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INTERNATIONAL REGULATORY UPDATE 01 – 05 OCTOBER 2018

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EU Council adopts new cash controls regulation

The EU Council has adopted a new regulation updating and extending controls on cash entering and leaving the EU.

The new regulation will replace and repeal the Cash Controls Regulation (1889/2005), has been designed to complement the Fourth Anti-Money Laundering Directive (AMLD 4 – 2015/849) and aims to reflect current international standards and best practices on combating money laundering and terrorism financing developed by the Financial Action Task Force (FATF).

Key changes include:

- extending the definition of cash beyond currency to also cover highly liquid commodities and other financial instruments such as gold and prepaid cards;
- providing competent authorities with the power to require the sender or recipient of unaccompanied cash (e.g. cash moved via courier shipments, unaccompanied luggage or containerised cargo) to make a disclosure declaration; and,
- granting competent authorities the power to carry out controls on any consignments, receptacles or means of transport which may contain unaccompanied cash.

The regulation will be published in the Official Journal once signed by the Council and the EU Parliament, and enter into force twenty days later.

EBA publishes reports on Basel III monitoring and liquidity measures

The European Banking Authority (EBA) has published its 2018 Basel III monitoring report and 2018 report on liquidity coverage requirements under the Capital Requirements Regulation (CRR).

The Basel III monitoring report, based on data as of 31 December 2017 and a sample of 101 banks, assesses the impact of the final Basel III reforms. Run in parallel with the exercise carried out at a global level by the Basel Committee on Banking Supervision (BCBS), the data shows that:

- European banks' minimum Tier 1 capital requirement would increase by 16.7% at the full implementation date;
- the impact of the risk-based reforms is 21.8%, of which the leading factors are the output floor (6.3%) and operational risk (5.7%);
- the leverage ratio is the constraining (i.e. the highest) Tier 1 requirement for some banks in the sample, explaining why part of the increase in the

risk-based capital metric (-5.1%) is not to be accounted as an actual increase of the overall Tier 1 requirement; and

- to comply with the new framework, EU banks would need EUR 24.5 billion of total capital, of which EUR 6.0 billion of additional CET1 capital.

A more detailed report, based on a larger sample and updated data, is forthcoming following the EU Commission's March 2018 call for technical advice for the purposes of revising the own fund requirements for credit, operational, market and credit valuation adjustment risk.

The report on liquidity measures broadly shows that EU banks have continued to improve their liquid coverage ratio (LCR), averaging 145%. However, significant currency mismatches are a major concern. The EBA therefore suggests competent authorities consider greater use of their discretion to set limits on an excess of net outflows denominated in a significant reporting currency.

MiFID2: ESMA writes to Commission on third-country regimes in the context of Brexit

The European Securities and Markets Authority (ESMA) has published a letter to the EU Commission Vice President in charge of Financial Stability, Financial Services and Capital Markets Union, Valdis Dombrovskis, dated 26 September 2018, on MiFID2 requirements on investor protection and intermediaries in the context of the UK's withdrawal from the EU.

The letter follows up on a first letter dated 20 November 2017, which set out concerns relating to:

- the MiFID2 third country regime with respect to firms dealing on own account;
- the lack of an EU-wide regime for third country trading venues accessing the EU market and placing trading screens; and
- the lack of a suspension regime for the trading obligation for derivatives.

The follow-up letter sets out four additional issues that have been identified in the context of the discussion on the risks arising from the UK withdrawal from the EU. However, the letter notes that the issues are viewed by ESMA as being more general and applying beyond the Brexit debate. ESMA's concerns relate to:

- the MiFIR regime for third country firms providing investment services and activities to eligible counterparties and professional clients, noting that the Commission's proposals for new prudential requirements for investment firms may need further improvements and setting out ESMA's view that the MiFIR regime does not ensure a consistent and convergent level of protection to investors interacting with third country firms;
- the MiFID2 regime for third country firms providing investment services and activities to retail and professional clients on request, on which ESMA suggests that the Commission may wish to consider the opportunity for further harmonisation of the national regimes;
- reverse solicitation, noting the importance of the topic in the context of Brexit and recommending that the Commission reviews the MiFID2 framework in order to mitigate the effects of reverse solicitation; and

- investment firms outsourcing critical or important functions other than those related to portfolio management to third country providers, suggesting a stricter regime under MiFID2 to ensure a higher level of investor protection.

MiFID2: ESMA publishes opinion on ancillary activity calculations

ESMA has published an updated opinion on ancillary activity calculations, which provides an estimation of the market size of commodity derivatives and emission allowances for 2017 based on data collected from trading venues as well as data reported to trade repositories under EMIR.

Under Article 2(3) of regulatory technical standards (RTS) 20 (Commission Delegated Regulation (EU) 2017/592), a calculation of the overall market trading activity is necessary for the establishment of the size of trading activity per market participant which ultimately determines whether an activity is ancillary, and hence, whether a market participant falls within the scope of MiFID2. National competent authorities (NCAs) and market participants requested that ESMA provide guidance for the determination of the market size figures to ensure the correct application of Article 2(3) of RTS 20 and, as such, ESMA has issued its opinion. ESMA considers the guidance will contribute positively to the consistency of supervisory practices and will ensure a uniform approach across the EU.

ESMA repeals MiFID1 guidelines on automated trading

ESMA has announced a decision of its Board of Supervisors on 26 September 2018 to repeal MiFID1 guidelines on systems and controls in an automated trading environment for trading platforms, investment firms, and competent authorities.

ESMA is of the view that the subject matter of the guidelines, which were adopted in December 2011, has been incorporated into MiFID2 and its implementing measures.

ESMA renews prohibition on marketing, distribution or sale of binary options to retail clients

ESMA's Decision to renew the temporary prohibition in Decision (EU) 2018/795 on the marketing, distribution or sale of binary options to retail clients has been published in the Official Journal.

ESMA adopted its Decision under Article 40 of MiFIR and a notice setting out details of the measure has been published alongside the Decision.

The Decision, which came into effect on 2 October 2018, applies for a period of 3 months.

PRIIPs: ESAs write to EU Commission on duplication of key information documents

The Joint Committee of the European Supervisory Authorities (ESAs), which comprise the EBA, European Insurance and Occupational Pensions Authority (EIOPA) and ESMA, have written to the EU Commission raising concerns regarding the possible duplication of information requirements for investment funds under the Packaged Retail and Insurance-based Investment Products (PRIIPs) and UCITS Regulations.

The EU Commission wrote to the ESAs in July and August 2018 stating that there would be a deferral of the review of the PRIIPs Regulation and requesting guidance regarding the information that should be disclosed by investment funds.

The ESAs are concerned that an approach where retail investors would receive both PRIIPS key information documents (KIDs) and UCITS key investor information documents (KIIDs) as of 1 January 2020 would not be satisfactory and would risk undermining the aims of the PRIIPs Regulation. The ESAs are also concerned that UCITS KIID information cannot be effectively articulated together with the PRIIPs KID information and may provide inconsistent information due to technical differences in the methodologies underpinning the presentation of risks, performance and costs.

In the letter, the Joint Committee calls for legislative changes to avoid duplicate information requirements from 1 January 2020. The Joint Committee also intends to launch a targeted review of the PRIIPs Commission Delegated Regulation (EU) 2017/653 in order for issues that have arisen from the practical application of detailed technical requirements to be addressed in the short-to-medium term, potentially prior to an overall review, to address all of the elements set out in Article 33 of the PRIIPs Regulation.

The Joint Committee plans to begin the targeted review by launching a consultation in Q4 2018, examining performance scenarios and other targeted amendments, with the intention of submitting proposed amendments to the Commission in Q1 2019.

ECON Committee publishes draft report on low-carbon benchmarks and positive carbon impact benchmarks

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its draft report on the EU Commission's proposal for a regulation on low carbon benchmarks and positive carbon impact benchmarks amending Regulation (EU) 2016/1011.

The explanatory memorandum highlights the following proposed changes to the EU Commission proposal:

- empowering the Commission to adopt a delegated act setting out the methodology for measuring the social and governance impact of financial benchmarks;
- empowering the Commission to adopt a delegated act to ensure that all benchmarks provided and published by benchmarks providers are aligned with the Paris Climate Agreement commitments according to a standardised methodology;
- empowering the Commission to adopt a delegated act setting out the criteria to ensure fees charged by benchmark providers are transparent, impartial and based on actual costs; and
- benchmark providers being required to describe in a standardised way the climate impact of the benchmarks used.

ECON Committee publishes revised draft report on directive on cross-border distribution of collective investment funds

ECON has published a revised version of its draft report (originally published on 18 September 2018) on the EU Commission's proposal for a directive amending the Undertakings for Collective Investment in Transferable Securities (UCITS) Regulation and the Alternative Investment Fund Managers Directive (AIFMD) with regard to cross-border distribution of collective investment funds.

Rapporteur Wolf Klinz broadly supports the Commission proposals, but suggests changes to the Council text relating to:

- the definition of pre-marketing to professional investors;
- further simplifications in the provisions concerning the possibility for alternative investment fund managers (AIFMs) and UCITS managers to cease marketing a fund which has previously been active in a member state; and
- more stringent tests for fees charged by competent authorities.

Basel Committee reports on Basel III monitoring exercise

BCBS has published the results of its latest review of the implications of the Basel III standards for banks. The report is based on data as at 31 December 2017 for 206 banks, of which 111 were Group 1 banks, defined as internationally active banks with Tier 1 capital of more than EUR 3 billion.

The final Basel III minimum capital requirements are expected to be implemented by 1 January 2022 and fully phased in by 1 January 2027. The report finds that all the participating banks would meet the Common Equity Tier 1 (CET1) requirement of 4.5% and the target level CET1 requirement of 7%, plus any surcharges for globally systemically important banks (G-SIBs).

Applying the 2022 minimum total loss-absorbing capacity (TLAC) requirements and fully phased-in framework, eight of the 25 G-SIBs reporting TLAC data had a combined shortfall of EUR 82.1 billion, compared with EUR 109.0 billion at the end of June 2017.

The monitoring reports also collect data on Basel III's liquidity requirements. Group 1 banks' average Liquidity Coverage Ratio (LCR) decreased by 1.0 percentage point to 133.0%, while the average Net Stable Funding Ratio (NSFR) decreased from 116.9% to 116.0%. For Group 2 banks (those with Tier 1 capital of less than EUR 3 billion or which are not internationally active) there was an increase for both LCR and NSFR.

Brexit: SIs under the EU (Withdrawal) Act for 1 – 5 October 2018

HM Government published new draft statutory instruments (SIs) under the EU (Withdrawal) Act 2018 last week.

HM Treasury (HMT) published the draft Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 and draft Trade Repositories (Amendment and Transitional Provision) (EU exit) Regulations 2018. These SIs will make amendments to certain retained EU law related to MiFID2 and EMIR, respectively, to ensure that they continue to operate effectively in the

UK once the UK has left the EU. The draft Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 will also amend the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 and Data Reporting Services Regulations 2017.

The draft instruments are still in development and are intended to provide Parliament and stakeholders with further details on HM Treasury's approach to onshoring financial services legislation. The drafting approach, and other technical aspects of the proposal, may change before the final instrument is laid before Parliament.

The following SIs were made last week:

- The Consumer Credit (Amendment) (EU Exit) Regulations 2018 (SI 2018/1038), which make amendments to the:
  - Consumer Credit Act 1974;
  - Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013);
  - Consumer Credit (Green Deal) Regulations 2012 (SI 2012/2798); and
  - Financial Services Act 2012 (Consumer Credit) Order 2013 (SI 2013/1882); and
- The Friendly Societies (Amendment) (EU Exit) Regulations 2018 (SI 2018/1039), which make amendments to the:
  - Friendly Societies Act 1992; and
  - Friendly Societies (Accounts and Related Provisions) Regulations 1994 (SI 1994/1983).

For information on all draft SIs under the EU (Withdrawal) Act published last week, visit www.gov.uk and www.legislation.gov.uk.

CSSF issues regulation setting countercyclical buffer rate

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new regulation (18-05) on the setting of the countercyclical buffer rate for the fourth quarter of 2018. The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 10 September 2018 (CRS/2018/004) and maintains a 0% countercyclical buffer rate for relevant exposures located in Luxembourg for the fourth quarter of 2018.

The regulation entered into force on 1 October 2018.

Spanish Royal Decree-Law amending restated text of Securities Market Law published

Royal Decree-Law 14/2018, of 28 September, which amends the restated text of the Securities Market Law approved by Royal Legislative Decree 4/2015, of 23 October in order to conclude the implementation of MiFID2 in Spain, has been published.

The parts of MiFID2 implemented through this Royal Decree relate to the authorisation, conduct and supervision of investment services companies, give new supervisory powers to the regulator and establish new cooperation

obligations between the Spanish Securities Market Commission (CNMV) and other securities market regulators.

The Royal Decree also allows the CNMV to impose certain limits on the volume of net positions to be held in derivatives as well as disclosure and communication obligations on positions in certain derivatives by negotiating centres.

In addition, through the Royal Decree, the data provision services are regulated for the first time under Spanish law (including the authorisation of companies providing these services and the requirements that they need to fulfil).

Except for certain provisions that will enter into force when the required new devolving regulations to be adopted enter into force, the Royal Decree entered into force on 1 October 2018, one day after its publication in the Spanish Official Gazette (Boletín Oficial del Estado).

China further opens up its panda bond market in CIBM

The People's Bank of China (PBoC) and the Ministry of Finance (MoF) have jointly issued the Interim Measures on Bond Issuance by Overseas Institutions in the China Interbank Bond Market (CIBM), which repeal the Interim Measures on Bond Issuance by International Development Institutions in the CIBM issued in 2010.

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

- qualified offshore issuers – four types of offshore issuers are allowed to issue onshore RMB denominated bonds (Panda Bond) in the CIBM, including foreign governmental institutions, international development institutions, overseas financial institutions and overseas non-financial enterprises with legal person status;
- application and registration – bond issuances in the CIBM by overseas financial institutions are subject to the approval of the PBoC; the other three types of offshore issuers shall apply and register with the National Association of Financial Market Institutional Investors (NAFMII);
- shelf registration – subject to the corresponding procedures, foreign governmental institutions, international development institutions and overseas financial institutions that (i) have substantial experience in overseas bond issuance, or (ii) have issued bonds in China and made continuous information disclosures for more than a year, can apply to make multiple offerings within a quota; for overseas non-financial enterprises, shelf registration shall follow the relevant rules of NAFMII;
- information disclosure – where a bond issuer discloses material information in other markets, it shall at the same time or within the shortest time practical, make the disclosure in the CIBM. Disclosures should be in simplified Chinese or provided with a Chinese translation;
- accounting principles – bond issuers can use (i) PRC GAPP; or (ii) other accounting principles with a note on the material differences between such principles and PRC GAAP and a reconciliation statement; and
- rating – a rating report is not mandatory for an overseas financial institution issuer. Where an offshore issuer chooses to disclose its rating reports,

such rating report shall be issued by a recognised rating agency in the CIBM.

SFC concludes consultation on offline sale of complex products

The Securities and Futures Commission (SFC) has concluded its March 2018 further consultation on requirements applicable to the offline sale of complex products. The proposed requirements are intended to better protect clients' interests by ensuring that clients are well informed about the nature, risks and features of complex products and that complex products are suitable for them.

Under the proposed requirements, additional protective measures will be applicable to the sale of complex products in an offline environment, for example, when the sale is concluded with a client face-to-face, over the telephone or via other forms of interactive communication. The suitability of complex products will need to be ensured and clients will need to be provided with product information and warning statements. These are the same protective measures which will be introduced for the distribution of complex products on online platforms. The additional protective measures, together with other requirements in the guidelines on online distribution and advisory platforms, will become effective on 6 April 2019.

Amendments to the Code of Conduct for persons licensed by or registered with the SFC reflecting these additional measures were gazetted on 5 October 2018 and will take effect six months later on 6 April 2019.

Singapore's Variable Capital Companies Bill moved for second reading

The Variable Capital Companies Bill has been moved for its second reading in the Singapore Parliament.

The Bill provides a legislative framework for the incorporation and operation of a new corporate structure tailored specifically for investment funds. The introduction of the variable capital company (VCC) is intended to encourage fund managers to domicile their funds in Singapore and help establish a full-service fund ecosystem in Singapore.

The Bill was first read in the Singapore Parliament on 10 September 2018. In addition to the key provisions set out in the first reading of the Bill, the second reading also drew attention to the following:

- directors of a VCC will owe a fiduciary duty to act in the best interests of the VCC;
- VCCs offered to retail investors, or that have sub-funds offered to retail investors, will be required to have at least three directors on their boards, at least one of whom must be independent;
- VCCs will be subject to anti-money laundering and countering the financing of terrorism requirements, in line with international standards; and
- the tax framework for VCCs will be set out in separate legislative amendments to the relevant tax regime.

MAS publishes subsidiary legislation pursuant to Securities and Futures (Amendment) Act 2017

The Monetary Authority of Singapore (MAS) has issued the following amendment regulations, orders and notices:

- the Securities and Futures (Offers of Investments) (Shares) (Exemption for Units of Shares) (Amendment) Regulations 2018;
- the Securities and Futures (Trade Repositories) (Amendment) Regulations 2018;
- the Securities and Futures (Offers of Investments) (Prescribed Period and Prescribed Day for Registration of Prospectus and Profile Statement) (Amendment) Regulations 2018;
- the Securities and Futures (Offers of Investments) (Disapplication of Division 2 of Part XIII) (Amendment) Order 2018;
- the Securities and Futures (Offers of Investments) (Use of Term Real Estate Investment Trust) (Amendment) Order 2018;
- the Securities and Futures (Market Conduct) (Exemptions) (Amendment) Regulations 2018;
- the Securities and Futures (Corporate Governance of Approved Exchanges, Approved Clearing Houses and Approved Holding Companies) (Amendment) Regulations 2018;
- the Securities and Futures (Approved Holding Companies) (Amendment) Regulations 2018;
- the Securities and Futures (Recognised Securities Exchange) Order 2018;
- the Financial Advisers (Remuneration) (Amendment) Regulations 2018;
- the Financial Advisers (Exemption from Requirement to Hold Financial Adviser's Licence) (Amendment) Regulations 2018;
- Notice on Cancellation Period for Collective Investment Schemes Constituted as Unit Trusts [Notice No. SFA 04/13-N01 (Amendment) 2018]; and
- Notice on Technology Risk Management [Notice No. CMG-N02(Amendment) 2018].

These Amendment Regulations, Orders and Notices effect consequential changes stemming from amendments to the Securities and Futures Act (SFA), pursuant to the Securities and Futures (Amendment) Act 2017, which will come into operation on 8 October 2018.

The MAS has also issued the following subsidiary legislation to operationalise the regulatory regime for financial benchmarks:

- the Securities and Futures (Financial Benchmarks) Regulations 2018 (SF(FB)R), which set out, amongst other things, the requirements for a benchmark administrator and a benchmark submitter of a designated benchmark; and
- the Securities and Futures (Designated Benchmarks) Order 2018 (SF(DB)O) which designates the Singapore Interbank Offered Rate and the Singapore Swap Offer Rate as designated benchmarks.

The provisions of the SF(FB)R and the SF(DB)O will come into operation on 8 October 2018, except for regulations 9(2), 13(2) and 21 of the SF(FB)R, which will come into operation on 8 October 2020.

MAS publishes responses to feedback on proposed regulations, notices and guidelines under the Securities and Futures (Amendment) Act 2017

The MAS has published its responses to feedback received on consultation papers concerning draft regulations, notices and guidelines proposed pursuant to the amended SFA.

The responses to Consultation Paper I on draft regulations set out the MAS' clarifications relating to, among other things:

- the new Securities and Futures (Organised Markets) Regulations 2018 (SF(OM)R), which extends the regulatory regime to operators of organised markets for the trading of OTC derivatives and came into operation on 8 October 2018. The SF(OM)R sets out, amongst other things, the approval and recognition requirements for approved exchanges and recognised market operators, as well as the regulatory requirements applicable to approved exchanges and recognised market operators;
- the new Securities and Futures (Financial Benchmarks) Regulations; and
- amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005, including: the additional factors that the MAS may take into account when recognising a foreign fund for offer to retail investors; the conditions that a Physical Assets Fund must satisfy to rely on the exemption from prospectus and authorisation/recognition requirements; allowing Real Estate Investment Trusts (REITs) to publish pro forma financial information; and allowing restricted schemes in the form of REITs to have managers who are licensed or regulated to carry out REIT management activities in their principal place of business.

The responses to Consultation Paper II on draft regulations set out the MAS' clarifications relating to, among other things:

- amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations (SF(LCB)R) to introduce business conduct requirements and licensing exemptions for dealing in over-the-counter derivatives (OTCD) contracts, introduce enhanced requirements for protection of customers' moneys and assets held by all capital markets intermediaries, and to support changes to the product and regulated activities definitions; and
- the introduction of the new Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations (SF(OI)(SSDC)R) to extend the prospectus requirements to cash-settled securities-based derivatives contracts (including appropriate exemptions where the underlying is listed and where disclosure requirements apply to the contracts), collapse the prospectus requirements for securities and units of business trusts into one division, and combine the requirements under the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 and Securities and Futures (Offers of Investments) (Business Trusts) (No.2) Regulations 2005 into the new SF(OI)(SSDC)R.

The responses to Consultation Paper I on draft notices and guidelines set out the MAS' clarifications relating to, among other things:

- the scope of contracts for difference (CFDs) under the new Notice on Risk Fact Sheet;
- implementation of the consequential amendments to the Notice on Risk-Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences (RBC Notice), including changes to the product definitions and the extension of the capital markets licensing regime to OTC derivatives;
- amendments relating to the lending of the Singapore dollar to non-resident licensees, including the scope of capital markets services licensees to which SFA04-N04 applies, and the scope of financial institutions to which MAS Notice 757 and equivalent notices apply; and
- the interpretation of 'persons who commonly invest' in Division 3 of Part XII of the SFA.

CFTC Chairman releases white paper on cross-border swaps regulation

The Chairman of the Commodity Futures Trading Commission (CFTC) has released a white paper entitled 'Cross-Border Swaps Regulation Version 2.0: A Risk-Based Approach with Deference to Comparable Non-US Regulation'.

The paper identifies a number of adverse consequences of the CFTC's current cross-border regulation of swaps and recommends the following changes to the CFTC's cross-border approach:

- expanding the use of the CFTC's exemptive authority for non-US central clearing parties that are subject to comparable regulation in their home country and do not pose substantial risk to the US financial system, permitting them to provide clearing services to US customers indirectly through non-US clearing members that are not registered with the CFTC;
- exempting non-US trading venues in regulatory jurisdictions that have adopted comparable G20 swaps reforms from having to register with the CFTC as swap execution facilities to facilitate a unified marketplace;
- tailoring registration requirements for non-US swap dealers to address risks to the US financial system and showing appropriate deference to non-US regulatory regimes that have comparable swap dealer regulations;
- adopting an approach that permits non-US persons to rely on substituted compliance with respect to the swap clearing and trade execution requirements in comparable jurisdictions, and adopting risk-based limits on when to apply those requirements for non-US persons from non-comparable jurisdictions; and
- taking a territorial approach to US swaps trading activity, including trades that are 'arranged, negotiated, or executed' within the United States by personnel or agents of such non-US persons.

The CFTC has not announced a timeframe within which it would publish any regulatory reform proposals to address the recommendations provided in the white paper.

US Alternative Reference Rates Committee seeks public input on fallback contract provisions for syndicated loans and floating rate bonds

The US Alternative Reference Rates Committee (ARRC) has released consultations on model fallback provisions regarding the replacement of US Dollar LIBOR for syndicated loans and floating rate debt securities. These consultations outline draft language for new contracts that reference US Dollar LIBOR so as to ensure these contracts will continue to be effective in the event that LIBOR is no longer usable.

The proposed fallback provisions for floating rate bonds and syndicated business loans are tailored to each specific product but seek general consistency in defining key terms. For floating rate bonds, the proposed fallback provisions define events that would trigger a transition away from LIBOR, outline a clear waterfall for determining what rate would replace LIBOR and address how a spread adjustment to that rate would be calculated. For syndicated loans, two different approaches are proposed for comment:

- a 'hardwired' approach that would clearly specify which SOFR-based rate and which spread adjustment to use; and
- an 'amendment' approach that would provide for a streamlined amendment mechanism.

These proposals were developed by consensus within the relevant working groups of the ARRC and represent the collective work of more than fifty institutions. Public comments on these consultations should be submitted no later than 8 November 2018.

In the future, the ARRC expects to consult on proposals for model fallback provisions for other financial products (such as securitizations and bilateral loans).

SEC requests public comment on NRSRO rule amendments

The Securities and Exchange Commission (SEC) has announced the approval of proposed rule amendments intended to codify an existing temporary exemption for credit rating agencies registered with the SEC as nationally recognized statistical rating organizations (NRSROs).

Rule 17g-5(a)(3) under the Securities Exchange Act of 1934, establishes a program to provide information necessary to determine a structured finance product's credit rating to NRSROs that were not hired by the issuer, sponsor, or underwriter of the structured finance product. The SEC granted a temporary conditional exemption prior to the 2 June 2010 compliance date for Rule 17g-5(a)(3 for certain offshore transactions issued by non-US persons. This exemption has been extended several times and remains in effect.

The proposed amendments would codify the existing temporary exemption and clarify the exemption's conditions. The proposed amendments would also clarify the conditions applicable to similar exemptions in Exchange Act Rules 17g-7(a) and 15Ga-2 so that the approach among these exemptions remains consistent. Rule 17g-7(a) requires an NRSRO to disclose certain information when it publishes a rating action. Rule 15Ga-2 requires an issuer or underwriter to disclose the findings and conclusions of any third-party due

diligence report it obtains with respect to an asset-backed security that is to be rated by an NRSRO.

The public comment on the proposed rules will be open for 30 days following publication of the proposing release in the Federal Register.

RECENT CLIFFORD CHANCE BRIEFINGS

Very Pleased to Meet You – Market Rates for Introducers in Asia Pacific

Introducers have got themselves a bad name, particularly in Asia Pacific countries. Prominent and negative references to this type of third-party agent are de rigueur in anti-corruption enforcement actions. Yet, their necessary purpose in bringing potential business partners together is acknowledged by permissible inclusion even in the strictest anti-corruption compliance policies, laws and regulations. The key is to ensure that it is legitimate business opportunities that are being introduced, and not opportunities for bribery.

This briefing discusses the issues.

https://www.cliffordchance.com/briefings/2018/09/very_pleased_to_meetyoumarketratesfo.html

Labour's Plan for the Compulsory Acquisition of 10% of All Large UK Companies by 'Inclusive Ownership Funds'

The UK Labour Party announced a proposal at its annual autumn conference that would require 10% of the shares in all companies with more than 250 employees to be owned by the employees. The dividends on those shares would then be shared between employees (but capped at GBP 500 per employee), and the balance paid to the Government.

This briefing explores some of the novel legal and practical issues raised by the proposal as well as the potential for legal challenges. We also consider whether the same political objectives could be achieved in a more straightforward way.

https://www.cliffordchance.com/briefings/2018/09/labour_s_plan_forthecompulsoryacquisitiono.html

Proposed new UK national security and investment regime – implications for loans and related collateral

Under the proposed national security and investment regime announced by BEIS in its July 2018 White Paper, loans are capable of being notifiable investments and of being called in by the Government for national security screening if they give rise to or may give rise to national security risks. Although the White Paper makes it clear that 'the overwhelming majority of loans raise no national security concerns', it also makes the point that the Government must be able to intervene in cases where the loan itself or the underlying collateral are used as vehicles through which national security may be put at risk.

This briefing summarises how the Government intends to bring certain loan transactions under the national security screening regime and exploring some of the issues arising out of this proposal.

https://www.cliffordchance.com/briefings/2018/10/proposed_new_uk_nationalsecurityandinvestmen.html

New rules on supporting investments in Poland

Entrepreneurs can count on attractive tax exemptions in Poland regardless of where they locate their new investment. There should be a greater influx of investments in areas with higher unemployment. Small and medium-sized enterprises should have a better chance of obtaining support.

This briefing discusses the developments.

https://www.cliffordchance.com/briefings/2018/09/new_rules_on_supportinginvestmentsinpoland.html

Memorandum of guidance improves enforcement prospects for money judgments between Singapore and China

On 31 August 2018, the Supreme Court of Singapore and the Supreme People's Court of the People's Republic of China (PRC) signed a Memorandum of Guidance on the Recognition and Enforcement of Money Judgments in Commercial Cases. While not legally binding, this is a milestone development given that there are no treaties or other existing arrangements for reciprocal enforcement of judgments between the PRC and Singapore.

The signing of the memorandum is a welcome development for companies which have dealings with entities with assets in the PRC, as well as Chinese companies which have dealings with entities with assets in Singapore against which a judgment may potentially be enforced.

This briefing discusses the memorandum.

https://www.cliffordchance.com/briefings/2018/10/memorandum_of_guidanceimprovesenforcemen.html

Are Your Tokens Outside US Securities Law Jurisdiction? Important Extraterritoriality Decision Handed Down by US District Court

Token issuers often sell their securities offshore and consider such sales to be exempt from US securities regulation. But this raises the question of location – are the token sales in fact outside the US for securities law purposes? In In re Tezos Securities Litigation, a class action lawsuit brought by investors alleging that the tokens sold in the Tezos Initial Coin Offering were in fact securities, a federal court recently asked and answered the question: 'where does an unregistered security [transaction], purchased on the internet, and recorded "on the blockchain," actually take place?'

In the process, the court formulated a US federal securities law extraterritoriality analysis that – for what we believe is the first time ever – specifically takes the unique characteristics of blockchains into account.

This briefing discusses the decision and its potential impact on questions of jurisdiction over cryptocurrencies, ICOs, and other token offerings by issuers based abroad.

https://www.cliffordchance.com/briefings/2018/09/are_your_tokens_outsideus
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