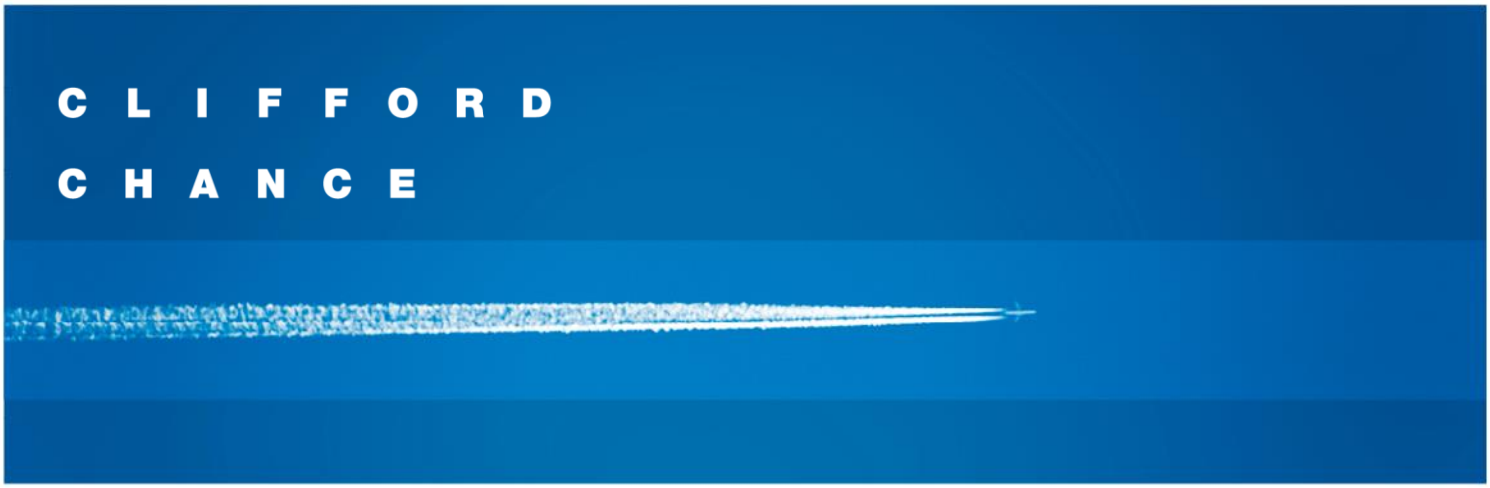

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EBA publishes final assessment of European Secured Notes

The European Banking Authority (EBA) has published a final report responding to the EU Commission's call for advice on European Secured Notes (ESNs).

The final report includes:

- an assessment of the business case for ESNs;
- an analysis of the potential implications of issuances of ESNs on asset encumbrance;
- a data analysis of the risk profile of small and medium-sized enterprises (SME) loans and project finance; and
- recommendations for the EU Commission to consider when designing the legislative framework for SME ESNs.

Among other recommendations, the EBA considers that a dual recourse structure would not be appropriate for infrastructure ESNs. However, the EBA recommends that the EU Commission investigate a new distinct class for high quality project finance loans in the form of a standardised EU infrastructure bond.

Money Market Funds: ESMA calls on EU Commission to provide clarity on share cancellation

The European Securities and Markets Authority (ESMA) has published a letter requesting the EU Commission publish its opinion on the compatibility of the reverse distribution mechanism (RDM), also known as share cancellation, with the Money Market Funds Regulation (MMFR).

In the letter, ESMA notes that the Commission has already provided some market participants with the text of the opinion of the Legal Service of the

Commission on the compatibility issue, and therefore encourages making that interpretation clear to the wider public to ensure a proper and consistent interpretation and implementation of the MMFR.

The MMFR came into effect on 21 July 2018.

G20 Finance Ministers and Central Bank Governors publish communiqué following Buenos Aires meeting

G20 Finance Ministers and Central Bank Governors have published a communiqué following their meeting in Buenos Aires on 21-22 July 2018. Overall, the communiqué highlights continued robust global economic growth, but also notes an increase to downside risks over the short to medium term. The Ministers and Governors have committed to continuing to use all policy tools to support strong, sustainable, balanced and inclusive growth.

On regulatory reform, the Ministers and Governors have set out that they:

- continue their commitment to the full, timely and consistent implementation and finalisation of the post-crisis reforms;
- welcome progress on the evaluation of the effects of the reforms on infrastructure financing and incentives to centrally clear OTC derivatives by the Financial Stability Board (FSB) and standard setting bodies (SSBs), and expect final results by the Leaders' Summit;
- look forward to the FSB's continued progress on achieving resilient market-based finance;
- continue to monitor and, if necessary, address emerging risks and vulnerabilities in the financial system;
- welcome updates by the FSB and SSBs on monitoring the potential risks of crypto-assets; and
- reiterate the commitments related to the implementation of the Financial Action Task Force (FATF) standards and invite the FATF to clarify in October 2018 how the standards apply to crypto-assets.

Brexit: UK government publishes White Paper on Withdrawal Agreement legislation

The Department for Exiting the European Union (DExEU) has published the Government's White Paper on legislating for the Withdrawal Agreement between the UK and the EU. The Government will bring forward the European Union (Withdrawal Agreement) Bill once the negotiations have been concluded and Parliament has approved the final deal under the terms of the European Union (Withdrawal) Act 2018. The Bill will be the primary means of legislating for the Withdrawal Agreement and the Bill must pass before the UK leaves the EU on 29 March 2019 in order for the Withdrawal Agreement to have domestic legal effect.

The White Paper sets out the Government's current plans for that legislation and is intended to provide parliamentarians and others with early detail on the likely contents of the Bill in those areas where agreement with the EU has been reached, specifically:

- citizens' rights;
- the implementation period; and

- the negotiated financial settlement.

The paper also sets out the procedures for Parliament's approval of the terms of the UK's withdrawal, including the vote on the final deal. The White Paper notes that the final provisions in the Bill will be dependent on the outcome of negotiations which have not yet concluded.

Brexit: UK government publishes details of proposed temporary permissions and recognition regime

HM Treasury has published for consultation a draft of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, the first of a number of pieces of legislation that will establish temporary permissions regimes for financial services firms and funds if there is no implementation period and the passporting regime falls away abruptly when the UK leaves the EU. HM Treasury plans to lay this instrument before Parliament in the autumn. It covers firms operating in the UK under a financial services passport. Legislation covering payments/e-money institutions and investment funds will be set out separately.

The government has also laid in Parliament the draft Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018, a separate draft SI that will, subject to parliamentary approval, deliver a temporary recognition regime for non-UK central counterparties (CCPs).

The aim of the temporary permissions and recognition regimes will be to allow firms, including CCPs, who wish to continue carrying out business in the UK in the longer term to operate in the UK for a limited period after withdrawal while they seek authorisation or recognition from UK regulators.

The Bank of England (BoE) has issued a press release reiterating its position that EEA firms, and non-UK CCPs, providing cross-border services into the UK may plan on the assumption that permanent PRA authorisation or recognition by the Bank will only be needed by the end of the implementation period which has been agreed in principle as part of the UK's Withdrawal Agreement with the EU. In the event that the Withdrawal Agreement is not ratified, the temporary permissions and recognition regimes are intended to provide confidence that a back-stop will be available.

The Financial Conduct Authority (FCA) has also published an update on how the temporary permissions regime will operate, including its initial views on the FCA rules it proposes will apply to firms while they are in the regime. The FCA intends to consult fully on its proposals in Autumn 2018.

Brexit: BoE publishes details of future framework for settlement finality designation of EU systems

The Executive Director, Financial Market Infrastructure at the Bank of England, David Bailey, has written to the operators of systems currently designated under the Settlement Finality Directive (SFD) on how the BoE envisages the future UK framework for settlement finality designation of EU systems to work. The SFD relies on automatic recognition by each EU Member State of other Member States' SFD designation of domestic systems, but from the point at which the UK withdraws from the EU, the UK will no longer be part of this framework of automatic recognition.

The letter notes that subject to an implementation period, EU systems will be able to continue to operate with the benefit of existing settlement finality

protections during the implementation period. The letter sets out how the Bank expects the UK's future framework to work under legislation to be brought forward by the Government which will ensure the continuation of UK settlement finality protections after Brexit. The BoE will be given new powers to grant permanent designation to non-UK, including EU, systems that are not governed by UK law. The legislation will also include a temporary SFD designation regime, open to EU systems currently designated under the SFD, in advance of permanent designations being granted.

The BoE has set out that it expects to work closely with systems and provide guidance on the process, taking into account any relevant developments in the political process.

BoE confirms SONIA's compliance with IOSCO benchmark principles

The Bank of England has published its statement of compliance with the IOSCO Principles for Financial Benchmarks.

The document shows that the BoE complies with the IOSCO Principles, and therefore with international best practice, in its administration of the SONIA interest rate benchmark.

The BoE hopes that the IOSCO compliance statement will play a role in the transition process away from LIBOR by providing transparency on the administration of SONIA to the expanding set of SONIA users.

Working Group on Sterling Risk-Free Reference Rates publishes paper on new issuances of sterling bonds referencing LIBOR

The Bank of England's Working Group on Sterling Risk-Free Reference Rates has published a paper on new issuances of sterling bonds referencing LIBOR.

The paper is aimed at bond market participants who are continuing to issue, offer and purchase new sterling bonds referencing LIBOR, particularly where those bonds mature beyond the end of 2021 when LIBOR may cease to be available. It is intended to help market participants increase their level of preparedness and forward planning, and covers in particular:

- the risks associated with issuing long-dated bonds referencing LIBOR now; and
- the measures that can be taken to mitigate these risks.

The Working Group believes that the most effective way of avoiding risks related to LIBOR discontinuation is to transition to alternative benchmarks, such as SONIA. The Working Group intends to communicate best practice for referencing SONIA in bond markets later this year.

PRA consults on minor regulatory reporting amendments

The Prudential Regulation Authority (PRA) has launched a consultation (CP16/18) to propose minor regulatory reporting amendments.

This consultation is relevant to banks, building societies, PRA-designated investment firms, and dormant account fund operators.

The proposed amendments include:

- discontinuation of Prudent Valuation Return;

- changes to PRA reporting instructions to align with updated EBA requirements;
- amendments to Pillar 2 reporting templates and instructions to reflect their application to ring-fenced bodies;
- amendments to ring-fencing reporting requirements;
- deletion of reporting requirements for dormant account fund operators;
- alignment of 'data item' definitions in the PRA Rulebook;
- update of the notification form relating to reporting on an Accounting Reference Date basis; and
- correction of Pillar 2 liquidity rules.

Comments on CP16/18 are due by 23 October 2018.

FCA publishes policy statement on formal recognition of industry codes on unregulated activities

The FCA has published a policy statement (PS18/18) on feedback received to its consultation paper on industry codes of conduct (CP17/37), which was published in November 2017. The consultation proposed, among other things, formally to recognise industry codes of conduct that cover unregulated activities. This approach was intended to encourage individuals to observe certain market codes that in the FCA's view explain 'proper standards of market conduct' in relation to Rule 5 of the Individual Conduct Rules, which the vast majority of staff at banks, building societies, credit unions and dual-regulated investment firms are subject to. The FCA also asked a discussion question in CP17/37 on whether firms should be subject to a requirement to observe proper standards of market conduct in relation to unregulated activities, in the same way as individuals are under the Senior Managers and Certification Regime (SM&CR).

The policy statement confirms that the FCA will proceed with establishing a process through which it can recognise certain codes in priority areas, to encourage but not mandate their use. In response to feedback, the FCA intends to make some changes to the process and criteria for recognition, which will include publicly consulting on each decision to recognise a code to provide transparency to market participants. The policy statement also announces that the FCA will not consult on extending Principle for Business 5 to wholly unregulated activities but will continue to consider the case for this in light of the effectiveness of the code recognition process, among other things.

The Handbook changes set out in PS18/18 will take effect immediately. Industry groups that have codes of conduct covering particular unregulated activities undertaken by authorised firms may now apply to the FCA to have these formally recognised.

FCA launches call for input on PRIIPs Regulation

The FCA has issued a call for input on firms' and consumers' initial experiences with the new requirements under the Packaged Retail and Insurance-based Investment Products (PRIIPs) legislation, which took effect in January 2018. The FCA is particularly keen to hear from those who are producing, advising on, or distributing PRIIPs and preparing and providing Key Information Documents (KIDs), as well as from consumers now using KIDs to decide whether to invest in these investment products.

The call for input sets out questions relating to the scope of the PRIIPs legislation and the content of KIDs. The FCA is aware of some industry uncertainty about the scope of the PRIIPs Regulation and invites input on this. The FCA is also keen to hear more on industry concerns about the practical aspects of certain cost and risk disclosure requirements in the PRIIPs legislation, and in the resulting KIDs.

Comments are due by 28 September 2018.

BoE, FCA, PRA and PSR review cooperation on payment systems

The Bank of England, FCA, PRA, and Payment Systems Regulator (PSR) have carried out their annual review of a memorandum of understanding (MoU) which sets out the framework they use to cooperate with one another in relation to payment systems in the UK.

Following consultation with industry and staff, the authorities have concluded that cooperation and coordination under the MoU is working well, although there are a number of areas where they intend to further deepen their collaboration. They have made minor amendments to the MoU to reflect recent legislative and structural changes and note that their review next year will include consideration of whether the MoU continues to reflect the authorities' respective roles and responsibilities once the UK leaves the EU.

Alongside the reviewed MoU, the FCA and PSR have also published a protocol which sets out the framework they use to cooperate with one another in the monitoring and enforcement of compliance with 'Regulation 105: access to bank accounts' of the Payment Services Regulations 2017. The protocol sets out the role of each authority in the enforcement of Regulation 105 and the areas where they intend to work together, including:

- consulting and liaising to reduce duplication of effort, such as both authorities opening parallel investigations into the same issue;
- sharing notifications from credit institutions regarding the refusal or withdrawal of access to payment account services from a payment service provider; and
- meeting periodically to discuss the notifications and complaints received, any issues raised and views on whether the cases should be investigated further.

SI amending Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 made

The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) (Amendment) Order 2018 has been made. The Order amends the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (SI 2014/1960) to exclude from the definition of 'core deposit' any deposit where one or more of the account holders is, or at any point within the previous six months has been, subject to financial sanctions.

The Order will come into force on 31 October 2018.

German Payment Accounts Act: Regulation on requirements for comparison websites published

The German Federal Government has published a regulation on the requirements for comparison websites in accordance with the German Payment Accounts Act. The regulation is intended to ensure that information published when comparing payment service providers is complete, correct, and up to date and that the circumstances under which information about the relevant payment service providers is obtained is published. This involves the disclosure of any benefits received by the website provider, e.g. monetary compensation.

The regulation was published in the Federal Law Gazette Part I No. 27 of 23 July 2018.

BaFin consults on draft circular to implement EBA guidelines on connected clients

The German Federal Financial Supervisory Authority (BaFin) has launched a consultation on a draft circular which implements the guidelines on connected clients under Article 4(1)(39) of the Capital Requirements Regulation (CRR) published by the EBA on 14 November 2017. The guidelines are intended to support institutions in identifying all possible connections among their clients, in particular when control or economic dependencies should lead to the grouping of clients.

BaFin consults on draft circular regarding implementation of EBA guidelines on liquidity coverage ratio disclosure

BaFin has published a draft circular which implements the EBA's guidelines on liquidity coverage ratio (LCR) disclosure to complement the disclosure of liquidity risk management under Article 435 CRR published on 8 March 2017. The guidelines provide harmonised disclosure templates and tables for LCR disclosure without altering the general disclosure framework provided for in the CRR and are intended to improve the transparency and comparability of LCR and other liquidity risk management related information.

In the interest of European harmonisation of supervisory law, BaFin generally incorporates EBA guidelines into its administrative practice. The decision to adopt such guidelines is made as a 'comply' declaration to the responsible EU authority. BaFin has already declared compliance with the aforementioned guidelines to the EBA. In order to take account of the particularities of German supervisory law (principle of proportionality), the guidelines will be implemented by means of the published draft.

Comments are due by 31 August 2018.

The Netherlands implements Fourth Anti Money Laundering Directive

The Dutch Government has published the Act implementing the Fourth Anti Money Laundering Directive (2015/849/EU - AMLD 4) and the EU Regulation 2015/847 on information accompanying transfers of funds. The Act entered into force on 25 July 2018.

AMLD 4 consolidates the core obligations included in the Dutch AML Act, namely to conduct customer due diligence and report unusual transactions to

the Financial Intelligence Unit. The Directive also requires Member States to establish a central register of ultimate beneficial owners of companies (UBO register). This will be effected through a separate bill which is expected to be submitted to Parliament in early 2019.

Important changes included in the current Implementation Act include an amended definition of ultimate beneficial owners (UBOs) and the fact that no distinction is made anymore between domestic and foreign politically-exposed persons (PEPs). Also, affected entities will need to establish a compliance and audit function if this is proportional to the nature and size of their company.

The Netherlands Authority for the Financial Markets (AFM) has published updated guidelines on the AML Act and also a new list of FAQs. New guidance from the Dutch Central Bank and other competent authorities may be expected to follow.

PSD2: Luxembourg implementing law published

A new law of 20 July 2018 on payment services, implementing the revised Payment Services Directive (PSD2), has been published in the Luxembourg official journal (Mémorial A). The Law amends the Law of 10 November 2009 on Payment Services (PSL).

The Law aims to adapt the legislative framework to the technological evolution of financial services, notably with regard to third party payment providers which act as an intermediary between financial institutions and their customers. Amongst other things, it imposes higher standards with regard to user authentication and IT security, and introduces a legal regime for payment initiation service providers (PISPs) and account information service providers (AISPs).

Under the new regime, PISPs and AISPs are required to obtain a specific license or be registered for their activity. The Law designates the Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), as the competent authority for the licencing, registration, and supervision of these new payment service providers.

The Law further specifies the passporting framework for payment institutions and electronic money institutions. In this context, the Law also requires closer cooperation between the national competent authorities concerned.

Moreover, the Law requires payment service providers to establish strong authentication processes, as well as specific procedures for managing and reporting major operational or security-related incidents. Access of PISPs and AISPs to the payment accounts of their users must be operated through so-called 'application programming interfaces' (APIs) in order to provide safe and efficient access to payment accounts and the data of their users, provided they have consented.

With this new legal framework, the legislator intends to open the market for payment services by offering a wider choice of payment services based on new technologies and to promote free competition by abolishing the traditional banks' monopoly for access to the account data of their clients.

As regards consumer protection, payment service providers are obliged to inform their customers on complaint and alternative dispute resolution procedures. Furthermore, customers' liability for the damage caused by non-

authorised payments after the loss or theft of a payment instrument is now limited to EUR 50 (instead of EUR 150 as previously).

The Law entered into force on 29 July 2018.

CSSF updates reporting table regarding persons responsible for controlled functions within credit institutions

The CSSF has issued a circular (18/695) updating table B 4.6 'Persons responsible for certain functions and activities'. The circular is addressed to all credit institutions.

The amended reporting table introduces the appointment of a specific agent in charge of the credit institution's compliance with its obligations relating to the protection of client assets following the publication of the Grand-Ducal regulation of 30 May 2018 on the protection of financial instruments and clients' funds. In addition, revised reporting table B 4.6 introduces an obligation for credit institutions to name one member of their authorised management as the person in charge of compliance with the European Securities and Markets Authority (ESMA) guidelines for the assessment of knowledge and competence and CSSF Circular 17/665.

A marked-up version of table B 4.6 and further instructions relating to it are available on the CSSF website.

Korean government to ease restrictions on fintech

During a meeting held with fintech leaders, the Korean government has announced its intention to ease restrictions on the fintech industry. The government's initiative is intended to strengthen cooperation between direct or 'internet-only' banks and financial-technology (fintech) corporations.

In particular, the government intends to support the fintech industry by easing restrictions on improving system and financial support, and on helping with international expansion.

ABS Benchmarks Administration Co Pte Ltd and Singapore Foreign Exchange Market Committee finalise proposals on evolution of SIBOR

The ABS Benchmarks Administration Co Pte Ltd (ABS Co) and the Singapore Foreign Exchange Market Committee (ABS-SFEMC) have finalised proposals to enhance the Singapore Interbank Offered Rates (SIBOR), following their December 2017 joint public consultation. The finalised proposals take into account global guidance on interest rate benchmark reforms, which includes the 'IOSCO Principles for Financial Benchmarks' and the Financial Stability Board Official Sector Steering Group report on 'Reforming Major Interest Rate Benchmarks'.

The key proposed enhancement, which is intended to increase reliance on market transactions, will see the SIBOR calculated using the following waterfall methodology:

- transactions in the underlying wholesale funding markets (Level 1 Inputs);
- transactions in related markets (Level 2 Inputs); and
- expert judgement (Level 3 Inputs).

In respect of the above, ABS-SFEMC provided its responses to the feedback from the public consultation. Amongst other things, they include the following:

Level 1 Inputs

- panel banks' existing compliance controls would need to be expanded with the inclusion of corporate deposits into the SIBOR submission methodology;
- to reduce operational complexity, the minimum eligible transaction size will be SGD 10 million for all types of transactions;
- the 6-month SIBOR could be more volatile due to the wider tenor bucket, hence ABS Co will adopt a narrower tenor bucket at specified rates;
- the current publication timing for SIBOR at 11.30am will be retained;
- panel banks are to base benchmark submissions on transactions from the previous day; and
- the eligible transaction window will be widened to the entire trade date (i.e. 0000hrs to 2359hrs), one business day before the submission date;

Level 2 Inputs

- ABS-SFEMC will not proceed with the proposal for panel banks to reference own transactions in related markets as such adjustments would have been sporadic. To simplify the methodology, Level 2 Inputs will only entail panel banks' referencing of movements in related market transaction-based benchmarks to adjust their previous days' submissions. The maximum number of consecutive business days that Level 2 Inputs can be used will be aligned across all SIBOR benchmark tenors to 10 business days; and
- Level 2 Inputs would not be based directly on the actual level of the related transaction-based benchmarks. They would instead be an adjustment of a panel bank's previous rate submission with changes in the related transaction-based benchmark. Panel banks may rely on expert judgement if they assess that certain significant market or bank-specific events have rendered a Level 1 or Level 2 Input less reflective of market conditions;

Level 3 Inputs

- ABS-SFEMC will retain the current methodology of trimming the top and bottom quartiles of panel banks' submissions, following concerns by respondents that the proposed median group method would result in a benchmark that is less representative of the market.

ABS-SFEMC will provide a 12-month period from July 2018 to allow banks sufficient lead time to put in place the necessary system enhancements to support the SIBOR waterfall methodology. ABS Co will consult panel banks on its revised Code of Conduct in the second half of 2018. The enhancements to the SIBOR will undergo a period of transitional testing, which is expected to commence in the second half of 2019, and implemented around end-2019/early-2020. In the interim, the existing processes for the SIBOR computation remain unchanged. With the implementation of the SIBOR enhancements, the current 12-month SIBOR will be discontinued.

SGX consults on proposed amendments to default management capabilities of SGX-DC and CDP

The Singapore Exchange (SGX) has launched a public consultation on proposed amendments to the clearing rules of the Singapore Exchange Derivatives Clearing Limited (SGX-DC) and the Central Depository (Pte) Limited (CDP) to enhance default management capabilities. The proposed amendments, which are intended to reinforce the robustness of SGX-DC's and CDP's risk management, also take into account changes relating to the SGX-DC Clearing Fund that arose from SGX's consultation on 13 March 2018 on proposed refinements to the SGX-DC Clearing Fund structure.

Amongst other things, SGX seeks comments on the following proposals to amend the SGX-DC Clearing Rules:

- introduction of an auction protocol for liquidating a defaulted SGX-DC Clearing Member's positions in exchange-traded derivatives contracts and over-the-counter commodities contracts (ETD/OTCC auction), which allows SGX-DC to identify who amongst the non-defaulting Clearing Member is willing and best able to take on the defaulted Clearing Member's positions;
- introduction of the unilateral termination of positions of non-defaulting Clearing Members that exactly offset those of the defaulted Clearing Member for all classes of contracts that SGX-DC clears, which allows SGX-DC to close out existing positions of the defaulted Clearing Member in a prompt and effective manner;
- incorporation of, within the revised SGX-DC Clearing Fund structure, a new loss distribution mechanism to address losses arising from an ETD/OTCC auction. The mechanism determines the priority in which the SGX-DC Clearing Fund will be drawn down, in the event that the defaulted Clearing Member's collateral is insufficient to cover the losses. It will also potentially accelerate a required participant's exposure to losses arising from an ETD/OTCC auction based on its performance in that auction, so as to incentivise proper bidding behaviour; and
- incorporation of, within the revised SGX-DC Clearing Fund structure, a modified loss distribution mechanism following a default auction, for over-the-counter financial derivatives.

SGX also seeks comments on the proposal to amend the CDP Clearing Rules to introduce the power to write-off, as a loss to CDP, a defaulted CDP Clearing Member's unsettled buy trades if those securities are not force-sold by the seventh day after the Clearing Member is declared to be in default, which will minimise CDP's exposure to market risk as a result of any unsettled buy-trades, and will provide certainty to the market as to when default management will be concluded.

SGX expects to implement the proposed amendments to the SGX-DC Clearing Rules and CDP Clearing Rules in the fourth quarter of 2018, subject to regulatory approval.

Comments on the consultation paper are due by 16 August 2018.

ASIC publishes external report on fees and costs disclosure

The Australian Securities and Investments Commission (ASIC) has released the external report on 'Regulatory Guide 97 - Fees and costs disclosure' (RG 97), commissioned in November 2017.

The report, prepared by an expert appointed by ASIC, concludes that changes to the disclosure regime would be advantageous, and includes discussion of:

- the way fee and cost information is presented to consumers; and
- some of the information to be included in the disclosure.

Welcoming the expert's report, ASIC has agreed that changes to the fees and costs disclosure are in the interests of consumers and industry and indicated that it is keen to ensure any changes are practicable for industry while providing transparency and useable comparability for consumers. ASIC intends to release a consultation paper in the first half of the 2018-19 financial year setting out its proposed response to issues raised in the report. In the meantime, ASIC's facilitative compliance approach to fees and costs disclosure will continue.

CFTC publishes proposal concerning swap dealers

The Commodity Futures Trading Commission (CFTC) has unanimously approved a proposal which it says will reduce unnecessary burdens on registrants and market participants by simplifying overly complex notification provisions, thereby reducing certain intricate and prescriptive requirements that have been found to provide little or no benefit.

Through the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress had mandated that a swap dealer notify each counterparty that the counterparty has the right to choose whether to require their funds to be kept in a segregated account with an independent third party, separate from the assets and other interests of the swap dealer. The CFTC regulations 23.700 through 23.704 implemented this legislation (Section 4s(l) of the Commodity Exchange Act). The CFTC has indicated that after four years of administering these rules, its staff has found that the prescriptive nature of the CFTC's rules provides little benefit, if any, and adds a level of complexity that deters end-user swap counterparties from exercising their right to choose to require their funds to be segregated. The proposal aims to better implement the intent of CEA Section 4s(l) while simplifying or eliminating certain additional requirements not required in the statute.

The deadline for submission of comments by interested persons is 60 days after the proposal is published in the Federal Register.

Alternative Reference Rates Committee releases guiding principles for LIBOR fallback contract language in cash products

The Alternative Reference Rates Committee (ARRC), a finance industry committee set up by the US Federal Reserve, has released guiding principles for the development of fallback language for new financial contracts for cash products to ensure they will continue to be effective in the event that US dollar (USD) LIBOR ceases to be produced. The guiding principles are intended for market participants' voluntary use, to help them as they begin to reformulate

potential contract language for cash products. They include broad guidelines related to the use of successor rates, spread adjustments, and trigger events, encourage consistency of terms and conditions across asset classes, and ask practitioners to consider feasibility and fairness of implementation.

The guiding principles build on the ARRC's Paced Transition Plan, which outlines the steps for an effective shift to the ARRC's recommended alternative reference rate, the Secured Overnight Financing Rate (SOFR). These principles are primarily aimed toward newly issued cash products including business loans, securitizations, and floating rate notes referencing LIBOR; other considerations beyond these principles may be warranted in considering contract language for consumer products.

SEC adopts final rules enhancing oversight of alternative trading systems for listed equity securities

The US Securities and Exchange Commission (SEC) has adopted amendments to Regulation ATS that will, among other things, increase the reporting and disclosure obligations of alternative trading systems (ATSs) that trade stocks listed on a national securities exchange (i.e., NMS Stocks). New requirements will include:

- the completion and filing of new Form ATS-N with the SEC, which will require NMS Stock ATSs publicly to disclose information about their manner of operations, conflicts of interest, and the ATS-related activities of the broker-dealer that operates the ATS and of its affiliates;
- prompt filing of material amendments to Form ATS-N for SEC review. The SEC will have the authority to declare an amended Form ATS-N 'ineffective'; and
- requiring ATSs to implement safeguards and procedures for protecting subscribers' confidential trading information.

ATSs that do not facilitate trading of NMS Stocks (e.g., ATSs supporting transactions in other securities such as over-the-counter equity securities and fixed income securities (corporate, government, and municipal)) are not required to complete and file Form ATS-N. The SEC staff have, however, been asked to review the regulatory framework for oversight of the ATSs used in the municipal securities and corporate bond markets, and to provide recommendations to the SEC for enhancing oversight of these venues.

The Regulation ATS amendments will be published on the SEC website and the Federal Register and will become effective 60 days from the date of publication in the Federal Register. Existing NMS Stock ATSs must complete and file Form ATS-N no earlier than 7 January 2019 and no later than 8 February 2019. An entity seeking to register as an NMS Stock ATS from 7 January 2019 onward must complete and file Form ATS-N as part of the registration process.

RECENT CLIFFORD CHANCE BRIEFINGS

UK national security reviews to catch a substantially broader range of mergers

The UK Government is proposing to broaden substantially the scope of the national security screening regime to catch a wide range of transactions in any

sector, with no minimum size of transaction. While the regime will remain voluntary, transactions that are called in for review by the Government would become subject to an automatic prohibition on closing (unless already closed) and potential interim measures. The Government expects around 200 transactions per year will be notified, with around 100 becoming subject to review on national security grounds, compared to only one or two at present.

This briefing paper discusses the proposed reforms.

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

MIFID2 – Romania Implementation Update

Law no. 126 of 2018 on markets in financial instruments (MiFIL) implementing MiFID2, the MiFID2 Delegated Directive and the Directive on the reorganisation and winding up of credit institutions was published in the Official Gazette of Romania on 26 June 2018. The main objectives of MiFIL are to improve investor protection, enhance market transparency by expanding pre- and post-trading requirements and to promote competition in the areas of trading and settlement.

This briefing paper provides a brief overview of the main elements of the package of reforms under MiFID2 (implemented in Romania through MiFIL) and focuses in particular on some Romanian additions to the MiFID2 package likely to impact the market in the coming months.

https://www.cliffordchance.com/briefings/2018/07/client_briefing_-mifid2romaniaimplementatio.html

Singapore Contentious Commentary

Clifford Chance has prepared the inaugural issue of Singapore Contentious Commentary. In the first edition of a quarterly publication, we look at important or interesting decisions made by the Singapore courts in the second quarter of 2018 (April to June).

During this period, the courts have grappled with a wide range of issues including directors' liabilities, questions of civil procedure, decisions with consequences for the shipping and construction industries, as well as the hot topic of data privacy and confidentiality. There were also a number of interesting developments in international arbitration and the first foreign judgement enforced under the Hague Convention, reflecting Singapore's status as a global hub for dispute resolution.

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

MAS publishes regulations relating to classification of Capital Markets Products

On 8 June 2018, the Monetary Authority of Singapore (MAS) gazetted the Securities and Futures (Capital Markets Products) Regulations 2018, which set out various provisions relating to the operation of section 309B of the Securities and Futures Act, Chapter 289 of Singapore. The Regulations came into force on 9 July 2018.

This briefing paper discusses the Regulations.

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

Japanese Casinos Are On The Cards

The Integrated Resort Act of Japan (IR Act) – which legalises casino gambling in designated integrated resort areas (IR Areas) – was passed by the Diet on 20 July 2018. The IR Act will present great opportunities for developers, operators, hoteliers and financiers, among others, as well as the wider Japanese economy. Market participants should note however that the IR Act only provides a framework and not all of the specifics for operating an integrated resort in Japan. These matters will be dealt with in detailed regulations to be published by the central government (including through the Casino Management Committee) and as part of the bidding procedures to be determined by local governments.

This briefing paper discusses the Act.

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

California's New Data Privacy Law – Implications for Asset Managers

The recently enacted California Consumer Privacy Act of 2018 will require companies that do business in California to provide notice regarding the collection and use of personal information, delete personal information upon request, allow individuals to opt out of the sale of their personal information, and adopt reasonable security procedures and practices to protect personal information. The Act will protect a far broader category of 'personal information' than is covered by most other state and federal statutes, will provide enhanced penalties for noncompliance, and will provide a private right of action. The Act addresses many of the same privacy and security concerns as the European Union's General Data Protection Regulation (GDPR) but is distinct in several key respects. The Act will become effective in January 2020 unless it is amended beforehand.

Asset managers doing business in California will likely be subject to the Act and this briefing paper discusses the implications.

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

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