

## INTERNATIONAL REGULATORY UPDATE 17 – 21 SEPTEMBER 2018

- **ECON Committee publishes draft reports on Commission proposals for facilitating cross-border distribution of collective investment funds**
- **Basel Committee publishes FAQs on liquidity risk treatment of settled-to-market derivatives**
- **IOSCO publishes guidance on conflicts of interest and conduct risks from use of intermediaries in equity capital raising**
- **IOSCO publishes guidance on addressing risks arising from retail OTC leveraged products**
- **Joint statement on inaugural meeting of US-UK Financial Regulatory Working Group published**
- **Fintech: Treasury Committee publishes crypto-assets report**
- **FCA and PRA seek assurances on firms' preparations for transition from LIBOR to risk-free rates**
- **PSD2: FCA consults on implementation of standards and guidelines on strong customer authentication, exemptions and fraud reporting**
- **BaFin publishes module concerning critical infrastructure in banking and insurance sector**
- **Polish Council of Ministers adopts draft Act Amending the Act on the Bank Guarantee Fund, the Deposit Guarantee Scheme and Mandatory Restructuring and Certain Other Acts**
- **PBoC and CSRC announce mutual recognition of rating agencies between China interbank bond market and bond exchange market**
- **SFC announces green finance strategic framework**
- **SFC reminds intermediaries of notification requirement**
- **MAS and US Commodity Futures Trading Commission sign co-operation arrangement on fintech innovation**
- **ASIC reminds financial firms to join Australian Financial Complaints Authority**
- **ASIC extends relief for foreign financial services providers**
- **ASIC acts against misleading initial coin offerings and crypto-asset funds targeted at retail investors**
- **Recent Clifford Chance briefings: Singapore's Insolvency,**

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**Restructuring and Dissolution Bill. Follow this link to the briefings section**

## **ECON Committee publishes draft reports on Commission proposals for facilitating cross-border distribution of collective investment funds**

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published a [draft report on the proposal for a Regulation](#) and a [draft report on a proposal for a Directive](#) on the cross-border distribution of collective investment funds.

The draft Regulation and Directive would amend the Alternative Investment Fund Managers Directive (AIFMD), Undertakings for Collective Investment in Transferable Securities (UCITS) Directive, the European Venture Capital Funds (EuVECA) Regulation and the European Social Entrepreneurship Funds (EuSEF) Regulation.

In general, the rapporteur Wolf Linz agrees with the Council that the Commission's approach needs to be modified. In particular, it is proposed that:

- in the definition of pre-marketing to professional investors, which is proposed to be inserted in the AIFMD and EuSEF and EuVECA Regulations, a more targeted approach should be adopted in order to focus on making pre-marketing possible but keeping reverse solicitation from happening;
- further simplifications be made relating to the marketing of a fund which has previously been active in a host member state by alternative investment fund managers (AIFMs) and UCITS managers, ensuring that investors are protected; and
- there should be a tighter test for fees that can be charged by competent authorities in relation to cross-border activity of fund managers.

## **Basel Committee publishes FAQs on liquidity risk treatment of settled-to-market derivatives**

The Basel Committee on Banking Supervision (BCBS) has [issued responses](#) to frequently asked questions (FAQs) on the treatment of settled-to-market (STM) derivatives under the liquidity coverage ratio (LCR) and net stable funding ratio (NSFR).

The Committee has noticed that an increasing number of banks are recording variation margin (VM) on cleared derivatives as settlement payments rather than as transfer of collateral. These STM contracts allow banks to take ownership of the collateral they receive.

Under STM, daily payments of mark-to-market VM are recorded as settlements of the derivatives transactions rather than transfers of collateral and the market value of the derivatives is reset daily to zero.

The Committee's FAQs seek to clarify that the liquidity risks associated with STM derivatives are the same as those for more conventional collateralised-to-market derivatives and should be treated in an equivalent manner.

## **IOSCO publishes guidance on addressing risks arising from retail OTC leveraged products**

The International Organization of Securities Commissions (IOSCO) has published a [report](#) providing guidance for securities regulators on the risks arising from the marketing and sale of over-the-counter (OTC) leveraged products to retail investors. The report focuses specifically on rolling-spot forex contracts, contracts for difference and binary options. It contains three toolkits highlighting areas that regulators should consider in their approaches to address the risks posed by the marketing and sale of these products, including:

- policy measures aimed at addressing the risks arising from the marketing and sale of OTC leveraged products by intermediaries;
- educating investors on the risks of these products and the firms offering them; and
- enforcement practices aimed at mitigating the risks posed by unlicensed firms offering the products.

The report also includes examples of various policy, educational and enforcement initiatives taken by IOSCO members in order to address, in particular, unauthorised cross-border and online offerings of OTC leveraged products. IOSCO intends these to serve as useful guidance to other members when considering their own approaches to addressing the risks.

Alongside this report, IOSCO has also published a [statement](#) warning the public of the risks of investing in illegal or fraudulent binary options (contracts in which the pay-out is based on the performance of an underlying asset, such as a currency, commodity, stock index or share). The statement provides an overview of how these products are typically marketed and traded, and sets out the measures that some regulators have taken to mitigate their risks.

## **IOSCO publishes guidance on conflicts of interest and conduct risks from use of intermediaries in equity capital raising**

IOSCO has published guidance aimed at helping its members address conflicts of interest and associated misconduct risks that may arise from the use of intermediaries in the equity capital raising process.

The [report](#) identifies key stages of equity capital raising where the role of intermediaries might give rise to conflicts of interest, including:

- the formation of analysts' views on an issuer in the pre-offering phase of a capital raising;
- the allocation of securities;
- the pricing of securities offerings; and
- personal transactions by staff employed within firms managing a securities offering.

The report then sets out standards of conduct for market intermediaries when involved in the equity capital raising process. These standards are intended to improve, amongst other things, the range, quality and timeliness of information available to investors, the transparency of allocations, and the efficiency and integrity of the overall equity raising process.

Following on from this work, IOSCO intends to examine whether the issues and potential harms identified in the report are also applicable to the debt capital raising process and whether any regulatory response is required.

### **Joint statement on inaugural meeting of US-UK Financial Regulatory Working Group published**

HM Treasury (HMT) has published a [joint statement](#) on the first meeting, held on 12 September in London, of the US-UK Financial Regulatory Working Group formed earlier in the year.

According to the joint statement, participants from the US Department of the Treasury, HMT, the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Office of Comptroller of the Currency, Securities and Exchange Commission, the Bank of England and the Financial Conduct Authority, discussed:

- the outlook for financial regulatory reforms and future priorities, including possible areas for deeper regulatory cooperation to facilitate further financial services activity between US and UK markets; and
- the implications of Brexit on financial stability and cross-border financial regulation, including contract continuity and the importance of maintaining bilateral activity of US and UK financial services firms.

Follow-up work on these topics and other cross-border issues were also identified. The next meeting will be held in the first half of 2019 in Washington, DC.

### **Fintech: Treasury Committee publishes crypto-assets report**

The UK House of Commons Treasury Committee has published an unanimously-agreed [report](#) on crypto-assets for its Digital Currencies inquiry.

The Digital Currencies inquiry was launched in February 2018 with the aim of investigating the role of digital currencies in the UK, the potential impact of distributed ledger technology on financial institutions, and the regulatory response to digital currencies from the government, the Financial Conduct Authority (FCA), and the Bank of England (BoE).

The report highlights the Treasury Committee's [key findings and recommendations](#), including that:

- the crypto-asset market needs to be regulated;
- problems include volatile prices, hacking vulnerabilities, minimal consumer protection, and anonymity aiding money laundering;
- blockchain is currently slow, costly and energy-intensive, but there is potential for data storage uses;
- the ambiguity of the UK government and regulators' position is not sustainable;
- regulation could improve customer outcomes, enable sustainable growth, and reduce certain risks;
- in deciding the regulatory approach, government should decide if growth should be encouraged; and

- proportionate regulation could see the UK well placed to become global centre for crypto-assets.

## **FCA and PRA seek assurances on firms' preparations for transition from LIBOR to risk-free rates**

The Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA) have jointly written a [letter to the CEOs of major banks](#) and a [letter to insurers](#) requesting details of the steps being taken to manage the transition from LIBOR to alternative interest rate benchmarks.

The letters ask that respondents:

- submit a board-approved summary of their firm's assessment of key risks relating to LIBOR discontinuation and details of actions they plan to take to mitigate those risks. The letters advise that assessment and plans should consider a wide range of scenarios and include a quantification of LIBOR exposures; and
- identify the senior managers within their firm who will oversee the implementation of the firm's transition plans.

Responses from firms are due by 14 December 2018. The FCA and PRA will review the responses, which will also supplement the Bank of England's Financial Policy Committee's risk monitoring.

## **PSD2: FCA consults on implementation of standards and guidelines on strong customer authentication, exemptions and fraud reporting**

The FCA has launched a [consultation](#) on its approach to the final regulatory technical standards (RTS) on strong customer authentication (SCA) and common and secure open standards of communication and certain European Banking Authority (EBA) guidelines under the recast Payment Services Directive (PSD2).

The SCA RTS are intended to increase the security of customers' payments made by card and other means, as well as setting out various requirements that affect open banking services, and will apply from 14 September 2019.

In addition to implementing the SCA RTS, the FCA is also consulting on domestic implementation of the EBA's guidelines on:

- the conditions to be met to benefit from an exemption from contingency measures, which the EBA has not yet finalised and, as such, the FCA will take account of any changes made by the EBA in its final rules, directions and guidance; and
- fraud reporting.

The FCA is also consulting on updates to its Payment Services and E-Money Approach Document, to reflect other legislative changes and clarify its expectations based on its experience of the PSD2 regime.

Comments on the consultation are due by 12 October 2018.

## **BaFin publishes module concerning critical infrastructure in banking and insurance sector**

The German Federal Financial Supervisory Authority (BaFin) has published a [module](#) concerning Critical Infrastructure in the Banking and Insurance Sector (KRITIS) which supplements the Supervisory Requirements for IT in Financial Institutions (BAIT).

BAIT is intended to provide a flexible framework for the technical and organisational resources of institutions.

KRITIS provides a description of additional requirements which have to be considered in order to provide proof to the annual auditor pursuant to section 8a paragraph 3 of the Act on the Federal Office for Information Security (BSI).

## **Polish Council of Ministers adopts draft Act Amending the Act on the Bank Guarantee Fund, the Deposit Guarantee Scheme and Mandatory Restructuring and Certain Other Acts**

The Polish Council of Ministers has [adopted](#) the draft Act Amending the Act on the Bank Guarantee Fund (BGF), the Deposit Guarantee Scheme and Mandatory Restructuring and Certain Other Acts. The primary aim of the amendment is to implement into Polish law Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy.

The draft introduces, amongst other things, an additional category of receivables under senior non-preferred obligations in insolvency proceedings, which is intended to streamline the process of mandatory restructuring, in particular with regard to any bail-in process. In addition, a number of amendments are proposed concerning the systemic exemption of mortgage banks from certain regulations of the Act, streamlining the restructuring of an associated bank by creating a bridging institution, the operation of the deposit guarantee scheme and obligations related thereto, and the extension of the options for the management of the BFG's funds.

## **PBoC and CSRC announce mutual recognition of rating agencies between China interbank bond market and bond exchange market**

The People's Bank of China (PBoC) and the China Securities Regulatory Commission (CSRC) have jointly issued a [circular](#) announcing the commencement of the mutual recognition process of rating agencies between the China interbank bond market (CIBM) and the bond exchange market.

The following key aspects with respect to the circular are worth noting:

- regulators will gradually unify the qualification standards for rating agencies in CIBM and the bond exchange market, specifically:
  - rating agencies already operating in either CIBM or the bond exchange market may apply to operate in the other market. PBoC, CSRC and the National Association of Financial Market Institutional Investors (NAFMII) will set up a fast-track channel to process such applications; and



- for rating agencies intending to operate rating business simultaneously in CIBM and the bond exchange market, their onshore institution shall firstly file with a PBoC branch at provincial level and then make an application to CSRC and NAFMII. PBoC, CSRC and NAFMII will coordinate with respect to the review or registration; and
- regulators encourage the integration of rating agencies with the same actual controller through merger and acquisition to strengthen the capacity of each rating agency.

## **SFC announces green finance strategic framework**

The Securities and Futures Commission (SFC) has [announced](#) its strategic framework to contribute to the development of green finance in Hong Kong.

Under the [framework](#), a priority will be to enhance listed companies' consistent and comparable disclosure of environmental information, with an emphasis on climate-related risks and opportunities. The SFC will also work on ways in which asset managers make clear to investors how and to what extent they factor environmental criteria into their investment processes and risk assessments. These initiatives will complement and build on existing initiatives to promote green bonds.

In addition, the SFC will work to facilitate the development of a wider range of green investment opportunities through internationally-compatible disclosure guidance to ensure the credibility of green product offerings in Hong Kong. The SFC will also work closely with Hong Kong Exchanges and Clearing Limited (HKEX) on how it can develop and promote the listing and trading of green financial products including bonds, indices and derivatives.

Other elements of the SFC's strategy include enhancing investors' awareness and capacity building in collaboration with the Investor Education Centre, other financial regulators, industry associations and stakeholders. The SFC will also promote Hong Kong as a centre for green finance by participating in international initiatives and exploring opportunities for cooperation with environmental authorities.

## **SFC reminds intermediaries of notification requirement**

The SFC has issued a [circular](#) to intermediaries to remind them of the notification requirement under paragraph 12.5 of the Code of Conduct for Persons Licensed by or Registered with the SFC, under which intermediaries are required to report to the SFC immediately upon the happening of, among other things, any material breach, infringement of or non-compliance with any law, rules, regulations and codes administered by the SFC or any such suspected breach, infringement or non-compliance.

It has recently come to the SFC's attention that some intermediaries have not promptly reported breaches of or non-compliance with various legal or regulatory requirements to the SFC, including:

- suspected unlicensed dealing activities;
- suspected unauthorised trading activities;
- non-compliance with the suitability requirements under paragraph 5.2 of the Code of Conduct as supplemented by the corresponding frequently asked questions;
- breaches of the Securities and Futures (Keeping of Records) Rules;

- breaches of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules; and
- non-compliance with the order recording requirements under paragraph 3.9 of the Code of Conduct.

In this regard, the SFC reminds intermediaries that:

- the reporting obligation applies to both licensed corporations and registered institutions. While the Hong Kong Monetary Authority (HKMA) is the frontline regulator of registered institutions, registered institutions are required to fulfil this reporting obligation by making the report directly to the SFC in addition to reporting to the HKMA;
- all material breaches and non-compliance (actual or suspected, irrespective of whether these were identified by the intermediary itself, stemmed from customer complaints or were identified through other sources) must be reported to the SFC (as well as the HKMA in the case of registered institutions) as soon as practicable upon identification, i.e. not after the intermediary has already completed its investigation, obtained legal advice or taken remedial actions; and
- failure to comply with the reporting obligation may result in disciplinary action being taken against the intermediaries and their management.

The SFC has advised intermediaries to review their incident escalation and reporting mechanisms and implement appropriate controls to ensure compliance with the notification requirement.

### **MAS and US Commodity Futures Trading Commission sign co-operation arrangement on fintech innovation**

The Monetary Authority of Singapore (MAS) and the US Commodity Futures Trading Commission (CFTC) have signed a Cooperation on Financial Technology Innovation Arrangement to foster greater co-operation on fintech. The [arrangement](#) is intended to support both authorities' efforts to facilitate fintech development and innovation in their respective markets.

The arrangement focuses on information sharing on fintech market trends and developments, including sharing insights derived from each authority's relevant fintech sandbox, proofs of concept, and innovation competitions. The arrangement also facilitates referrals of fintech companies interested in entering the other's market to help fintech companies better understand and navigate the regulatory regime and capitalise on opportunities in each jurisdiction.

### **ASIC reminds financial firms to join Australian Financial Complaints Authority**

The Australian Securities and Investments Commission (ASIC) has issued a [press note](#) to all Australian financial services licensees, Australian credit licensees, authorised credit representatives and superannuation trustees reminding them to join the Australian Financial Complaints Authority (AFCA) now if they have not already done so. The deadline for joining the AFCA is 21 September 2018. ASIC has warned that financial firms who do not join the AFCA will be in breach of the law.

ASIC is monitoring membership lists with the AFCA and will be following up with firms who fail to meet this deadline. ASIC is also finalising an instrument



which allows firms an extended period to notify ASIC about their AFCA membership details. Firms will be able to update their details between 1 and 30 November 2018. This does not extend the period for joining the AFCA.

### **ASIC extends relief for foreign financial services providers**

ASIC has [decided](#) to extend the licensing relief for foreign financial services providers (FFSPs) to 30 September 2019. The extension is intended to allow FFSPs to provide financial services to Australian wholesale clients without needing to hold an Australian financial services licence.

The licensing relief that is extended by ASIC is in the following instruments, which were due to expire in late September 2018:

- ASIC Corporations (Repeal and Transitional) Instrument 2016/396 and ASIC Corporations (CSSF-Regulated Financial Services Providers) Instrument 2016/1109 – FFSPs relying on this relief can provide specified financial services to Australian wholesale clients if their home regulatory regime has been assessed by ASIC as sufficiently equivalent to the Australian financial services licensing regime; and
- ASIC Corporations (Foreign Financial Services Providers-Limited Connection) Instrument 2017/182 – this provides licensing relief for FFSPs limited to inducing an Australian wholesale client to use the provider's financial services.

ASIC had indicated in Consultation Paper 301: Foreign financial services providers (CP 301) that it would extend the relief for an additional twelve months to allow ASIC time to consult on proposals about the regulation of FFSPs.

### **ASIC acts against misleading initial coin offerings and crypto-asset funds targeted at retail investors**

ASIC has [announced](#) that it has taken action to stop several proposed initial coin offerings or token-generation events (together, ICOs), targeting retail investors.

Recently, ASIC has stopped the issue of a product disclosure statement for a crypto-asset managed investment scheme. In five other separate matters since April 2018, ASIC has acted to prevent ICOs raising capital without the appropriate investor protections. These ICOs have been put on hold and some will be restructured to comply with the applicable legal requirements. ASIC is taking further action in respect of one completed ICO.

ASIC has cautioned investors that ICOs, mostly unregulated, are highly speculative investments and may turn out to be scams. ASIC has further advised investors to consult the information on its Moneysmart website before deciding to invest in such schemes.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **The new Insolvency, Restructuring and Dissolution Bill**

On 10 September 2018, the Insolvency, Restructuring and Dissolution Bill was tabled for its first reading in Parliament. On top of bringing Singapore's currently-disparate bankruptcy and insolvency provisions under one omnibus

legislation, several interesting new provisions have been proposed as part of a holistic update of Singapore's insolvency and restructuring laws.

This briefing, prepared by Clifford Chance and Cavenagh Law LLP, discusses the Bill.

[https://www.cliffordchance.com/briefings/2018/09/the\\_new\\_insolvencyrestructuringanddissolutio.html](https://www.cliffordchance.com/briefings/2018/09/the_new_insolvencyrestructuringanddissolutio.html)

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