FX market. The Blue Book, together with the Global Code, is intended to foster a high standard of conduct and good market practices, ensure equitable and healthy relationships between participants and facilitate market efficiency.

The updated version of the Blue Book is the result of a review conducted by a working group in 2017 to align it with the Global Code, and a consultation process with relevant industry stakeholders. The generic principles of the Global Code were adopted as part of the updated Blue Book and applied to all asset classes covered by the Blue Book.

As the scope of the previous version of the Blue Book included guidance on good practices in the wholesale financial market, including the wholesale foreign exchange market, changes were made to minimise duplication between the Blue Book and the Global Code.

The key updates to the Blue Book include the following:

- extension of the scope of application to all market participants that are engaged in wholesale financial markets. This includes buy-side entities

and financial market infrastructures, as well as all persons who are subject to the Global Code;

- extension of the scope of application to cover exchange-traded products. Previously, the Blue Book applied only to over-the-counter markets. The Blue Book will continue to exclude cash equities and exchange traded funds;
- incorporation of the ethics, governance and risk management principles from the Global Code;
- new guidance on betting or gambling by staff in ways which could give rise to actual or potential conflicts of interest with their professional roles or responsibilities;
- new guidance on execution of brokerage agreements and reconciliation of brokerage bills; and
- deletion of the chapter on 'Other Market Instruments'.

MAS supports use of Correspondent Banking Due Diligence Questionnaire

The Monetary Authority of Singapore (MAS) has announced its support for an international initiative by the Wolfsberg Group to help stem the decline in correspondent banking relationships and enhance banks' ability to provide cross-border financial transactions.

The Wolfsberg Group, an industry association comprised of thirteen global banks which aims to develop frameworks and guidance for the management of financial crime risks, know your customer (KYC), anti-money laundering (AML) and countering the financing of terrorism (CFT) policies, published the Correspondent Banking Due Diligence Questionnaire (CBDDQ) in February 2018. The questionnaire is intended to enable banks to more efficiently enter cross-border correspondent banking relationships.

The Financial Action Taskforce (FATF) previously clarified that while its standards require correspondent banks to assess respondent banks' risks and control practices, correspondent banks do not have to conduct customer due diligence on the customers of their respondent banks. The CBDDQ supports the FATF guidance by standardising the information that correspondent banks should ask of respondent banks, to assess the latter's risks and controls, when opening a correspondent relationship.

The MAS urges banks in Singapore to incorporate the CBDDQ into their risk assessment process for setting up cross-border correspondent banking relationships.

MAS consults on proposed guidelines to strengthen individual accountability of senior managers in financial institutions

The MAS has launched a public consultation to seek feedback on its proposed guidelines on individual accountability and conduct to strengthen individual accountability of senior managers and raise standards of conduct in financial institutions (FIs).

The consultation paper sets out the MAS' three-pronged approach to FIs' culture and conduct. It goes on to set out MAS' proposals in respect of the

guidelines. The guidelines are intended to supplement the existing regulatory framework on accountability and conduct and focus on measures that FIs should put in place to promote ethical behaviour and responsible risk-taking and strengthen the accountability of senior managers for the actions of their staff and conduct of the business under their purview.

Amongst other things, the MAS seeks feedback on the following proposals:

- that FIs identify senior managers who are responsible for core management functions and have actual decision-making authority and oversight of each such function, and clearly specify their individual accountabilities;
- that FIs be responsible for conducting due diligence on senior managers prior to appointment, and establish governance policies and processes to promote proper accountability and facilitate senior managers' performance of their roles and responsibilities effectively. The MAS also proposes that FIs (a) have robust standards and processes to assess the fitness and propriety of senior managers, (b) clearly specify each senior manager's area of responsibility, (c) appropriately delineate the FI's overall management structure, (d) ensure each senior manager acknowledges his specified roles, responsibilities and reporting lines, (e) procure board or head office approval of and document each senior manager's roles and responsibilities and the FI's overall management structure, (f) put in place appropriate incentive, escalation and consequence management frameworks, and (g) put in place a succession plan that is regularly reviewed and updated;
- that FIs identify employees whose decisions or activities could materially impact a FI's risk profile (i.e., material risk functions). FIs should ensure that such employees are subject to more stringent oversight and higher conduct standards than employees in non-material risk functions. The MAS also proposes that FIs assess the fitness and propriety of such employees, facilitate effective risk governance, and subject such employees to standards of proper conduct, continuing training and an appropriate incentive structure; and
- that FIs have in place a framework that promotes and sustains desired conduct among employees. The framework should articulate the standards of conduct expected of all employees and ensure consistent and effective communication of the expected standards. Policies, systems and processes to enforce the expected standards should be implemented, including a monitoring, reporting and escalation framework, an incentive structure, a consequence management system and a formalised whistle-blowing channel. The framework should also address engagement strategies with key stakeholders. The board and senior management should notify the MAS of material adverse developments.

Comments on the consultation are due by 25 May 2018. The guidelines are targeted to be issued in the fourth quarter of 2018.

CFTC publishes white paper evaluating US swap market regulations and recommending rule changes

The Commodity Futures Trading Commission (CFTC) has released a White Paper, 'Swaps Regulation Version 2.0: An Assessment of the Current Implementation of Reform and Proposals for Next Steps', assessing the

CFTC's implementation of swaps reforms pursuant to the Dodd-Frank Act. It focuses on five key areas:

- central counterparty clearing;
- trade reporting;
- trade execution;
- swap dealer capital; and
- the end user exception.

Regulatory reform recommendations include:

- tailoring the real-time reporting requirements to the liquidity profiles of the associated swaps products in order to yield value of transparency to market without introducing trading risk;
- encouraging a greater amount of swaps trades to take place on regulated swap execution facilities by making the 'Made Available to Trade' requirement synonymous with the clearing requirement;
- raising standards of conduct for swaps trading; and
- establishing material swaps exposure thresholds for financial end users, below which entities would be excepted from clearing and margin requirements.

The CFTC has not announced a timeframe within which it will publish any regulatory reform proposals to address the recommendations provided in the white paper.

RECENT CLIFFORD CHANCE BRIEFINGS

EU legislative measures for non-performing loans — impact on the loan markets: new regulation of loan transfers, non-bank lenders and facility agents

A recently released EU legislative package aims to facilitate the reduction of non-performing loans (NPLs) held by European banks now and in the future. However, it contains unexpected measures which are not confined to NPLs and which will bring significant change to practice in both the secondary and primary loan markets. These include compulsory levels of disclosure and reporting requirements on loan transfers to non-banks; a requirement for pre-enforcement notification by non-bank lenders, and potential regulation of facility agents and credit fund managers as 'loan servicers'.

This briefing discusses the legislative package, concentrating on those measures in the Directive which aim to encourage the development of secondary markets for NPLs.

https://www.cliffordchance.com/briefings/2018/04/eu_legislative_measuresfornon-performingloan.html

Secondary loan trading – implications of proposed EU regulation on assignments

The European Commission has adopted a legislative proposal laying down new conflict of laws rules designating which national law applies to determine

who has the superior title to an assigned claim. Subject to three exceptions, the relevant law would be that of the assignor's 'habitual residence'. If adopted, this would cut across existing loan market practice (which looks to the governing law of the underlying debt) and could lead to an increase in settlement times as well as additional costs.

This briefing discusses the Commission's proposals.

https://www.cliffordchance.com/briefings/2018/04/secondary-loan-trading--implications-of-proposed-eu-regulation-o.html

EU Court of Justice clarifies antitrust prohibition on price discrimination by dominant businesses

The EU Court of Justice (CJEU) has ruled that where dominant businesses supply to customers with whom they do not compete and charge higher prices to certain customers, they will only be committing a breach of EU antitrust laws if it can be shown that such discrimination causes actual or potential anticompetitive effects, by distorting competition between customers. A mere disadvantage experienced or suffered by some customers is not enough. This clarification will afford dominant businesses considerably greater flexibility to adapt their pricing policies to commercial realities.

This briefing discusses the ruling.

https://www.cliffordchance.com/briefings/2018/04/eu_court_of_justiceclarifiesantitrus.html

Financial Restructuring Committee established in the UAE

The UAE has taken a further step forward in the reform of its insolvency regime through the establishment of the Financial Restructuring Committee (the FRC). This milestone decision allows financial institutions an out-of-court restructuring option which may help break deadlock situations and avoid more formal court-based proceedings.

This briefing details the role of the FRC and how it is expected to function, and analyses the benefits to UAE restructuring practices.

https://www.cliffordchance.com/briefings/2018/04/financial_restructuringcommitteeestablishedi.html

US Data Privacy Enforcement After Facebook – What to Expect

Earlier in April 2018, Facebook CEO and Founder Mark Zuckerberg testified before Congress regarding Cambridge Analytica's alleged misuse of the data of approximately 80 million US residents with Facebook accounts. During the course of nine hours at two Congressional hearings, Mr. Zuckerberg faced hostile questioning from nearly 100 legislators. Some members of Congress called for new legislation or regulation enhancing the US data privacy system, potentially modelled on the European Union's General Data Protection Regulation (GDPR). While it is unclear if Congress will act, businesses entrusted with consumer data should take steps to prepare for further regulatory and media scrutiny of their data privacy and use practices, and not wait for new legislation to implement enhanced data privacy policies and controls.

This briefing discusses the existing data privacy regulatory framework and next steps for businesses.

https://www.cliffordchance.com/briefings/2018/04/us_data_privacy_enforcementafterfacebookwha.html

US Supreme Court Closes Door to Human Rights Lawsuits against Foreign Corporations under the Alien Tort Statute

On 24 April 2018, the Supreme Court held in Jesner v Arab Bank, PLC that foreign corporations may not be sued in US courts for human rights violations under the Alien Tort Statute (ATS). For nearly four decades, foreign plaintiffs have used the ATS to sue corporations for allegedly committing, financing, or otherwise facilitating human rights violations committed outside the United States, in cases presenting significant financial and reputational risk. While corporate officers and employees may still be sued under the ATS, *Jesner* effectively ends the ATS liability risk to foreign corporations.

This briefing discusses the decision.

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