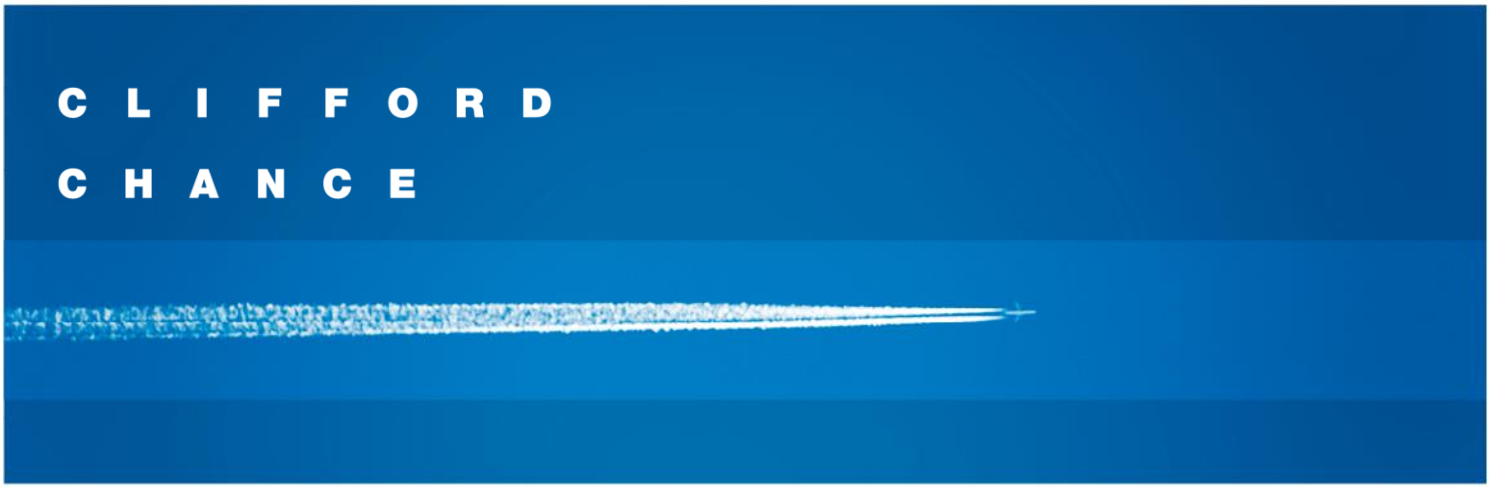

INTERNATIONAL REGULATORY UPDATE 09 – 13 JULY 2018

- **Benchmarks Regulation: EU Commission adopts regulatory technical standards**
- **EU Commission adopts legislative proposals on depositary safekeeping duties under AIFMD and UCITS Directive**
- **Brexit/MiFID2: ESMA consults on tick sizes applicable to third country instruments**
- **EMIR: ESMA consults on clearing obligation**
- **Prospectus Regulation: ESMA consults on risk factor guidelines**
- **Brexit: ESMA publishes statement on authorisation request submissions**
- **Single Resolution Board publishes 2017 annual report**
- **FSB issues statement on interest rate benchmark reform**
- **Brexit: Government publishes White Paper on future relationship between UK and EU**
- **Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018 published**
- **UK government decides not to opt in to proposed EU Regulation on law applicable to third-party effects of assignments of claims**
- **HM Treasury sets out general approach to FMI administration rules**
- **MMF Regulation: FCA publishes policy statement setting out Handbook changes and fees schedules**
- **Issuers guideline: BaFin consults on further revisions**
- **Brexit preparations: CSSF issues press release on EBA opinion**
- **Payment accounts: Draft Royal Decree on regime applicable to individuals in especially vulnerable situations and at risk of financial exclusion published**
- **Draft Order on services, fees related to payment accounts with basic features, switching procedures and comparability of fees published**
- **CNMV publishes draft circular on reserved information of entities that provide investment services**
- **SFC amends takeovers rules**

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- **HKMA issues circular on Banking (Exposure Limits) Rules and revised return of certificate of compliance**
- **SFC issues circular on implementation of amended professional investor rules**
- **SFC issues circular to intermediaries on online client onboarding**
- **JPX and LSEG to cooperate in sustainable investment and product marketing**
- **FSA announces organisational reform**
- **Recent Clifford Chance briefings: Guide to loan trading across the globe; Onshoring EU financial services legislation in the UK; Antitrust enforcement in Argentina; Saudi Arabia's Privatisation Projects Manual, and more. Follow this link to the briefings section**

Benchmarks Regulation: EU Commission adopts regulatory technical standards

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

The Delegated Regulations set out regulatory technical standards:

- for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA) (C(2018)4426/F1);
- for the procedures and characteristics of the oversight function (C(2018)4430/F1);
- specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark (C(2018)4439/F1);
- specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements (C(2018)4432/F1);
- specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function (C(2018)4431/F1);
- determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent (C(2018)4427/F1);
- specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements (C(2018)4434/F1); and
- specifying further the governance and control requirements for supervised contributors (C(2018)4425/F1).

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

EU Commission adopts legislative proposals on depositary safekeeping duties under AIFMD and UCITS Directive

The EU Commission has adopted two Delegated Regulations as regards safekeeping duties of depositaries under the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive.

The legislative proposals aim to clarify that UCITS, alternative investment funds (AIFs) and other client assets can be comingled at the level of the first custodian under the condition that they are initially held by the same depositary or are initially held by the same custodian where the latter further delegates the custody of assets down the custody chain.

Both Delegated Regulations (C(2018) 4377 and C(2018) 4379) will enter into force on the twentieth day following that of their publication in the Official Journal and will apply from the first day of the eighteenth month after publication.

Brexit/MiFID2: ESMA consults on tick sizes applicable to third country instruments

ESMA has published a consultation on proposed amendments to the tick size regime under MiFID2 and Delegated Regulation (EU) 2017/588 (RTS 11) that seek to introduce specific provisions with respect to third country instruments.

In the consultation, ESMA highlights the competitive advantage non-EU trading venues may gain over EU trading venues owing to the impact of tick size on spread and, subsequently, liquidity. It also notes that the number of third country instruments is likely to increase following the UK's withdrawal from the EU.

To address this issue, ESMA broadly proposes to allow ad hoc adjustments to the average daily number of transactions (ADNT) for third country financial instruments on a case-by-case basis, provided the two following conditions are fulfilled:

- the competent authority proposing the adjustment reasonably demonstrates, based on numerical evidence, that the most liquid trading venue for the instrument is located outside the EU; and
- the instrument has an ADNT equal to or greater than one.

Comments on the proposals are accepted until 7 September 2018.

EMIR: ESMA consults on clearing obligation

ESMA has launched a consultation on the clearing obligation under the European Market Infrastructure Regulation (EMIR). The consultation proposes an amending draft regulatory technical standard (RTS) with regard to the treatment of intragroup transactions with a third country group entity.

There are currently three Delegated Regulations on the clearing obligation under EMIR that have entered into force, which mandate a range of interest rate and credit derivative classes to be cleared. These Delegated Regulations contain a deferred date of application of the clearing obligation for intragroup

transactions satisfying certain conditions and where one of the counterparties is in a third country, in the absence of the relevant equivalence decision.

The deferred dates in these Delegated Regulations are soon approaching and as yet there have not been any equivalence decisions with regard to the clearing obligation.

The consultation sets out explanations on the draft RTS amending the current Delegated Regulations on the clearing obligation with respect to the deferred date of application for certain intragroup transactions with a third country group entity.

Comments to the consultation close 30 August 2018. ESMA will review the responses in order to finalise the draft RTS, which will then be submitted to the EU Commission for endorsement in the form of Commission Delegated Regulations. In addition, ESMA will consult the European Systemic Risk Board (ESRB) and, where relevant, the competent authorities of third countries when developing the draft RTS.

Prospectus Regulation: ESMA consults on risk factor guidelines

ESMA has launched a consultation on draft guidelines on risk factors under the Prospectus Regulation.

The guidelines are intended to assist national competent authorities (NCAs) in their review of the specificity and materiality of risk factors and of the presentation of risk factors in a prospectus.

Comments to the consultation close 5 October 2018. ESMA will consider the responses and deliver its technical advice to the EU Commission and publish final reports by 31 March 2019.

Brexit: ESMA publishes statement on authorisation request submissions

ESMA has published a statement on the timely submission of requests for authorisation to relocate entities, activities or functions to the EU in the event of a hard Brexit.

In its statement, ESMA urges regulated entities wishing to continue to provide services in the EU if the UK leaves the EU without an agreement to submit complete and accurate applications for authorisation as soon as possible. ESMA notes that some National Competent Authorities (NCAs) have already communicated to entities that authorisation will only be achievable before 29 March 2019 if applications are received in the month of June/July.

Single Resolution Board publishes 2017 annual report

The Single Resolution Board (SRB) has published its annual report for 2017.

The report describes the activities and performance of the SRB regarding the implementation of its mission and mandate in 2017.

Amongst other things, the report analyses the progress made by the SRB on:

- strengthening resolvability for SRB entities and less significant institutions (LSIs);
- fostering a robust resolution framework;

- preparing and carrying out effective crisis management;
- operationalising the SRF; and
- establishing a lean and efficient organisation.

According to the report, the main objectives identified in the SRB working priorities for 2017 were reached.

The SRB intends to continue to pursue the roadmap on resolution planning set by the Multi-annual Work Programme.

FSB issues statement on interest rate benchmark reform

The Financial Stability Board (FSB) has published a statement on reforms to interbank offered rates (IBORs) and the development of overnight risk-free, or nearly risk-free, rates (RFRs) and term rates.

The statement is intended to provide market participants and other stakeholders with the FSB's views ahead of a forthcoming consultation by the International Swaps and Derivatives Association (ISDA), which contemplates fall backs for certain derivative contracts based on overnight RFRs. In this statement the FSB considers:

- overnight RFRs;
- the development of term rates;
- limitations and benefits of term rates;
- where a term rate may be a suitable alternative or fall back to an overnight RFR; and
- progressing transition.

Brexit: Government publishes White Paper on future relationship between UK and EU

HM Government has published a White Paper setting out its proposals for the future relationship between the United Kingdom and the European Union.

The Government's vision is for an economic partnership that includes new arrangements on services and investment that provide regulatory flexibility, recognising that the UK and the EU will not have current levels of access to each other's markets, with new arrangements on financial services that preserve the mutual benefits of integrated markets and protect financial stability while respecting the right of the UK and the EU to control access to their own markets – noting that these arrangements will not replicate the EU's passporting regimes.

In particular, on financial services the White Paper argues that the EU's third country equivalence regimes, which provide limited access for some of its third country partners to some areas of EU financial services markets, are not sufficient to deal with a third country whose financial markets are as deeply interconnected with the EU's as those of the UK are. It therefore proposes a new economic and regulatory arrangement with the EU in financial services which would maintain the economic benefits of cross-border provision of the most important international financial services traded between the UK and the EU while preserving regulatory and supervisory cooperation, and maintaining financial stability, market integrity and consumer protection. This new economic and regulatory arrangement would be based on the principle of

autonomy for each party over decisions regarding access to its market, with a bilateral framework of treaty-based commitments to underpin the operation of the relationship, ensure transparency and stability, and promote cooperation. The Government acknowledges that this arrangement cannot replicate the EU's passporting regime.

The White Paper sets out the Government's view that the new arrangement should include provisions for:

- common principles for the governance of the relationship, based on an evidence-based judgement of the equivalence of outcomes achieved by the respective regulatory and supervisory regimes;
- extensive supervisory cooperation and regulatory dialogue;
- predictable, transparent and robust processes, including a transparent assessment methodology, a structured withdrawal process if circumstances arise that cause either party to wish to withdraw equivalence, and a presumption against unilateral changes that narrow the terms of existing market access regimes, other than in exceptional circumstances; and
- dispute resolution.

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018 published

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018 (SI 2018/831) has been made by Her Majesty's Treasury (HMT).

The Order seeks to ensure equivalent regulatory treatment of alternative finance investment bonds (AFIBS) and conventional bonds by expanding the definition of AFIBS in SI 2001/544 to include those traded on multilateral trading facilities (MTFs) and organised trading facilities (OTFs).

The Order also inserts a provision into SI 2001/1177 specifying that a person carrying on the regulated activity of administering a benchmark will be regarded as carrying on the activity by way of business. This amendment is consequential on the coming into force of the EU Benchmarks Regulation (EU) 2016/1011.

The Order came into force with immediate effect on 11 July 2018.

UK government decides not to opt in to proposed EU Regulation on law applicable to third-party effects of assignments of claims

The UK government has announced its decision not to opt in to the EU proposal for a Regulation on the law applicable to the third-party effects of assignments of claims in a written statement to the House of Commons (HCWS836) and the House of Lords (HLWS810).

The proposal applies a general rule that the law of the country where the assignor has their habitual residence governs the third-party effects of the assignment of claims (law of the habitual claim), but carves out three exceptions to the above rule, applying the law of the assigned claim to:

- the assignment of cash credited to a bank account;

- the assignment of claims arising from certain types of derivatives; and
- in certain circumstances to securitised entities.

The Government notes that this is different to current market practice in significant parts of UK financial services, where the law governing a claim is determined by contractual agreement (law of the assigned claim).

The Government has concluded that it is in the UK's interest not to opt in to this Regulation, because it:

- would have significant unintended consequences for financial services market practices in the UK;
- would create uncertainty for financial services transactions;
- could require changes to business as usual functions; and
- introduces an applicable law test that may contradict existing applicable law provisions such as those relating to securities.

HM Treasury sets out general approach to FMI administration rules

HM Treasury has published its response to the November 2016 consultation on financial market infrastructure (FMI) administration rules.

Under the Financial Services (Banking Reform) Act 2013, a form of special administration for certain FMI companies operating payment and/or security settlement systems (excluding recognised CCPs) was introduced.

FMI administration was introduced to mitigate the risk of any disruption to the functioning of the wider financial sector due to the insolvency of an FMI company. FMI administration aims to preserve the continuity of systemically important payment and securities settlement services in the event of a failure.

The consultation proposed changes to rules, including modifications of general insolvency rules, to ensure the effective functioning of an FMI administration.

In its response, HM Treasury advises that the government plans to bring the provisions relating to FMI administration into force at the same time as the FMI administration rules.

MMF Regulation: FCA publishes policy statement setting out Handbook changes and fees schedules

The Financial Conduct Authority (FCA) has published PS18/17 setting out its response to the feedback received to its January 2018 consultation paper (CP18/4) on proposed amendments to the FCA Handbook to ensure consistency with the Money Market Funds Regulation (MMF Regulation) and new fees schedules to allow the FCA to recover the costs of authorising and supervising MMFs.

Apart from correcting some factual errors, the FCA will apply the changes to the Handbook as laid out in the consultation, but will amend the format of the fees schedule so that the level of charges MMFs would face is clearer.

The rules applied to new MMFs, including funds which are not currently marketed as an MMF but have substantially similar objectives to an MMF, from 12 July 2018. The rules will apply to existing MMFs or short-term MMFs (as currently defined in the Handbook) only once they have been authorised.

Such existing funds will have until 21 January 2019 to apply for authorisation as an MMF under the MMF Regulation. There are transitional provisions that apply in respect of such existing funds.

Issuers guideline: BaFin consults on further revisions

The German Federal Financial Supervisory Authority (BaFin) has revised additional sections of its issuers guideline (Emittentenleitfaden). In particular, the revisions include BaFin's guidance on the notification requirements to be observed under the German Securities Trading Act (WpHG) in relation to significant voting rights.

Comments may be submitted to the BaFin until 17 August 2018.

Brexit preparations: CSSF issues press release on EBA opinion

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a press release in relation to the European Banking Authority's (EBA's) opinion of 25 June 2018 on preparations for the withdrawal of the United Kingdom from the European Union.

The CSSF circular is intended to draw the attention of the public to the publication of the EBA opinion. In light of the risks posed by a lack of preparation by financial institutions for Brexit in a scenario where no ratified withdrawal agreement is in place by 30 March 2019, the EBA's opinion invites national competent authorities (NCA) to ensure that financial institutions:

- take immediate practical steps to prepare for Brexit; and
- duly inform their customers and consumers with whom they have contractual arrangements in place of the potential risks.

The CSSF, in its capacity as the Luxembourg NCA, therefore requires that less significant credit institutions (as defined in Article 2(7) of Regulation (EU) No. 468/2014 of the European Central Bank (ECB) (SSM Framework Regulation), investment firms, payment institutions and electronic money institutions, lenders and credit intermediaries established in Luxembourg take the measures set out in the opinion. The CSSF will contact the concerned institutions to ensure they take the appropriate steps (unless such information has already been provided).

The CSSF further notes that significant credit institutions (as defined in Article 2(16) of the SSM Framework Regulation) should refer, where appropriate, to the ECB's instructions.

Payment accounts: Draft Royal Decree on regime applicable to individuals in especially vulnerable situations and at risk of financial exclusion published

Draft Royal Decree XX/20XX, developing Royal Decree-Law 19/2017, of 24 November, on basic payment accounts, payment accounts switching and the comparability of fees related to payment accounts (RDL 19/2017) regarding the regime applicable to individuals in especially vulnerable situations and at risk of exclusion has been published.

The principal aim of Draft Royal Decree XX/20XX is to develop the more advantageous conditions regime for the opening and functioning of basic

payment accounts for individuals in especially vulnerable situations or at risk of financial exclusion set out in Article 9.4 of RDL 19/2017.

In order to meet this objective, Draft Royal Decree XX/20XX sets out a regime based on two components:

- the applicable fee regime, which must necessarily be more advantageous than the one established on a general basis for all clients with basic payment accounts. In this regard, it could be considered for them to be free for the most vulnerable individuals; and
- the group of individuals to which such regime would apply, determined by (i) their especially vulnerable situation, and (ii) their risk of financial exclusion.

The Draft Royal Decree XX/20XX and in particular the design and the criteria to be followed in the determination of each of the above components will be subject to a public hearing until 24 July 2018.

Draft Order on services, fees related to payment accounts with basic features, switching procedures and comparability of fees published

Royal Decree-Law 19/2017, of 24 November, on payment accounts with basic features, payment account switching and comparability of fees (RDL 19/2017) transposes Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features into the Spanish legal system.

In order to implement the provisions contained in this regulation, the approval of an Order of the Ministry of Economy and Business is required. In particular, relating to articles 9.2, 10.1 and 13.6 of RDL 19/2017, the Draft Order covers the following matters:

- the establishment of a maximum fee that credit institutions can charge regarding the services to be included in the contract of a payment account with basic features;
- the need to adopt adequate measures that may raise awareness among the public about the availability of payment accounts with basic features, their general pricing conditions, the procedures to be followed in order to exercise the right to access a payment account with basic features and the methods for having access to alternative dispute resolution procedures for the settlement of disputes; and
- the description of the rules and procedures that the payment service providers shall follow when providing a switching service to consumers.

The Draft Order will be subject to a public hearing until 24 July 2018.

CNMV publishes draft circular on reserved information of entities that provide investment services

The Spanish Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has published Draft Circular XX/2018, of XX XXXX, which is intended to update Circular 1/2010, of 28 July, on reserved information of the entities that provide investment services. The main objectives of this update are to adapt the circular to the new regulatory

provisions incorporated by MiFID2 and to improve the information gathered regarding the positions in financial instruments held by clients of the entities.

Draft Circular XX/2018 is also intended to modify Circular 7/2008, of 26 November, on accounting standards, annual accounts and reserved information statements of investment firms, collective investment schemes and venture capital management companies, in order to gather information on the following aspects:

- other activities that can be carried on by investment firms;
- the category of liquid assets in which clients' temporary balances are invested and the guarantees received from them; and
- the calculation of capital requirements for general fixed expenses.

Draft Circular XX/2018 will be subject to a public consultation until 27 July 2018.

SFC amends takeovers rules

The Securities and Futures Commission (SFC) has published the conclusions of its January 2018 consultation on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs. The amended Codes have been gazetted and apply with immediate effect.

The SFC has indicated that respondents were generally supportive of the proposals, the majority of which were adopted with some modifications taking into account the responses received during the consultation process. Measures introduced to enhance investor protection included empowering the Takeovers Panel to require compensation be paid to shareholders who have suffered as a result of a breach of the Codes as well as increasing the threshold for independent shareholder approval of a 'whitewash waiver' to 75%.

Other changes included amendments to clarify the power of the Takeovers Executive, the Takeovers Panel and the Takeovers Appeal Committee to issue compliance rulings and that persons dealing with them must do so in an open and co-operative manner.

The SFC has advised that the Takeovers Executive should be consulted where there is any doubt about the application of the revised Codes, particularly where the timing may produce major difficulties for transactions which have already been announced.

HKMA issues circular on Banking (Exposure Limits) Rules and revised return of certificate of compliance

The Hong Kong Monetary Authority (HKMA) has issued a circular to authorised institutions informing them that the Banking (Exposure Limits) Rules are in operation from 13 July 2018.

The Rules primarily replace the equity exposure limit under section 87 of the Banking Ordinance. The HKMA previously consulted locally incorporated authorised institutions regarding their readiness to comply with the revised limit. An authorised institution which has opted for complying with the Rules starting from 1 January 2019 will receive a notification on the detailed arrangements individually. Other authorised institutions, i.e. ones which have opted for immediate switching should have started to comply with the revised equity exposure limit in the Rules from 13 July 2018.

To supplement the implementation of the Rules, the HKMA proposes to revise the Return of Certificate of Compliance with Banking Ordinance and the accompanying completion instructions as attached in Annex 1 and Annex 2 of the circular.

In relation to an authorised institution which will start to comply with the revised equity exposure limit under the Rules from 13 July 2018, expedient reporting arrangements to address the associated reporting issues are set out in Annex 3 of the circular.

For authorised institutions which have opted to comply with the Rules starting from 1 January 2019, the HKMA will specify the expedient reporting arrangements applicable to their case.

SFC issues circular on implementation of amended professional investor rules

The SFC has issued a circular to licensed corporations and registered institutions reminding them of the commencement of amendments to the Securities and Futures (Professional Investor) Rules (PI Rules) with effect from 13 July 2018. Modifications previously granted under section 134 of the Securities and Futures Ordinance (SFO) have been revoked accordingly.

According to the amended PI Rules, among other changes, the categories of professional investors have been expanded to include corporations which have investment holding as their principal business and are wholly-owned by one or more professional investors. Corporations which wholly own another corporation which is a qualified professional investor are also included.

The SFC expects that more corporations will qualify as professional investors under the amended PI Rules. If a corporation wholly owns another corporation which is a qualified professional investor, intermediaries should, as part of the know-your-client procedures, obtain confirmations that the shareholders of the holding companies have been informed of the corporation's status as a professional investor before providing services to that company.

The SFC has advised directors of holding companies to ensure that shareholders are properly informed of the implications of the amended rules. This includes, for example, information about those responsible for making investment decisions for the holding company and clarity about the circumstances in which shareholders should be informed of an investment decision or where their consent should be sought.

SFC issues circular to intermediaries on online client onboarding

The SFC has issued a circular to provide guidance to intermediaries on online client onboarding. The circular has been issued in response to enquiries raised by the industry about online client onboarding.

The SFC has advised that intermediaries are required to take all reasonable steps to establish the true and full identity of each of their clients and adopt an account opening approach which can satisfactorily ensure the identities of their clients. The SFC notes that onboarding a client who is not physically present for identification purposes without sufficient safeguards poses a higher risk of impersonation.

The Code of Conduct for Persons Licensed by or Registered with the SFC currently allows the use of certification services that are recognised by the Electronic Transactions Ordinance (ETO) for client identity verification in an online environment. As electronic transactions are becoming increasingly common, the SFC understands that intermediaries need to onboard clients in a more efficient manner in order to better serve clients, without compromising their duty under paragraph 5.1 of the Code of Conduct.

To provide more flexibility pending a review of paragraph 5.1 of the Code of Conduct, and consistent with the approach set out in paragraph 5.1(b), the SFC will also accept the following procedures to verify clients' identities when onboarding individual clients online:

- obtain a client agreement which is signed by a client by way of an electronic signature together with a copy of the client's identity document (an identity card or relevant sections of the client's passport);
- successfully transfer an initial deposit of not less than HKD 10,000 from a bank account in the client's name maintained with a licensed bank in Hong Kong (Designated Bank Account) to the intermediary's bank account;
- conduct all future deposits and withdrawals for the client's trading account through the Designated Bank Account(s) only; and
- maintain proper records of the account opening process for each client which are readily accessible for compliance checking and audit purposes.

The SFC believes that the above procedures will alleviate intermediaries' burden in account opening whilst containing the risks involved in onboarding clients online. Intermediaries are advised to be mindful of the requirements imposed by the domestic regulatory authorities when onboarding overseas clients.

The SFC will keep in view technological developments and may provide further guidance where appropriate.

JPX and LSEG to cooperate in sustainable investment and product marketing

Japan Exchange Group Inc (JPX) and London Stock Exchange Group Plc (LSEG) have announced that they have agreed to identify and collaborate on financial market infrastructure initiatives designed to promote global sustainable investment and on product marketing initiatives.

JPX and LSEG have begun identifying areas for mutual collaboration and innovation across the full spectrum of Environmental, Social and Governance (ESG) investment finance. Both groups intend to further deepen their ties in order to expand the range of services offered to listed companies and investors across capital markets in Japan, the UK, and globally. The initial focus will be on joint marketing activities to promote listing products, especially those related to ESG.

FSA announces organisational reform

The Financial Services Agency (FSA) has announced that it will reorganise itself with effect from 17 July 2018 to better address its new challenges and tasks.

Under the re-organised structure, in addition to the existing Supervision Bureau, the Strategy Development and Management Bureau and the Policy

and Markets Bureau will be newly established (and the Planning and Coordination Bureau and the Inspection Bureau will be abolished).

The organisational reform is intended to:

- enhance the FSA's strategy development with holistic perspectives across financial services and to upgrade its professional expertise (Strategy Development and Management Bureau);
- respond to the changing environment surrounding financial markets in a timely manner and develop the regulatory framework in line with IT and other innovations (Policy and Markets Bureau); and
- conduct more effective and efficient monitoring through seamless off-site and on-site monitoring (Supervision Bureau).

However, the reorganisation will not change the structure and responsibilities of the Security and Exchange Surveillance Commission (SESC) and the Certified Public Accountants and Auditing Oversight Board (CPAAOB).

RECENT CLIFFORD CHANCE BRIEFINGS

Guide to loan trading across the globe

Our loan trading guide covers 17 jurisdictions and is intended to provide all secondary loan market participants (whether a financial institution, fund or other non-financial entity, on the buy side, the sell side or acting as a broker/dealer) with an insight into the principal local law issues to consider when trading corporate loans in the secondary loan markets across various jurisdictions.

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

Onshoring EU financial services legislation under the European Union (Withdrawal) Act 2018

The European Union (Withdrawal) Act 2018 provides for domestication of EU legislation and grants powers to the Government to correct deficiencies arising from Brexit. On 27 June 2018 HM Treasury and the UK financial services regulators announced how they intend to use these powers. The announcements also discuss the UK's approach to implementing a temporary permissions and recognition regime to cover the UK leaving the EU without a deal.

This briefing discusses the announcements, including the Treasury's first steps and how this forms part of the Government's contingency planning for a no deal Brexit.

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

UK – Extension of the Senior Managers and Certification Regimes: Asset Managers

The FCA has published near final rules on the extension of the senior managers and certification regimes (SMCR) to FCA solo regulated financial services firms. It has also published a Guide to the SMCR regime which is expected to come into effect on 9 December 2019. Now that the rules are in

near final form, firms should consider what changes to training, employment documents and processes and compliance policies and procedures need to be made over the next 18 months.

This briefing seeks to help firms understand what they need to do to ensure a smooth transition to the SMCR regime.

https://www.cliffordchance.com/briefings/2018/07/uk_employment_briefingnote-july2018.html

Government consults on proposals for stronger Pensions Regulator which could have significant impact on business activity

The Government has published a consultation on proposals to create a 'stronger' Pensions Regulator that can intervene earlier and more quickly when defined benefit (DB) pension schemes are at risk.

The consultation proposes major reforms, which, if implemented, could have a significant impact on business activity where DB schemes are involved. These include introducing new requirements to notify the Regulator early of certain proposed transactions; imposing fines of up to GBP 1 million and new criminal penalties to punish serious wrongdoing; and expanding the scope of the Regulator's existing so-called anti-avoidance or 'moral hazard' powers.

This briefing takes a detailed look at the proposals outlined in the consultation and the potential implications in practice.

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

Unlocking capital from real estate – sale & leaseback transactions

With continued demand from overseas investors for 'trophy' real estate assets in the UK, sale and leaseback opportunities valued at GBP 800m were put on the market in central London during August 2017 as businesses continue to look at alternative sources of finance.

In this briefing, we look at the advantages and disadvantages of a sale and leaseback transaction as a way for property-owning companies to release capital.

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

Bill of law to implement the Anti-tax avoidance directive

On 19 June 2018, the Luxembourg minister of finance submitted the bill of law no. 7318 to the Luxembourg parliament, which is intended to implement the Anti-Tax Avoidance Directive (EU Directive 2016/1164 of 12 July 2016) into domestic law.

This briefing discusses the bill.

https://www.cliffordchance.com/briefings/2018/07/bill-of-law-to-implement-the-anti-tax-avoidance-directive.html

Abolition of Dutch tax deductibility of AT1 and RT1 coupons – what does this mean for issuers and noteholders?

On Friday 29 June 2018, the Dutch government published a letter to Parliament stating that it intends to abolish the specific corporate income tax provision for Additional Tier 1 (AT1)/Restricted Tier 1 (RT1) instruments issued by banks and insurers.

This briefing discusses the announcement and the impact it may have on issuers and noteholders of AT1/RT1 instruments.

https://www.cliffordchance.com/briefings/2018/07/abolition_of_dutchtaxdeductibilityofat1an.html

Purchase Price Adjustment Dispute – Accountant, Arbitrator, or Expert?

Delaware Chancery Court finds dispute resolution procedure in merger agreement required an 'expert determination' and not an arbitration, and accordingly the court (not the reviewing accountant appointed to resolve the dispute) decided whether extrinsic evidence was admissible.

This briefing discusses the judgment.

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

Australian Modern Slavery Legislation – Preparing for corporate reporting on supply chain transparency

Internationally, there has been increasing recognition of modern slavery as one of the greatest human rights abuses of the modern world. The term 'modern slavery' encompasses a range of heinous practices including human trafficking, slavery, servitude, debt bondage, forced labour and forced marriage. Modern slavery is particularly prevalent in the Asia-Pacific region, with the International Labour Organisation (ILO) estimating that over half of the victims of forced labour, approximately 11.7 million people, are in the Asia Pacific region.

This briefing discusses the issue and recent Australian legislative efforts to combat it.

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

Argentina – One Step Forward in Antitrust Enforcement

On 23 May 2018, the Law No. 27,442 of Defense of Competition entered into force. This new law significantly amends Argentina's prior competition act and brings Argentina in line with the international standards in this practice and with the competition regimes of its neighbours in Latin America.

This briefing discusses the new law.

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

National Centre for Privatisation releases the Privatisation Projects Manual

The National Centre for Privatisation (NCP) has released the Privatisation Projects Manual, mandatory for all privatisation projects in the Kingdom of Saudi Arabia, including ongoing projects.

The Manual introduces a four-file process of approving projects and sets out detailed requirements for each file. It also provides comprehensive guidelines for the procurement process and provides the governance necessary to ensure a successful and transparent execution of public private partnership (PPP) projects and sale of assets projects (i.e. privatisation projects) within the targeted sectors.

This briefing discusses the Manual.

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

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