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## **EU Commission President delivers State of the Union address**

The President of the EU Commission, Jean-Claude Juncker, has delivered his 2018 [State of the Union address](#) to the EU Parliament at Strasbourg.

Among other things, the speech discussed completing the EU's security union, and noted proposed measures to fight money laundering which have been published alongside the speech in a [formal communication](#) from the Commission to the EU Parliament, Council and European Central Bank (ECB).

The Commission proposes to amend the Regulation establishing the European Banking Authority (EBA) in order to reinforce the role of the EBA in anti-money laundering (AML) supervision. The proposed amendments would:

- ensure consistent investigation of AML breaches and empower the EBA to request that national AML supervisors investigate potential material breaches and request targeted actions;
- empower the EBA to address decisions directly to individual financial sector operators as a last resort;
- enhance the quality of supervision through common standards, periodic reviews of national supervisory authorities, and risk-assessments;
- enable the collection of AML risks and trends;
- facilitate cooperation with non-EU countries in cross-border cases; and
- establish a new permanent committee of national AML supervisory authorities.

The proposal is intended to feed into the ongoing discussions of the Commission proposal to review the European Supervisory Authorities (ESAs) Regulations, adopted by the Commission in 2017. The Commission encourages the EU Parliament and Council to reach agreement on the proposals as soon as possible.

## **Working group recommends ESTER as euro risk-free rate**

The working group on euro risk-free rates has [recommended](#) the euro short-term rate (ESTER) as the new euro risk-free rate.

The working group is an industry-led group established in 2018 by the European Central Bank (ECB), the Belgian Financial Services and Markets Authority (FSMA), the European Securities and Markets Authority (ESMA) and the EU Commission. The recommendation has been made because EONIA will no longer meet the criteria of the EU Benchmarks Regulation and will therefore see its use restricted as of 1 January 2020. ESTER will also provide a basis for developing fallbacks for contracts referencing Euribor, as the compliance of its reformed methodology with the requirements of the EU Benchmarks Regulation will be assessed in 2019.

The working group's recommendation is not legally binding on market participants. However, it represents the prevailing market consensus regarding the preferred euro risk-free rate to which market participants can now start transitioning.

## **EU Parliament adopts resolution on EU relationships with third countries concerning financial services regulation and supervision**

The EU Parliament plenary has adopted a [resolution](#) on relationships between the EU and third countries concerning financial services regulation and supervision. The resolution comments on relationships with third countries since the crisis, EU equivalence procedures and the EU's role in global standard-setting for financial regulation.

On equivalence the resolution calls for, among other things:

- the Commission to adopt a legislative act establishing a clear framework for a transparent, coherent and consistent application of equivalence procedures which introduces an improved process for the determination, review, suspension or withdrawal of equivalence;
- decisions to be subject to ongoing monitoring by the relevant European Supervisory Authority (ESA) to address the relevant legislation, enforcement practices and supervisory practices, as well as major legislative amendments and market developments, in the third country concerned and for the outcome of such monitoring to be made public;
- the Commission to publicly review the current equivalence regime and to assess whether it contributes to achieving a level playing field between EU and third-country financial institutions, while preserving EU financial stability, market integrity, investor and consumer protection and the functioning of the internal market; and
- the Commission to consider the possibility of introducing an application process for granting equivalence.

The resolution instructs the Parliament's President to forward the resolution to the EU Council and EU Commission.

## **EU Parliament adopts proposed Directive on countering money laundering by criminal law**

The EU Parliament has adopted its [position](#) on the Commission's proposal for a Directive on countering money laundering by criminal law, which establishes minimum rules concerning the definition of criminal offences and sanctions related to money laundering, removes obstacles to cross-border judicial and police cooperation and brings EU rules into line with international obligations. The proposed Directive still needs to be formally approved by the EU Council before being published in the Official Journal.

## **CSDR: Delegated Regulation on settlement discipline published in Official Journal**

A [Commission Delegated Regulation \(2018/1229\)](#) with regard to regulatory technical standards (RTS) on settlement discipline under the Central Securities Depositories Regulation (CSDR) has been published in the Official Journal. The Delegated Regulation covers measures for preventing settlement fails through processes and functionalities including automated matching, partial settlement and a hold and release mechanism. The RTS also set out measures for monitoring and addressing settlement fails, in particular, the cash penalties mechanism and the buy-in process.

The Regulation will enter into force on 13 September 2020.

## **ESAs publish joint report on risks and vulnerabilities in the financial system**

The Joint Committee of the European Supervisory Authorities (ESAs), which comprise the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA), has published an [update](#) on risks and vulnerabilities in the EU financial system.

In particular, the ESAs have identified:

- imminent and high risks of abruptly increasing yields generating substantive asset price volatility and leading to losses across asset classes;
- risks relating to the repricing of risk premia and possibly increasing interest rates directly affecting financial institutions and retail consumers, which could cause contagion; and
- the potential for uncertainties around the terms of the UK's withdrawal from the EU to expose the EU27 and the UK to economic and financial instability and weaken market confidence.

Among other things, the Joint Committee has proposed policy actions by the ESAs, national competent authorities (NCAs), financial institutions and market participants, including:

- conducting and further developing stress tests across all sectors;
- paying attention to risk appetite, including banks addressing their stocks of non-performing loans (NPLs) and retail investors carefully considering the risk attached to moving into higher yield leveraged products;
- macro- and micro- prudential authorities contributing to further addressing possible contagion risks; and
- EU financial institutions, counterparties, investors and consumers planning for Brexit, including risks associated with a no-deal scenario.

## **ECB consults on draft guide on assessment of capital and programme operations in licence applications**

The European Central Bank (ECB) has launched a [consultation](#) on Part 2 of its guide to assessments of licence applications.

[Part 2](#), which is intended to complement and be read together with the licensing guide published in March 2018, contains specific guidance on the ECB's supervisory expectations regarding the capital required for a newly licensed bank and its programme of operations, including business model and risk profile.

The consultation closes on 25 October 2018.

## **UK Government announces extension of BoE Governor's term**

HM Treasury (HMT) has published an exchange of letters between the Chancellor of the Exchequer, the Rt Hon Philip Hammond MP, and the Governor of the Bank of England (BoE), Mark Carney, confirming that the

Governor will extend his term by seven months to 31 January 2020. In his [letter to the Governor](#), the Chancellor states that the extension would support a smooth exit of the UK from the EU and an effective transition to the next Governor, who is expected to be appointed during the autumn of 2019.

HMT has also [announced](#) the reappointment of Sir Jon Cunliffe, Deputy Governor of the Bank of England with responsibility for Financial Stability, effective from 1 November 2018, for a term that will last until October 2023.

## **HMT consults on transposition of EU Bank Creditor Hierarchy Directive**

HM Treasury (HMT) has published a [technical consultation](#) on its approach to transposing the EU Directive on the ranking of unsecured debt instruments in insolvency hierarchy (2017/2399), which amends the Bank Recovery and Resolution Directive (BRRD).

The Bank Creditor Hierarchy Directive provides for a new class of non-preferred senior debt to be issued by credit institutions, investment firms and others. In insolvency proceedings, the debt in this class will rank below ordinary unsecured debts but above own funds investments and subordinated liabilities that do not qualify as own funds instruments.

HMT has published the [draft Banks and Building Societies \(Priorities on Insolvency\) Order 2018](#) alongside the consultation paper. The Order amends the Insolvency Act 1986, Insolvent Partnerships Order 1994 and Banking Act 2009.

Comments are due by 10 October 2018.

## **PRA consults on updates to reporting requirements**

The Prudential Regulation Authority (PRA) has launched a [consultation](#) on proposals to update its reporting requirements in light of the EBA's proposed changes to the implementing technical standards (ITS) on supervisory reporting. The PRA's proposals include:

- changes to the existing PRA reporting templates for ring-fenced banks, statement of profit and loss, and forecast capital data ('Capital+'); and
- extending the scope of new financial reporting templates for non-performing loans and forbore exposures to cover firms that are not required to report using these templates under the Capital Requirements Regulation.

Comments are due by 12 December 2018.

## **Brexit: FCA publishes direction on application for recognised overseas investment exchange status**

The Financial Conduct Authority (FCA) has published a [direction](#) clarifying how an EEA market operator may make an application to become a recognised overseas investment exchange (ROIE). Once the UK has left the EU, passport rights will no longer apply to MiFID2 EEA market operators seeking to facilitate the participation of the exchange in UK markets. EEA market operators who currently make use of passport rights may therefore wish to apply to be recognised as an ROIE.

The direction clarifies the FCA's expectations of EEA market operators and the way an application must be made in order for the FCA to assess whether

the recognition requirements have been met. Overseas investment exchanges which do not carry on regulated activities in the UK need take no action.

## **Brexit: SIs under the EU (Withdrawal) Act for 10 - 14 September 2018**

HM Government published new draft statutory instruments (SIs) under the EU (Withdrawal) Act 2018 last week, including the [draft Civil Jurisdiction and Judgments \(Hague Convention on Choice of Court Agreements 2005\) \(EU Exit\) Regulations 2018](#), which have been published for sifting ahead of being laid.

The draft Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018 are [intended](#) to ensure that the UK statute book is ready to comply with The Hague Convention of 30 June 2005 on Choice of Court Agreements (the 2005 Hague Convention) in circumstances whereby a Withdrawal Agreement with the EU is not concluded. The UK and EU have agreed that during an implementation period, the UK would be treated as a Member State for the purposes of international agreements, including the 2005 Hague Convention.

SIs going through the sifting process are considered by a new committee in the House of Commons and the Secondary Legislation Scrutiny Committee in the House of Lords, which determine the suitability of the 'negative procedure'.

## **FCA publishes Quarterly Consultation No.22**

The FCA has published its [quarterly consultation \(CP18/24\)](#) on proposed miscellaneous amendments to the FCA Handbook.

In particular, the consultation sets out proposed amendments to:

- the Gabriel validation rule and FCA guidance on form FSA056 (capital adequacy for authorised payment institutions (APIs)) for element 32B (own funds requirement) in the Supervisory manual (SUP 16); and
- existing supervisory principles in SUP 1A.3.2G, to replace those principles with the supervisory principles detailed in chapter 2 of the FCA's 'Approach to Supervision'.

Comments on chapter 3 are due by 7 October 2018 and on chapter 2 by 7 November 2018.

## **Federal Council proposes introduction of qualified investment funds to boost Switzerland's appeal as a fund location**

The Federal Council has [announced](#) its plans to improve the appeal of Switzerland as an investment fund location. During its meeting on 5 September 2018, it instructed the Federal Department of Finance (FDF) to draw up a proposal for a corresponding legislative revision by mid-2019. By introducing a category of funds that are not subject to approval by the Swiss Financial Market Supervisory Authority (FINMA) under the Collective Investment Schemes Act, innovative products could be placed on the market much more quickly and cost-effectively. This new category of funds (Limited Qualified Investment Funds or L-QIF) would be reserved for qualified investors such as pension funds and insurers. The proposal will be subject to a consultation procedure.

## **MAS responds to feedback on proposed framework for variable capital companies and moves Variable Capital Companies Bill for first reading in Parliament**

The Monetary Authority of Singapore (MAS) has published its [responses](#) to the feedback on its public consultation on the proposed framework for variable capital companies (VCCs), which was issued on 23 March 2017, and has moved the [Variable Capital Companies Bill](#) for its first reading in Parliament.

The Bill provides for the incorporation and operation of a new corporate structure, the VCC, for investment funds. The introduction of the VCC structure is intended to encourage fund managers to domicile their investment funds in Singapore and help strengthen Singapore's position as a full-service fund management centre.

Amongst other things, the MAS [announced](#) the following points in its response paper, several of which also address the key provisions under the Bill:

- a VCC will be able to issue and redeem shares without having to seek shareholders' approval, enabling investors to exit their investments in the investment fund when they wish to, and pay dividends using its capital;
- a VCC may be established as a standalone structure or an umbrella structure with multiple sub-funds that may have different investment objectives, investors as well as assets and liabilities, though assets and liabilities of each sub-fund will be required to be segregated to avoid comingling between sub-funds and each sub-fund may be wound up as if it were a separate legal person;
- the requirement for a VCC to have at least two members has been removed;
- a VCC must appoint a fund manager that is regulated by the MAS (a Permissible Fund Manager) to retain overall responsibility for the fund management duties and to mitigate any conflicts of interests that may arise. At least one director of a VCC must be a representative or director of the Permissible Fund Manager;
- VCCs not used for schemes authorised by the MAS for offer to retail investors may prepare their financial statements using IFRS, an applicable ASC Standard or GAAP. All sub-funds in a VCC will also be required to prepare financial statements using the same accounting standards, which must be audited;
- a VCC must maintain an updated register of members at its registered office or at the office of a service provider whose office is in Singapore and must disclose this information to the necessary regulatory and law enforcement authorities upon request, though neither this, nor the constitution of the VCC, would need to be made public;
- a VCC will be required to maintain a register of controllers and nominee directors, though this will be dealt with under the MAS Anti-Money laundering and countering the financing of terrorism (AML/CFT) Notice for VCCs which will be consulted upon by the MAS at a later stage;
- while any schemes authorised by the MAS for offer to retail investors structured as a VCC will need to appoint a custodian that is an Approved Trustee, such custodian would not be imposed with a general obligation to safeguard the rights and interests of the VCC's members;

- restricted schemes structured as a VCC will be required to maintain their assets in trust or custody accounts with a prescribed entity which may but need not be an Approved Trustee;
- foreign corporate fund structures that are similar to VCCs will be able to re-domicile as VCCs in Singapore, but no legislative regime to convert existing domestic collective investment schemes to VCCs will be proposed;
- a VCC Amendment Bill will be tabled in early 2019 regarding the insolvency provisions which will align the insolvency regime for VCCs with that of other corporate structures in Singapore; and
- the Accounting and Corporate Regulatory Authority will act as the registrar of VCCs and administer the new Bill, except for the AML/CFT obligations of VCCs which will be overseen by the MAS.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Ethics and Leadership – How do values influence business decisions?**

How do our values influence business decisions? How does an organisation instil an ethical culture? These are questions with which business leaders are increasingly having to grapple. At a recent event hosted by Clifford Chance in collaboration with the Canary Wharf Multifaith Chaplaincy, our expert panel drew on their own experiences to discuss leadership and values.

This briefing provides a summary of the discussion.

[https://www.cliffordchance.com/briefings/2018/08/ethics\\_and\\_leadership-howdovaluesinfluenc.html](https://www.cliffordchance.com/briefings/2018/08/ethics_and_leadership-howdovaluesinfluenc.html)

### **SEC Adopts Amendments to Update and Simplify Its Disclosure Requirements – A Guide for Foreign Private Issuers**

The US Securities and Exchange Commission (SEC) adopted a voluminous set of rule and form amendments in August 2018 to update and simplify certain of its disclosure requirements. These amendments will become effective 30 days after the final rules are published in the Federal Register. While the SEC intends for these amendments to simplify disclosure compliance, it does not expect they will significantly alter the total mix of information provided to investors.

This briefing identifies the amendments we expect to impact forms filed with the SEC by foreign private issuers that report their financial results in accordance with International Financial Reporting Standards (IFRS), such as annual reports on Form 20-F, long-form registration statements on Form F-1 as well as short-form registration statements Form F-3. Annex I to the briefing provides a chart that summarizes key amendments to SEC disclosure requirements relevant to foreign private issuers.

[https://www.cliffordchance.com/briefings/2018/09/sec\\_adopts\\_amendmentsto\\_updateandsimplifyit.html](https://www.cliffordchance.com/briefings/2018/09/sec_adopts_amendmentsto_updateandsimplifyit.html)



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