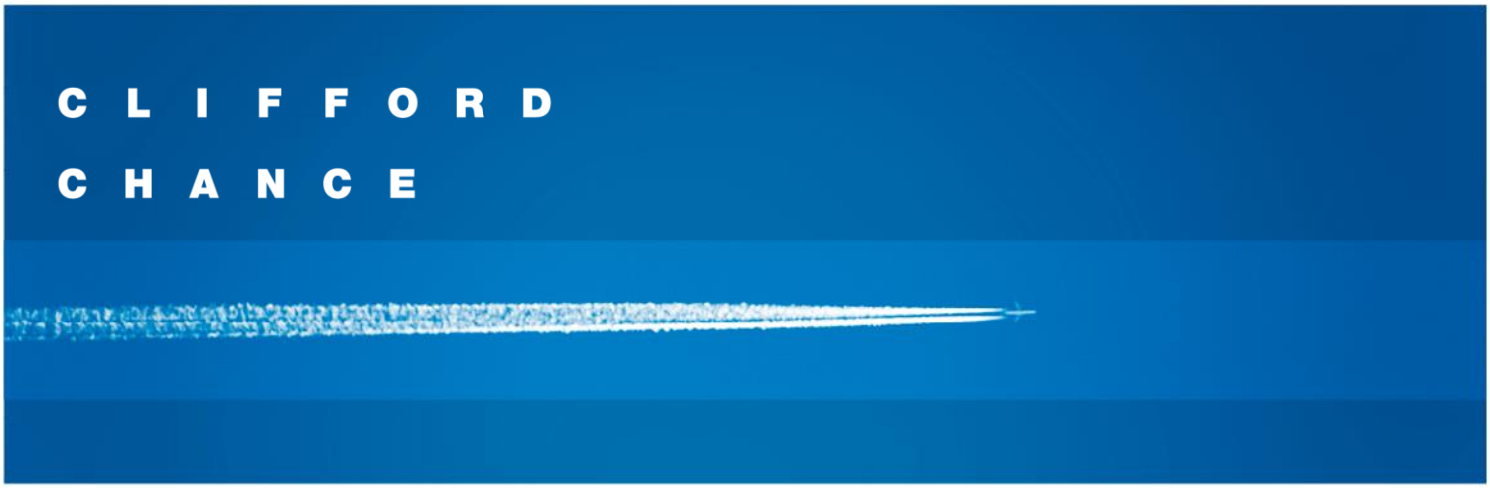

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Capital Markets Union: EU Commission publishes Communication on protection of intra-EU investments

The EU Commission has published a Communication on the protection of intra-EU investment. The document is intended to strengthen the business environment for EU investors in line with the Capital Markets Union (CMU) and help EU investors to invoke their rights before national administrations and courts, as well as helping EU Member States to protect the public interest in compliance with EU law.

The Commission has consistently taken the view that intra-EU bilateral investment treaties (intra-EU BITs) are incompatible with EU law, and the recent preliminary ruling concerning the *Achmea* case (C-284/16) in the Court of Justice (CJEU) has confirmed that investor-State arbitration clauses in intra-EU BITs are unlawful.

Following the judgment, the EU Commission has intensified its dialogue with all Member States, calling on them to take action to terminate intra-EU BITs.

The Communication focuses on intra-EU investments, in particular the protection of investors against national measures and not against measures adopted by the EU institutions and bodies.

Benchmarks Regulation: EU Commission adopts RTS on information to be provided by benchmark administrators

The EU Commission has adopted two Delegated Regulations supplementing the Benchmarks Regulation (EU 2016/1011).

The Delegated Regulations set out regulatory technical standards:

- for the information to be provided in an application for authorisation and in an application for registration of an administrator of benchmarks (C(2018)4438/F1); and;
- specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology (C(2018)4435/F1).

The Delegated Regulations will enter into force 20 days following their publication in the Official Journal.

Money Market Funds: Delegated Regulation on STS securitisations and asset-backed commercial papers published in Official Journal

Commission Delegated Regulation (EU) 2018/990 supplementing the Money Market Funds (MMF) Regulation with regard to simple, transparent and standardised (STS) securitisations and asset-backed commercial papers (ABCPs), requirements for assets received as part of reverse repurchase agreements and credit quality assessment methodologies has been published in the Official Journal.

The Delegated Regulation aims to ensure that MMFs are invested in appropriate eligible assets by setting out MMF investment requirements and providing an overview of and single point of access to them.

The Delegated Regulation will enter into force on 2 August 2018 and will apply from 21 July 2018, except for Article 1 which will apply from 1 January 2019.

Brexit: EU Commission adopts Communication on stakeholders' preparations

The EU Commission has adopted a Communication outlining ongoing work on the preparation for all outcomes of the UK's withdrawal from the EU. The Commission intends the Communication to be viewed in light of the EU27 Leaders' call to intensify preparedness at all levels. In particular, the Commission notes that preparedness is a joint effort at EU, national and regional levels, and also includes economic operators and other private parties and that all stakeholders should step up preparations for all scenarios and take responsibility for their specific situation.

The Communication highlights that the EU is working hard to reach an agreement on an orderly withdrawal, but notes that there is no certainty that an agreement will be reached. Moreover, the Commission sets out that even if an agreement is reached the UK's relationship with the EU will be in a fundamentally different situation. The Communication is intended to describe ongoing preparedness work, outline the preparedness actions taken so far and point to the various challenges ahead.

Alongside the Communication, the Commission has published a high-level factsheet for businesses in the EU27 preparing for Brexit. The factsheet calls on all businesses concerned to prepare, make all necessary decisions, and complete all required administrative actions, before 30 March 2019 in order to avoid disruption.

The issues identified relate to:

- responsibilities in the supply chain;
- certificates, licenses, and authorisations;
- customs, VAT and excise;
- rules of origin;
- prohibitions and restrictions for import/export of goods; and
- transfer of personal data.

Credit rating agencies: ESMA publishes supplementary guidance to clarify endorsement regime for non-EU credit ratings

The European Securities and Markets Authority (ESMA) has published supplementary guidance providing clarification on how to assess if the requirements of a third-country credit rating agency (CRA) meet the 'as stringent as' test (the ASA test).

The guidelines set out the general principles of the ASA test and provide a list of alternative requirements which ESMA considers acceptable to pass the test, such as:

- fees charged by CRAs;

- analyst rotation;
- pre-publication of issuer notification;
- rating disclosures; and
- the treatment of inside information.

The guidelines will come into force on 1 January 2019.

Capital Markets Union: ESMA submits final draft RTS and ITS on securitisation to EU Commission

ESMA has submitted its final draft regulatory technical standards (RTS) and draft implementing technical standards (ITS) to the EU Commission for endorsement.

The draft RTS and ITS specify:

- the information and format that originators and sponsors are required to provide ESMA to comply with the simple, transparent and standardised (STS) notification obligations;
- the information to be provided to the competent authorities for the authorisation of a third party assessing the compliance of securitisations with the STS criteria; and
- the standardised templates to be used for the provision of the STS notification.

Alongside the draft, ESMA has published feedback on the responses received to its December 2017 consultation.

European System of Financial Supervision: ECON Committee publishes draft reports on proposals for reform

The EU Parliament Economic and Monetary Affairs (ECON) Committee has published two draft reports on the proposed reform of the European System of Financial Supervision (ESFS).

The draft reports relate to:

- the proposal for a regulation amending the EBA Regulation, EIOPA Regulation and ESMA Regulation as well as the Regulation on European venture capital funds, Regulation on European social entrepreneurship funds, MiFIR, the European long-term investment funds (ELTIF) Regulation, the Benchmarks Regulation and the Prospectus Regulation; and
- the proposal for a regulation amending the Regulation on EU macroprudential oversight of the financial system and establishing a European Systemic Risk Board (ESRB).

ECB announces bank-specific supervisory expectations to further address NPLs

The European Central Bank (ECB) has announced further steps in its supervisory approach for addressing the stock of non-performing loans (NPLs) in the euro area. In particular, the ECB intends to further engage with each bank to define bank-specific supervisory expectations for the provisioning of

NPLs. The expectations will be based on a benchmarking of comparable banks and guided by individual banks' current NPL ratio and main financial features.

The ECB views the current aggregate level of NPLs as far too high compared to international standards. The ECB intends that its approach will ensure continued progress to reduce legacy risks in the euro area and achieve the same coverage of the stock and flow of NPLs over the medium term.

CRR: EU Commission adopts proposed amendments to LCR Delegated Regulation

The EU Commission has published a draft Delegated Act amending Delegated Regulation (EU) 2015/61 on the Liquidity Coverage Ratio (LCR), which supplements the Capital Requirements Regulation (CRR). The draft Regulation is intended to make limited amendments to the LCR Delegated Regulation to improve its practical application.

The proposed amendments relate to:

- the calculation of expected liquidity outflows and inflows on repos, reverse repos and collateral swaps transactions, in order to fully align them with international liquidity standards developed by the Basel Committee on Banking Supervision (BCBS);
- the treatment of certain reserves held with third-country central banks that are not rated at least ECAI 1;
- the waiver of the minimum issue size for certain non-EU liquid assets by waiving for consolidated purposes any applicable minimum issue size requirements for third country liquid assets held by a non-EU subsidiary;
- the application of the unwind mechanism for the calculation of the liquidity buffer, among other things, to align it more closely with the BCBS standard by removing collateral received through derivatives transactions from the mechanism; and
- the integration of simple, transparent and standardised (STS) criteria for securitisation into the LCR Delegated Regulation.

Following adoption, the Delegated Regulation will be submitted to the EU Parliament and Council for scrutiny.

EBA publishes final guidance to strengthen Pillar 2 framework

The European Banking Authority (EBA) has published its final revised guidelines aimed at further enhancing institutions' risk management and supervisory convergence in the supervisory review and examination process (SREP).

The three reviewed guidelines focus on stress testing, particularly its use in setting Pillar 2 capital guidance (P2G), as well as interest rate risk in the banking book (IRRBB). In particular, the publication includes:

- the final report on the guidelines on the revised common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing;

- revised final guidelines on the management of interest rate risk arising from non-trading activities (IRRBB guidelines); and
- revised final guidelines on institutions' stress testing.

The changes to the SREP guidelines do not alter the overall SREP framework and mainly aim to enhance the requirements for supervisory stress testing and explain how stress testing outcomes will be used in setting P2G.

The revised IRRBB guidelines reflect developments in the Basel Committee on Banking Supervision (BCBS) and clarify internal governance and supervisory outlier tests requirements during the first phase of the European implementation of the Basel standards.

The revised guidelines on institutions' stress testing update the EBA's 2010 guidelines to reflect industry practices and the incorporation of recovery planning.

Prospectus Regulation: ESMA publishes final report on draft RTS

ESMA has published its final report on draft regulatory technical standards (RTS) under the Prospectus Regulation. The draft RTS cover the following areas:

- key financial information to be disclosed by issuers for the prospectus summary;
- data and machine readability;
- advertisements disseminated to retail investors;
- publication of a prospectus;
- requirements to publish supplements; and
- arrangements for the notification portal used for passporting prospectuses.

Alongside the final report on draft RTS, ESMA has published feedback on the responses received to its December 2017 consultation.

ESMA has submitted the draft RTS to the EU Commission for endorsement.

Prospectus Regulation: ESMA consults on technical advice on minimum information content for prospectus exemption

ESMA has launched a consultation on technical advice under the Prospectus Regulation.

In accordance with the Prospectus Regulation, issuers may offer or admit securities connected with a takeover, merger or division without publishing a prospectus, provided that an alternative document is made available to investors which describes the transaction and the impact on the issuer. ESMA is consulting on a draft version of technical advice on the minimum information to be included in the content of documents describing a merger, division or takeover.

Comments to the consultation are due by 5 October 2018. ESMA expects to issue a summary of responses and final report in Q1 2019.

PSD2: EBA publishes final guidelines on fraud reporting

The European Banking Authority (EBA) has published its final guidelines on fraud reporting under the recast Payment Services Directive (PSD2). The final report follows a consultation, which closed on 3 November 2017. In close cooperation with the ECB, the EBA assessed the responses and identified approximately 200 different issues or requests for clarifications that respondents had raised.

The EBA has made a number of changes in its final guidelines, in particular relating to:

- reporting frequency;
- geographical area;
- the number of categories of fraudulent transactions to be reported; and
- fraud types.

Additionally, the EBA and the ECB have made efforts to further align the guidelines with related reporting requirements, in particular the ECB Regulation on payment statistics (ECB/2013/43). The other requirements proposed in the consultation paper remain unchanged, including the exclusion of account information service providers from the fraud statistics reporting obligations.

The guidelines will apply from 1 January 2019. Competent authorities will have two months after the guidelines have been published in the official EU languages to report whether they comply with the guidelines.

Credit rating agencies: ESMA launches consultation to revise guidelines on periodic reporting

ESMA has launched a consultation to revise the first set of guidelines published in 2015 regarding the information that is periodically submitted to ESMA by credit rating agencies (CRAs).

- The revised guidelines are intended to:
- establish reporting categorisations for CRAs;
- introduce standardised reporting templates;
- provide additional reporting instructions in areas where ESMA has identified a supervisory need;
- introduce new periodic reporting requirements to reduce ESMA's ad-hoc requests for information; and
- establish reporting calendars based on reporting categorisation.

Comments to the consultation are due by 26 September 2018. ESMA expects to issue a final report on the revised guidelines before the end of 2018.

FSB consults on effects of infrastructure finance reforms

The Financial Stability Board (FSB) has published a consultation paper on the effects of the G20 regulatory reforms on infrastructure finance. The FSB is seeking public feedback on a set of questions relating to its initial conclusions regarding the impact of the regulatory reforms.

Amongst other things the FSB has concluded that:

- the effect of the G20 reforms is secondary to the effect of other factors, such as the macro-financial environment, government policy and institutional drivers;
- those reforms that have already been largely implemented (such as the Basel III capital and liquidity requirements and the over-the-counter derivatives reforms) do not appear to have had any material negative effect on the provision and cost of infrastructure finance;
- overall the amount of infrastructure finance has grown over recent years, in particular project and corporate bond issuances;
- lending spreads for infrastructure finance have returned to lower levels in recent years following a spike during the financial crisis;
- the provision of infrastructure finance differs depending on how developed the market is, for instance emerging and developing economies tend to rely more on bank loans, have a higher proportion of cross-border financing and use local currency less;
- market-based financing has begun to replace bank financing in some advanced economies;
- the reforms have contributed to shorter average maturities of infrastructure loans by global systemically important banks; and
- the wider benefits to the financial system caused by enhanced resilience appear to also apply in the narrower context of infrastructure finance.

Comments are due by 22 August 2018. The FSB intends to publish the final report around the time of the next G20 Leader's Summit in Buenos Aires in November 2018.

FSB reports on work on crypto-assets

The FSB has published a report delivered to the G20 Finance Ministers and Central Bank Governors on the work of the FSB and standard-setting bodies on crypto-assets.

The FSB has developed a framework, in collaboration with the Committee on Payments and Market Infrastructures (CPMI), to monitor the financial stability implications of developments in crypto-asset markets. The framework focuses on the transmission channels from crypto-asset markets, and the report sets out the metrics that the FSB intends to use to monitor crypto-asset markets as part of its ongoing assessment of vulnerabilities in the financial system.

The report also describes the work other standard-setting bodies are undertaking in the areas of their respective mandates, including:

- the CPMI, which has conducted work on applications of distributed ledger technology (DLT), and is conducting outreach, monitoring, and analysis of payment innovations;
- the International Organization of Securities Commissions (IOSCO), which has established an initial coin offering (ICO) consultation network to discuss experiences regarding ICOs, and is developing a support framework to assist members in considering how to address domestic and cross-border issues stemming from ICOs that could impact investor protection; and

- the Basel Committee on Banking Supervision (BCBS), which is assessing the materiality of banks' direct and indirect exposures to crypto-assets, clarifying the prudential treatment of such exposures, and monitoring developments related to crypto-assets for banks and supervisors.

The Financial Action Task Force (FATF) will report separately to the G20 on its work concerning the money laundering and terrorist financing risks relating to crypto-assets.

Brexit: SIs under the EU (Withdrawal) Act for 16-20 July 2018

HM Treasury (HMT) has published two draft statutory instruments (SIs) for sifting and has laid two draft SIs before Parliament under the EU (Withdrawal) Act 2018.

Before the draft SIs are formally laid in Parliament they will go through a sifting process under which a committee in the House of Commons and the Secondary Legislation Scrutiny Committee in the House of Lords will consider the suitability of the negative procedure for the SIs.

HMT has published the following draft SIs for sifting:

- The Friendly Societies (Amendment) (EU Exit) Regulations 2018 (16 July 2018); and
- The Consumer Credit (Amendment) (EU Exit) Regulations 2018 (16 July 2018).

HMT has laid before Parliament the following draft SIs:

- The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (16 July 2018); and
- The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (20 July 2018).

HMT gives effect to special administration rules for financial market infrastructure systems

The Financial Market Infrastructure Administration (England and Wales) Rules 2018 (SI 2018/833) have been made. The instrument exercises the power to give effect to Part 6 of the Financial Services (Banking Reform) Act 2013, which established a new special administration procedure to apply to operators of certain financial market infrastructure systems (FMIs) as designated by HM Treasury (HMT). The Rules set out the procedure for making an application for an FMI administration order and apply (with modifications) specified provisions of the Insolvency (England and Wales) Rules 2016 (SI 2016/1024). SI 2018/833 will come into force on 4 August 2018.

The Financial Market Infrastructure Administration (Designation of VocaLink) Order 2018 (SI 2018/858) has also been made, under which HMT exercises its power to designate VocaLink Limited in respect of services it provides to the operators of the recognised payment systems Faster Payments, Bacs and LINK. This is the first time that HMT has exercised its powers under section 112(4) of the 2013 Act to designate an infrastructure company for the purposes of Part 6 of the Act. SI 2018/858 comes into force on 9 August 2018.

BoE consults on term SONIA reference rates

The Bank of England's (BoE's) Working Group on Sterling Risk-Free Reference Rates has launched a consultation on term SONIA reference rates (TSRRs).

The Working Group is seeking feedback on specific recommendations aimed at developing TSRRs, which the Working Group believes can play an important role in facilitating transition to SONIA, particularly in loan and debt capital markets. The consultation covers:

- TSRR use cases;
- an overview of the SONIA derivatives market; and
- data sources and methodologies for a TSRR.

The Working Group notes that the consultation has launched simultaneously with ISDA's consultation on new IBOR fallbacks for OTC derivatives contracts, but while the ISDA consultation is focused on preventing derivatives market disruption in the event a key IBOR is discontinued, this consultation focuses on how a TSRR can be constructed to facilitate sterling LIBOR transition in markets where term rates better suit users' needs.

Comments are due by 30 September 2018.

FCA publishes approach to consumer protection and consults on new duty of care

The Financial Conduct Authority (FCA) has published its approach document on consumers and a discussion paper (DP18/5) on a new duty of care for firms in financial services.

The approach document sets out how the FCA intends to meet its operational objective to protect consumers, and the regulatory, legal and decision-making frameworks that apply. A feedback statement providing a summary of responses to its 2017 consultation is annexed to the document.

The discussion paper asks whether a new duty of care (defined loosely to cover both a duty of care and/or fiduciary duty), or any other change (such as extending the client's best interests rules to cover all regulated activities), should be introduced to mitigate conflicts of interest, enhance firms' culture and governance, and improve consumer protection. Among other things, views are sought on whether a new duty is needed, and if so, the form it should take, including whether it should be put on a regulatory or statutory footing, and whether a breach should give rise to a private right for damages in court.

Comments on the discussion paper are due by 2 November 2018.

Belgian Parliament adopts law which gives effect to certain provisions of CSDR and SFTR

The Belgian Parliament has adopted a law which adapts the Belgian legal framework to the Central Securities Depositories Regulation (CSDR). The draft law also designates the National Bank of Belgium (NBB) as the competent authority under the CSDR for authorising and supervising CSDs established in Belgium. However, the draft law provides that certain competences will be exercised by the Financial Services and Markets Authority (FSMA) in respect of the authorisation and supervision of CSDs.

The draft law also designates the NBB as the competent authority under the Securities Financing Transactions Regulation (SFTR). The NBB is to ensure due compliance by financial and non-financial counterparties subject to its supervision with the requirement to report to a trade repository the details of any securities financing transaction they have concluded and any modification or termination thereof, as well as the reuse of financial instruments received as collateral.

Finally, the draft law partially implements Directive (EU) 2017/2399 as regards the ranking of unsecured debt instruments in insolvency hierarchy. For this purpose, the draft law amends specific provisions of the Banking Law in order to reflect the provisions of Directive (EU) 2017/2399.

Finance and risk bearing capacity information: revised regulation enters into force

The Second Regulation amending the Regulation on Finance and Risk Bearing Capacity Information (FinaRisikoV) has entered into force. The regulation grants institutions subject to reporting requirements certain facilities, such as extended submission deadlines. In addition, reporting templates have been revised and the exemptions regarding the submission of reporting templates have been enhanced.

With regard to the revised reporting templates, a transitional period will apply until 31 December 2018.

Consob issues press release on credit spread for non-equity securities issued by banks

The Commissione Nazionale per le Società e la Borsa (Consob) has issued a press release regarding its decision in future not to request information on credit spreads as part of the offer documentation for non-equity securities issued by banks.

Issuers remain responsible for monitoring risk factors on the basis of the management and control models in compliance with the prudential rules and article 94 para. 2 and 7 of Legislative Decree No. 58 of 1998 (Italian Financial Act).

PSD2: Bank of Italy consults on amendments to supervisory provisions

The Bank of Italy has launched a public consultation on amendments to the supervisory provisions for payment institutions and electronic money institutions intended to implement the revised Payment Services Directive (PSD2). PSD2 was transposed by Legislative Decree No. 218 of 17 December 2017.

Comments are due by 10 September 2018.

PSD2: Bank of Italy consults on amendments on transparency

The Bank of Italy has launched a public consultation on a set of amendments to the provisions of the Bank of Italy regulation of 29 July 2009 regarding transparency on banking and financial services and transactions. The amendments are intended to implement the revised Payment Services

Directive (PSD2), which was transposed in Italy by Legislative Decree No. 218 of 17 December 2017.

Comments are due by 10 September 2018.

CSSF issues circular on adoption of EBA guidelines on connected clients

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new circular (18/693) on the adoption of the guidelines of the EBA on connected clients under Article 4(1)(39) of the Capital Requirements Regulation (CRR).

The circular is addressed to all credit institutions and CRR investment firms incorporated under Luxembourg law and to Luxembourg branches of credit institutions and CRR investment firms having their registered office in a third country. The circular draws the attention of the public to the EBA guidelines, which will enter into force on 1 January 2019, and confirms the CSSF's intention to comply with the guidelines in its capacity as Luxembourg competent authority.

The CSSF has invited relevant institutions to make the necessary arrangements to ensure their compliance with the guidelines as of 1 January 2019. In particular, institutions shall take into consideration the guidelines when assessing whether a group of clients forms a 'group of connected clients' for the purposes of, among others, Sub-Chapter 1.2 and Chapters 2, 3 and 6 of Part III of CSSF circular 12/552, their internal capital adequacy assessment process (ICAAP) as defined in CSSF circular 07/301 and their management of concentration risk (CSSF regulation No. 15-02).

The circular became applicable with immediate effect.

CSSF issues press release on EMIR reporting

The CSSF has issued a press release (18/23) on the reporting of derivatives transactions under the European Market Infrastructure Regulation (EMIR).

In the press release, the CSSF as supervisory authority for EMIR purposes for financial and non-financial counterparties draws the attention of market participants to the importance of ensuring compliance with the revised technical standards contained in Commission Delegated Regulation (EU) 2017/104 and accompanying validation rules regarding EMIR reporting, published by the European Securities and Markets Authority (ESMA). The CSSF further notes that it is increasing its focus on the review of reported transactions to trade repositories (TRs).

The CSSF reminds all market participants falling within the scope of EMIR of the following:

- trade rejections – TRs are expected to apply the new validation rules and reject non-compliant reports. Any rejected report should be reviewed and resubmitted as soon as possible in compliance with the validation rules. A rejection does not postpone any duties with regards to timely reporting of derivative transactions;
- double-sided transaction reconciliation – a transaction should be reported by both counterparties where they are both in the scope of EMIR. The TRs would then reconcile both sides of the submitted reports by pairing and matching both the Legal Entity Identifiers (LEI) of each reporting

counterparty and the Unique Trade Identifier (UTI). The CSSF stresses the importance of reporting a common UTI for each transaction by both counterparties. Double-sided transactions that are neither paired nor matched could be considered as an indicator for unstable processes with regards to reporting duties; and

- content of the reporting – the CSSF expects that the various reporting fields, as defined by the revised technical standards, will be correctly reported and that any inconsistencies or errors will be corrected. Inconsistent information in fields with regards to publicly available identifiers of instruments, benchmarks, stakeholders (e.g. CCP, market) is an indicator for insufficient and inadequate processes and potential non-compliance with regards to EMIR reporting duties.

Draft Bill on digital transformation measures for the financial system published

The Draft Bill on digital transformation measures for the financial system has been published. The Draft Bill is intended to facilitate technology-based financial innovation while strengthening legal certainty, guaranteeing the protection of clients of financial services and expanding the instruments available to supervisors to fulfil their functions.

The Draft Bill foresees removing obstacles and articulating agile and transparent channels of collaboration between public authorities and the private sector, while ensuring that digital transformation does not affect financial stability and market integrity or facilitate the use of the financial system for unlawful purposes.

The main measure of the Draft Bill is the regulation of a 'sandbox' or controlled testing environment for technology-based financial innovations, where tests shall be carried out under three conditions:

- surveillance by the competent authorities, particularly the financial supervisors;
- prior delimitation of the scope, duration and characteristics of the tests; and
- maximum guarantees for participants when the performing of the tests requires the participation of real clients.

The Draft Bill is subject to a public hearing until 7 September 2018.

FINMA publishes circulars on further implementation of Basel III in Switzerland

The Swiss Financial Market Supervisory Authority (FINMA) has published revised circulars on interest rate risks, disclosure, capital requirements and capital held by banks.

The evolution of the standards issued by the Basel Committee, changes to the Banking Ordinance and Capital Adequacy Ordinance issued by the Federal Council and amended international accounting standards have necessitated changes to a number of FINMA circulars, in particular FINMA Circulars 2019/2 'Interest rate risks – banks' and 2016/1 'Disclosure – banks'. This revision package is one of the last steps in the national implementation of Basel III. The implementation of the net stable funding ratio (NSFR) and the revised standards published by the Basel Committee in December 2017 are still pending. These will be handled under the lead of the Federal Department of

Finance via amendments to the relevant Federal Council ordinances and associated FINMA circulars.

FINMA held a consultation on the revised circulars, which found support for the revision, although respondents also expressed reservations, mainly about interest rate risks. In relation to interest rate risks, FINMA has taken a number of issues into account that arose during the consultation. For example:

- FINMA allows the application of several discounting methods in line with the Basel standards;
- certain subordinated debt instruments can also be taken into consideration when measuring interest rate risk; and
- FINMA has an explicit de minimis regulation for medium-sized institutions in Category 3 with minor interest income and low interest rate risks, allowing them to apply simplifications also applicable to institutions in Categories 4 and 5.

In relation to disclosure, the revised circular adopts a more principles-based approach and the scope of disclosure varies according to the banking category. Institutions can now individually amend the scope of their disclosure without providing further justification for doing so: if a bank considers certain items of information subject to disclosure not to be important, it may refrain from disclosing such information.

FINMA has reflected amendments to the Federal Council's Banking Ordinance and Capital Adequacy Ordinance regarding capital buffer and credit risks in Circulars 2011/2 'Capital buffer and capital planning – banks' and 17/7 'Credit risks – banks'. Circular 13/1 'Eligible capital – banks' has also been updated and now includes the necessary new requirements for the treatment of the expected credit loss provisions established under international accounting standards when determining regulatory capital.

The circulars come into effect on 1 January 2019.

FINMA revises Anti-Money Laundering Ordinance

FINMA has revised its Anti-Money Laundering Ordinance (AMLO-FINMA) as part of a package of measures. The changes take account of feedback received from consultation and include measures resulting from the mutual evaluation report on Switzerland by the Financial Action Task Force (FATF).

The revised AMLO-FINMA is intended to:

- address shortcomings identified in the FATF country review and incorporate findings from FINMA's supervisory and enforcement practice;
- set out in more detail the requirements for global monitoring of money laundering risks. This will be relevant to Swiss financial intermediaries with branches or group companies outside Switzerland;
- specify risk management measures which must be put in place if domiciliary companies or complex structures are used or if there are links with high-risk countries; and
- reduce the threshold for identification measures for cash transactions to the FATF level of CHF 15,000.

The revised AMLO-FINMA will enter into force on 1 January 2020.

FINMA launches regime for small banks and defines new focus for auditing

FINMA has defined a new regime for small banks and launched a pilot phase. Participating institutions must have high levels of capital and liquidity and not be subject to particularly high risks. In return, they will be subject to a substantially less complex regulatory regime.

Sixty-seven institutions will participate in the pilot phase beginning in July 2018. These institutions:

- must have a simplified leverage ratio of at least 8% (instead of the usual 3%) and an average liquidity coverage ratio of 120% (instead of 90% at present, or 100% from 2019 onwards);
- must be free of special risks, particularly conduct and interest rate risks;
- do not have to calculate a range of key regulatory figures (e.g. risk-weighted assets and the net stable funding ratio), and disclosure requirements are reduced to a minimum; and
- enjoy simplifications relating to qualitative requirements for operational risks, outsourcing and corporate governance.

The regime does not contain any relaxation of business conduct rules.

FINMA has also sharpened the risk-oriented focus of regulatory audits carried out by audit firms and revised the relevant circular.

Regular regulatory auditing will be revised to have a narrower focus, consisting of more in-depth auditing of high-risk areas or focusing on a rotating selection of topics year by year. Small institutions without observable increased risks will also have the opportunity to request two or three yearly audits instead of the current annual audits. To make the audits more meaningful, it will also be possible to take random samples on a risk-oriented basis instead of comprehensively. The partially revised circular 2013/3 'Auditing' will enter into force on 1 January 2019.

FINMA publishes partially revised circular on video and online identification

FINMA has amended the due diligence requirements for client onboarding via digital channels to take account of technological developments.

Two years after the publication of the original circular on video and online identification, FINMA has carried out an evaluation of the regulation's purposefulness. The evaluation has shown that in light of the gained hands-on experience and the rapid pace of technological change, some of the circular's requirements are no longer optimally aligned with the needs of the financial market and financial intermediaries. FINMA has taken account of these factors in the partially revised circular and launched a consultation.

In principle, respondents to the consultation process welcomed the revision of the requirements. Based on the submissions to the consultation, FINMA has also amended certain elements. For example, only two security features will have to be checked for both video and online identification instead of the three originally envisaged. FINMA has defined a transitional period ending on 1 January 2020 to give financial intermediaries sufficient time to adjust their

processes. Until then they can choose whether to apply the current requirements or implement the revised version of the circular.

BRSA, CMB, Central Bank, Ziraat Bank, Vakifbank, Halkbank, and Kalkınma Bankasi now organised under Ministry of Treasury and Finance

Following the recent presidential elections, as a result of which Recep Tayyip Erdogan became the first president of the new system in Turkey, the Ministry of Finance was reorganised as the Ministry of Treasury and Finance by means of Decree No. 703, which was published in the Official Gazette dated 9 July 2018.

As the office of the Prime Ministry has also been abolished with the introduction of the new system, other structural changes were expected in respect of the state entities which were once organised under the Prime Minister's office.

Through the Presidential Circular No. 2018/1 published in the Official Gazette dated 15 July 2018, the Banking Regulation and Supervision Agency (BRSA), the Capital Markets Board (CMB), and the Central Bank of Turkey, as well as state owned banks such as T.C. Ziraat Bankası A.Ş. (Ziraat Bank), T. Vakıflar Bankası T.A.O. (Vakifbank), T. Halk Bankası A.Ş. (Halkbank), and T. Kalkınma Bankası A.Ş. have now also been reorganised under the Ministry of Treasury and Finance.

Accordingly, the new Minister of Treasury and Finance, Berat Albayrak, is now leading the Undersecretariat of Treasury, the Central Bank, the BRSA, the CMB and the state-owned banks such as Ziraat, Vakifbank and Halkbank.

On a separate note, the Saving Deposit Insurance Fund has been reorganised under the auspices of the Presidency of the Republic of Turkey.

Open-ended fund company structure to be introduced on 30 July 2018

The Companies Registry has issued a circular to announce the commencement of the Securities and Futures (Amendment) Ordinance 2016 (Amendment Ordinance) with effect from 30 July 2018.

The Amendment Ordinance introduces a new open-ended fund company (OFC) structure in Hong Kong to allow investment funds to be set up in the form of a company, but with the flexibility for investors to trade the funds through the creation and cancellation of shares. Currently, an open-ended investment fund may be established under the laws of Hong Kong in the form of a unit trust but not in a corporate form owing to various restrictions on capital reduction under the Companies Ordinance.

Under the OFC regime, the Securities and Futures Commission (SFC), being the principal regulator, is responsible for the registration and regulation of OFCs. The Registrar of Companies will oversee the incorporation and statutory corporate filings of OFCs and the Official Receiver the winding-up procedures.

HKMA publishes Open Application Programming Interface framework for banking sector

The Hong Kong Monetary Authority (HKMA) has published its Open Application Programming Interface (API) framework for the Hong Kong banking sector and has announced that it will launch the Open API on its website on 23 July 2018 to provide public access. The formulation of the Open API Framework is one of the seven initiatives announced by the HKMA in September 2017 to prepare Hong Kong to move into a new era of smart banking.

The framework takes a risk-based principle and a four-phase approach to implement various Open API functions. It lays out the detailed expectations on how banks should onboard and maintain relationships with third-party service providers in a manner that ensures consumer protection. The HKMA intends the framework to serve as an important guide for the banking industry in Hong Kong to adopt APIs effectively and strike a good balance between innovation and risks. With the release of the framework, the HKMA expects banks to deploy Phase I Open APIs within 6 months and Phase II Open APIs within 12 to 15 months. Upon receiving the deployment roadmaps from banks, the HKMA plans to publish a summary of roadmaps of the Open API functions from the banks for reference by the market.

The HKMA has indicated that it will work closely with the industry in the next twelve months on the deployment timeline for Phase III and IV Open APIs, considering implementation progress of Phase I and II, and international development. The HKMA will publish a timetable in due course.

FSC reshuffles organisational structure

The Financial Services Commission (FSC) has announced a plan to reshuffle its organisational structure. The plan is intended better to protect financial consumers and proactively respond to financial innovation in the fourth industrial revolution era.

Under the revised structure:

- a Financial Consumer Bureau will be created – the newly-created bureau will take on overall responsibility for financial consumer protection, currently divided among sector-specific bureaus. The new bureau will also assume responsibility for household debt policy on top of microfinance policy for financially marginalised households;
- the current Capital Markets Bureau will be renamed the Capital Market Policy Bureau under the new Financial Consumer Bureau;
- the current Banking and Insurance Bureau will be reorganised into the Financial Industry Bureau; and
- a Financial Innovation Bureau will be created – the new bureau will be tasked with policy initiatives for financial innovation, e.g. innovative financial services using fintech or big data and responses to new developments and challenges such as cryptocurrencies.

MAS responds to feedback on proposed amendments to Securities and Futures Act, Financial Advisers Act and Trust Companies Act

The Monetary Authority of Singapore (MAS) has published its response to the feedback it received on its public consultation on proposed amendments to the Securities and Futures Act (SFA), the Financial Advisers Act (FAA) and the Trust Companies Act (TCA).

The consultation paper, issued on 18 September 2015, proposed amendments aimed at enhancing the MAS' supervisory powers and business conduct requirements for financial institutions (FIs) regulated under the SFA, the FAA and the TCA. On 7 November 2016, the MAS published its response to the feedback received on the proposals to allow the pledging of securities held in Central Depository direct accounts for collateralised trading, and the proposal to extend sections 150B and 150C of the SFA in relation to inspections by foreign regulators to market infrastructure operators and approved trustees. The MAS has now published its response to the remaining proposals.

Amongst other things, MAS has confirmed that:

- all locally incorporated Recognised Market Operators (RMOs), Recognised Clearing Houses (RCHs), and Approved Trustees (ATs) will be required to seek the MAS' approval prior to appointing their Chief Executive Officers (CEOs) and directors;
- the grounds for the removal of CEOs, Resident Managers in the case of Licensed Trust Companies and directors of FIs regulated under the SFA, FAA and TCA will be aligned to a single criterion of 'fit and proper'. The criteria for considering whether an officer is 'fit and proper' are set out in the Guidelines on Fit and Proper Criteria (Guidelines No. FSG-G01). The MAS will accord persons aggrieved by its decision to remove them from office an opportunity to be heard and an independent appeal process;
- effective control provisions will be extended to the takeover of locally incorporated RMOs, RCHs and ATs;
- a potential acquirer needs to obtain the MAS' approval only before he takes effective control of a capital markets services licensee or a licensed financial adviser (collectively, Licensees). This will remove the need for any potential acquirer to obtain the MAS' approval before entering into discussions or negotiations to acquire a controlling stake in a Licensee. The MAS encourages all potential acquirers to initiate the review process with relevant details as soon as practicable to avoid any unnecessary delays to the acquisition timeline;
- on the notification requirements concerning adverse information on FIs, it would not be feasible to comprehensively prescribe the circumstances that require notification to the MAS. In assessing whether the FI has breached the requirement 'immediately' to notify the MAS of an adverse development, the MAS will give due regard to the facts and circumstances of each case, to determine if there was delay in notifying the MAS;
- an FI's failure to exercise reasonable care in submission of information will be a compoundable offence under the SFA, FAA and TCA. In assessing whether to penalise FIs for errors in their submissions, the MAS will consider factors such as the nature of the information submitted,

significance of the error(s), or the robustness of the FI's internal controls and processes, etc.;

- it is the MAS' intention for all FIs to eventually receive information and documents from the MAS via electronic service; and
- it will only allow foreign regulatory authorities to inspect (i) MAS-regulated FIs that foreign regulatory authorities have regulatory oversight of; and (ii) MAS-regulated FIs which are service providers to their related overseas FIs under outsourcing agreements. In the event that foreign regulators appoint agents to conduct inspections on their behalf, the same safeguards and conditions would be imposed on the agents of the foreign regulators.

The MAS has indicated that it intends to review the takeover requirements for insurance brokers in due course. The MAS has also indicated that the above proposals will be progressively effected when the relevant legislation is amended and it will inform the industry as and when these policies are scheduled to be implemented.

Legislative changes relating to Annual General Meetings and Annual Returns timelines to take effect on 31 August 2018

The Accounting and Corporate Regulatory Authority (ACRA) has announced that legislative changes to the Companies (Amendment) Act 2017, which are intended to reduce the regulatory burden for companies, will take effect on 31 August 2018. The legislative changes have been announced by the government as part of its on-going efforts to keep Singapore business friendly and competitive.

The key legislative amendments are:

- the alignment of timelines for holding annual general meetings (AGMs) and filing annual returns with the financial year-end (FYE) for listed and non-listed companies, subject to specified safeguards; and
- the exemption of private companies from holding AGMs, subject to specified safeguards.

In addition, the process for solvent exempt private companies and dormant private relevant companies to file annual returns has also been simplified.

The legislative changes will be applicable to companies with FYE ending on or after 31 August 2018.

MAS publishes revised notice on appointment of auditors

The MAS has revised Notice 165 on appointment of auditors, pursuant to its response to the feedback received on the review of the mandatory audit firm rotation for local banks published in August 2017.

Under the previous MAS Notice 615, banks incorporated in Singapore should not appoint the same audit firm for more than five consecutive years, except with the prior written approval of the MAS. Revised MAS Notice 615 discontinues the mandatory audit firm rotation policy and, among other things, introduces a requirement for mandatory audit re-tendering every ten years. Subject to certain exceptions, the notice sets out a rule that banks incorporated and headquartered in Singapore shall not reappoint an auditor who has been appointed for a period of 10 or more consecutive financial years

following the last conduct of a public tender, unless the auditor is selected following the conduct of a new public tender. The following exceptions to the rule are set out in the notice:

- the rule shall not apply to a bank incorporated and headquartered in Singapore that is a subsidiary of another bank incorporated and headquartered in Singapore;
- if a bank, which is incorporated and headquartered in Singapore, has appointed the same auditor for a period of more than 10 consecutive financial years as of 31 December 2017, the rule shall not apply to the bank's reappointment of its auditor for each of the financial year preceding the financial year ending 31 December 2020; and
- if a bank, which is incorporated and headquartered in Singapore, has appointed the same auditor for a period of 10 consecutive financial years or less as of 31 December 2017, the rule shall not apply to the bank's reappointment of its auditor for each of the financial year preceding the financial year ending 31 December 2022.

The revised notice took effect from 18 July 2018. Consequently, MAS Notice 615 dated 27 March 2002 and last revised on 19 March 2007 has been cancelled with effect from 18 July 2018.

President issues executive order creating Task Force on Market Integrity and Consumer Fraud

President Trump has signed an executive order creating a Task Force on Market Integrity and Consumer Fraud, which is designed to handle various cases of consumer fraud. The Task Force will replace the Financial Fraud Enforcement Task Force created by Executive Order 13519 of 17 November 2009.

Enforcement will involve cooperation between a number of government departments and agencies including the Justice Department and U.S. attorneys offices, the Federal Trade Commission, the Consumer Financial Protection Bureau, and Securities and Exchange Commission.

Among other things, the new Task Force will investigate and prosecute cases involving:

cyber-fraud, including fraud affecting the general public;

- digital currency fraud; and
- money laundering.

The inclusion of digital currency fraud as one of the major areas that the Task Force will cover may bring clarification as to how fraud involving cryptocurrencies will be treated.

Australian Government consults on second tranche of Corporate Collective Investment Vehicle Bill 2018

The Australian Government has launched a public consultation on the second tranche of the Treasury Laws Amendment (Corporate Collective Investment Vehicle (CCIV)) Bill 2018 and explanatory materials. The first tranche consultation on the CCIV that was launched on 13 June 2018 closed on 18 July 2018.

The second tranche exposure draft includes:

- external administration of a Corporate Collective Investment Vehicle (CCIV) in a winding up situation – this involves winding up on a sub-fund-by-sub-fund basis by treating the CCIV in a winding up situation as if it is comprised only of the sub-fund in respect of which the CCIV is wound up;
- the application of the Chapter 7 financial services regulatory regime to CCIVs – Chapter 7 will generally apply to CCIVs and corporate directors in the same way as it applies to other companies, with some modifications to take into account the unique structure of a CCIV and ensure parity with the requirements for registered schemes. In particular, the corporate director must have an Australian Financial Services Licence (AFSL) that covers both its operations and the operations of the CCIV;
- the liability of the corporate director of a CCIV for contraventions of the law by the CCIV – the provisions clarify how a contravention of a law of the Commonwealth by a CCIV is established. The provisions also re-route offences and penalties committed by the CCIV, and the associated penalty, to the corporate director (so members of a CCIV do not suffer loss); and
- the explanatory materials also include a detailed description of the proposed penalties framework for CCIVs (including the proposed penalties for a contravention of a provision in the new Chapter 8B) and the proposed approach to takeovers, compulsory acquisitions and buy-outs of a CCIV. The provisions for these aspects of the Bill are under development.

Comments on the second tranche consultation are due by 10 August 2018.

Australian Government consults on revised Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018

The Australian Government has launched a public consultation on a revised exposure draft of the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 and explanatory materials. The revised exposure draft of the Bill has been developed in response to the feedback received during the government's previous round of consultation, which was launched on 21 December 2017.

The measures in the Bill implement the government's response to the Financial System Inquiry (FSI), Improving Australia's Financial System 2015, whereby the government accepted the FSI's recommendations to introduce:

- design and distribution obligations for financial products to ensure that products are targeted at the right people (FSI recommendation 21); and
- a product intervention power for the Australian Securities and Investments Commission (ASIC) when there is a risk of significant consumer detriment (FSI recommendation 22).

Comments on the revised exposure draft of the Bill are due by 15 August 2018.

RECENT CLIFFORD CHANCE BRIEFINGS

Implementation of the EU's Fifth Money Laundering Directive

On 9 July 2018, the EU's Fifth Money Laundering Directive came into force. Member States now have until 10 January 2020 to give effect in local law to its provisions, which impose a range of potentially onerous new requirements. The amendments made by 5MLD form part of the EU Commission's action plan on further strengthening the fight against terrorist financing.

This briefing discusses the key changes and the implementation of 5MLD.

https://www.cliffordchance.com/briefings/2018/07/implementation_oftheeusfifthmoneylaunderin.html

IBOR fallbacks for derivatives – ISDA consultation on term and spread adjustments for floating rates

ISDA released its 'Consultation on Certain Aspects of Fallbacks for Derivatives Referencing GBP LIBOR CHF LIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR and BBSW' on 12 July 2018. The consultation seeks feedback on proposed amendments to the 2006 ISDA Definitions to address fallbacks to the applicable risk-free rates (RFRs) for derivatives in circumstances where an associated IBOR is not available. The consultation proposes four options to account for the move from a term rate to an overnight rate and three options to calculate a spread adjustment. It is open to all market participants and responses may be submitted until 12 October 2018.

This briefing discusses the consultation.

https://www.cliffordchance.com/briefings/2018/07/ibor_fallbacks_forderivativesisd.html

A Guide to Asia Pacific Restructuring and Insolvency Procedures

With chapters covering Australia, China, Hong Kong SAR, India, Indonesia, Japan, South Korea, Malaysia, Philippines, Singapore, Taiwan, Thailand and Vietnam, this second edition of our guide to the restructuring and insolvency laws and procedures in a number of key jurisdictions across the Asia Pacific region both provides an overview of applicable law and regulation and highlights substantial and market-moving developments.

https://www.cliffordchance.com/briefings/2013/08/a_guide_to_asia_pacificrestructuringan.html

Britain's Brexit Blueprint – The UK Government publishes its future relationship white paper

The UK Government has published its long-awaited White Paper, 'The Future Relationship between the United Kingdom and the European Union'. This follows the agreement reached by the UK Cabinet which precipitated the resignations of the Brexit Secretary David Davis and Foreign Secretary Boris Johnson, and led a number of Prime Minister Theresa May's own MPs to call for her resignation. The White Paper is the most detailed outline yet of the UK's aspirations for its future relationship with the EU since Article 50 was triggered in March 2017. The EU has welcomed the White Paper, but still may reject some key elements of the UK's proposals.

This briefing discusses the White Paper.

https://www.cliffordchance.com/briefings/2018/07/britain_s_brexitblueprinttheukgovernmen.html

A 'shorter, sharper' UK Corporate Governance Code

On 16 July 2018, the FRC published an updated version of the UK Corporate Governance Code, which will apply to financial years starting on or after 1 January 2019. Alongside it, the FRC also published its updated Guidance on Board Effectiveness which contains suggestions of good practice to support directors and their advisers in applying the code. All companies with a premium listing (whether UK incorporated or not) are required to report annually, on a 'comply or explain' basis, against the code.

This briefing discusses the updated code.

https://www.cliffordchance.com/briefings/2018/07/a_shorter_sharperukcorporategovernancecode.html

FINRA Expands Its Digital Asset Information Sweep

The US Financial Industry Regulatory Authority (FINRA) last week published a Regulatory Notice recommending that FINRA member firms provide information about existing and future business activities involving 'digital assets'. The notice represents an expansion of FINRA's efforts to obtain information from member firms on their participation in the digital asset markets.

This briefing discusses the notice.

https://www.cliffordchance.com/briefings/2018/07/finra_expands_itsdigitalassetinformationsweep.html

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