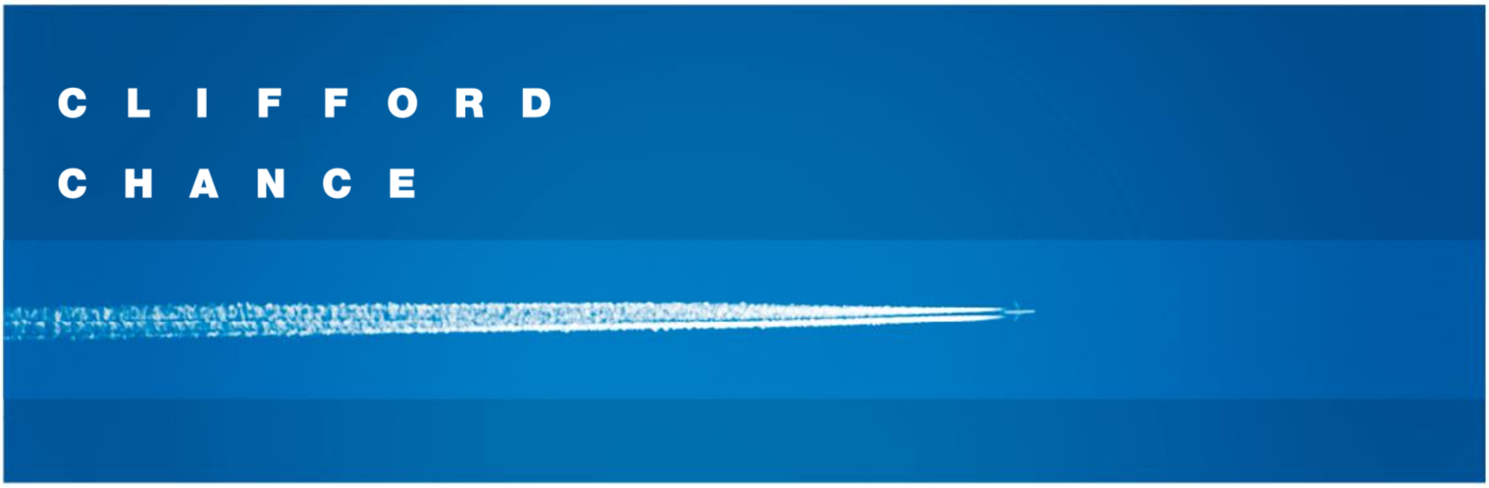

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Brexit: UK and EU negotiators reach deal on draft Withdrawal Agreement

The UK and EU have provisionally agreed a draft text of the agreement on the withdrawal of the UK from the EU and the European Atomic Energy Community (Euratom) and an outline Political Declaration on their future relationship. A special European Council has been scheduled to take place on 25 November in order to finalise and formalise the agreement. The agreement will then still have to be ratified by the UK and EU, including by a vote in both Parliaments.

The draft Withdrawal Agreement includes sections on:

- common provisions;
- citizens' rights;
- other separation issues such as goods placed on the market before the withdrawal date;
- the financial settlement;
- transitional arrangements; and
- institutional provisions.

It also includes protocols on Ireland/Northern Ireland, Gibraltar and the UK Sovereign Base Areas in Cyprus. The protocol on Northern Ireland provides for a legally operational backstop to ensure that there will be no hard border between Ireland and Northern Ireland, including a single customs territory between the EU and the UK, which will apply from the end of the transition period until such a time as a subsequent agreement becomes applicable.

The final Political Declaration on the future EU-UK relationship will be the subject of further negotiations between the two sides. The outline declaration published alongside the draft Withdrawal Agreement describes the agreed structure, scope and objectives of cooperation between the parties. On financial services, it envisages:

- commitments to preserving financial stability, market integrity, investor protection and fair competition, while respecting the parties' regulatory and decision-making autonomy and their ability to take equivalence decisions in their own interest;
- commencement of equivalence assessments by both parties as soon as possible after the UK's withdrawal, with the aim of concluding these before the end of June 2020; and
- close and structured cooperation on regulatory and supervisory matters.

Brexit: EU Commission sets out contingency action plan for no deal scenario

The EU Commission has published a communication setting out contingency measures that could be taken in the event that no deal is reached in Brexit negotiations with the UK. This follows a first preparedness communication published on 19 July 2018.

The Commission has identified the following priority areas where measures could be necessary in a no deal scenario:

- residency and visa-related issues;
- financial services;
- air transport;
- customs;
- sanitary/phytosanitary rules;
- personal data; and
- climate policy.

The communication emphasises that any contingency measures would only be taken in limited areas where they are necessary to protect the vital interests of the EU and where preparedness measures are not currently possible. They would be temporary in nature, limited in scope, adopted unilaterally by the EU and compatible with EU law.

With regard to financial services, the Commission notes that many firms have prepared for a no deal scenario by adjusting their contracts or relocating operations and activities to the EU27. While the Commission acknowledges that it will not be possible to complete this transfer of activities in time for March 2019, and that this could cause risks to financial stability, it believes that the risks in this sector linked to a no deal scenario have diminished significantly.

However, the Commission considers that financial stability risks relating to cleared derivatives remain, deriving from a disorderly close out of positions of EU clearing members in the UK central counterparties (CCPs) and also in relation to certain services provided to EU operators by UK central security depositories (CSDs) which cannot be replaced in the short term. The Commission takes the view that existing systems of equivalence provide appropriate tools in these areas and that the time remaining until March 2019 should be used in this respect.

In the event no deal is in place, the Commission will adopt temporary and conditional equivalence decisions in order to ensure that there will be no disruption in central clearing and in depositaries services. These decisions will be complemented by recognition of UK-based infrastructures, which the Commission encourages to pre-apply to ESMA for recognition. The Commission also encourages the European Supervisory Authorities (ESAs) to begin preparing cooperation arrangements with UK supervisors to ensure that exchange of information is possible immediately after the withdrawal date in the event of a no deal scenario.

Brexit: Single Resolution Board sets out expectations to ensure resolvability of banks

The Single Resolution Board (SRB) has issued a position paper setting out its expectations to ensure the resolvability of banks in the context of Brexit. The paper notes that, as a result of the UK leaving the EU, some UK or third country banking groups have decided to relocate activities currently based in the UK to the EU27 or to increase the extent or scope of existing activities there and that some banks under the SRB's remit may have significantly increased business or operational activities in third countries.

The SRB expects all banks active in the Banking Union to meet a specific set of resolvability conditions. The paper focuses on six main areas:

- MREL eligibility;
- internal loss absorbency;
- operational continuity;
- access to FMIs;
- governance; and
- management information systems.

Brexit: ESMA publishes statement on readiness of credit rating agencies and trade repositories for no-deal scenario

The European Securities and Markets Authority (ESMA) has issued a statement on the contingency plans of credit rating agencies (CRAs) and trade repositories (TRs) for the possibility of a no-deal Brexit scenario.

In its statement ESMA emphasises that, under the European Market Infrastructure Regulation, EU counterparties and central counterparties (CCPs) must report details of derivative contracts to a registered EU-established TR or a recognised third-country TR; likewise, CRAs need to have a legal entity registered in the EU and supervised by ESMA so that their ratings are used for regulatory purposes in the EU.

ESMA affirms that in the event of a no-deal Brexit, TRs and CRAs established in the UK will lose their EU registration as of the UK's withdrawal date on 30 March 2019.

ESMA encourages market participants to monitor public disclosures made by CRAs and TRs in the context of Brexit.

Brexit: ECB publishes article on preparing for supervision in euro area

The European Central Bank (ECB) has published an article entitled 'Brexit: preparing for supervision in the euro area' in the November issue of its Supervision Newsletter.

The article provides a broad overview of the process of significance and comprehensive assessments of banks relocating activities from the UK and expecting to come under direct supervision by the ECB. Among other things, the ECB highlights:

- that a significance assessment may be carried out on an ad hoc basis where a euro area bank substantially expands its activities in the context of Brexit;
- the two components of the comprehensive assessment (the asset quality review (AQR) and stress test), and the teams responsible for conducting them;
- timescales for when the ECB may assume direct supervision; and
- the role, and composition, of Joint Supervisory Teams (JSTs) in the day-to-day supervision of significant banks.

Capital Markets Union: ESMA publishes technical standards and guidance on implementation of Securitisation Regulation

ESMA has published a set of documents intended to implement the new European Securitisation Regulation and to promote simple, transparent and standardised (STS) securitisations.

In particular, ESMA has published:

- a final report on draft regulatory and implementing standards (RTS/ITS) on securitisation repository application requirements, operational standards, and access conditions;
- final technical advice on fees to be charged by ESMA for registering and supervising securitisation repositories;
- reporting instructions to provide STS notifications for public securitisations and an interim STS notification template; and
- a statement on various topics in relation to ESMA's near-term implementation activities under the Securitisation Regulation.

ESMA has submitted its RTS, ITS and technical advice to the EU Commission for endorsement.

Single Resolution Board publishes 2019 work programme

The Single Resolution Board (SRB) has published its work programme for 2019. The SRB's priorities for 2019 are:

- strengthening resolvability of SRB banks and less significant institutions (LSIs);
- fostering a robust resolution framework;
- preparing and carrying out effective crisis management;
- operationalising the Single Resolution Fund (SRF); and
- establishing a lean and efficient organisation.

CRR: Commission Implementing Regulation regarding prudent valuation for supervisory reporting published in Official Journal

Commission Implementing Regulation (EU) 2018/1627 amending Implementing Regulation (EU) 680/2014 as regards prudent valuation for supervisory reporting has been published in the Official Journal.

The Regulation will enter into force on 29 November 2018 and will apply from 1 December 2018.

Directive on combating money laundering by criminal law published in Official Journal

Directive (EU) 2018/1673 on combating money laundering by criminal law has been published in the Official Journal. The Directive 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 Directive will enter into force on 2 December 2018 and Member States will have until 3 December 2020 to transpose it into their national laws.

EMIR 2.2: EU Council Presidency publishes compromise text

The EU Council Presidency has published the latest Presidency compromise text on the proposed regulation amending the European Market Infrastructure Regulation (EMIR) as regards the procedures and authorities involved for the authorisation of central counterparties (CCPs) and requirements for the recognition of third-country CCPs.

ECON Committee publishes report on proposed regulation on cross-border payments and currency conversion charges

The EU Parliament Committee on Economic and Monetary Affairs (ECON) has published its report on the EU Commission's proposal on charges on cross-border payments in the EU and currency conversion charges.

The ECON Committee agrees with the Commission that charges should be aligned for cross-border payments within the EU and charges for domestic payments made in a Member State's currency. The proposal also includes new rules on transparency of currency conversion costs for both bank transfers and card-based transactions.

NPLs: ECON Committee publishes draft report on minimum loss coverage for non-performing exposures

The ECON Committee has published its draft report on the proposal for a regulation amending the Capital Requirements Regulation (CRR) as regards minimum loss coverage for non-performing exposures.

ECON Committee publishes report on proposed regulation on disclosures relating to sustainable investments

The ECON Committee has published its report on the proposal for a regulation on disclosures relating to sustainable investments and sustainability risks amending the IORP II Directive (2016/2341).

The proposed regulation would introduce disclosure obligations on how institutional investors and asset managers integrate environmental, social and governance (ESG) factors in their risk processes.

ECON Committee publishes reports on proposed crowdfunding framework

The ECON Committee has published its report on the proposal for a regulation on European Crowdfunding Service Providers (ECSPs) for Business.

The EU Commission is seeking to enable crowdfunding platforms to offer their services throughout Europe and to unlock early stage financing for businesses. The proposal for a Crowdfunding Regulation is the first deliverable of the EU Commission's Action Plan on how to harness the opportunities presented by technology-enabled innovation in financial services (fintech).

The ECON Committee has also published its report on the related Commission proposal for a Directive which would amend MiFID2 so that it does not apply to persons authorised as crowdfunding service providers as defined in the proposed regulation on European crowdfunding services providers.

MiFID2: ESMA publishes supervisory briefing on suitability requirements

ESMA has published an updated version of its supervisory briefing on MiFID2 suitability requirements. In December 2012 ESMA published a supervisory briefing in relation to suitability to provide guidance to national competent authorities (NCAs) in relation to the MiFID1 suitability rules.

This updated version of ESMA's suitability briefing takes into account the new version of ESMA's guidelines on suitability published in May 2018. The briefing summarises the key elements of the rules and explains associated objectives and outcomes and includes indicative questions that supervisors could ask themselves or a firm when assessing firms' approaches to the application of the MiFID2 rules.

It is structured around the following elements:

- determining situations where the suitability assessment is required;
- information to clients about the purpose of the suitability assessment;
- obtaining information from clients;
- arrangements necessary to understand investment products;
- arrangements necessary to understand the suitability of an investment;
- suitability report;
- qualifications of firm staff; and
- record keeping.

ESMA's 2012 briefing will consequently be retired as of the date of entry into application of the new 2018 guidelines.

MiFID2: ESMA issues call for evidence on frequent batch auctions

ESMA has published a call for evidence on periodic auctions for equity instruments (ESMA70-156-785).

Information is sought on the functioning of frequent batch auction trading systems, to enable ESMA to assess whether these can be used to circumvent the double volume cap (DVC) mechanism and other pre-trade transparency requirements under MiFID2.

Among other things, feedback is sought on:

- the main factors driving the rising market share for equity trading on frequent batch auctions;
- the main characteristics of frequent batch auctions;
- the compatibility of these trading systems with the MiFID2 transparency framework; and

- whether trading under these systems should be subject to stricter requirements in the future.

The call for evidence closes on 11 January 2019.

MMF Regulation: ESMA consults on future disclosure guidelines

ESMA has issued a consultation on draft guidelines on reporting to competent authorities under Article 37 of the Money Market Funds (MMF) Regulation.

Following the publication of implementing technical standards (ITS) establishing a reporting template that managers of MMFs must use to send information to the relevant national competent authority (NCA) in April 2018, ESMA worked on guidelines and IT guidance to complement the ITS.

In this consultation, ESMA is seeking feedback on draft guidelines that provide further specifications on how to complete the MMF Regulation reporting template.

MMF managers must send their first Article 37 quarterly report in Q1 2020 but will not be required retroactively to provide historical data for any prior period.

Comments are due by 14 February 2019.

ECB publishes first chapter of guide to internal models

The European Central Bank (ECB) has published the first chapter of its guide to internal models. The guide provides transparency regarding the ECB's understanding of the most relevant aspects of the applicable regulations on internal models for the institutions it directly supervises.

The first chapter on internal models contains principles for topics that are not risk-type specific, in particular for the internal ratings-based (IRB) approach: overarching principles, implementation of the IRB approach, internal governance, internal validation, internal audit, model use, model change management and third-party involvement. The consolidated version of the revised guide will also include risk-type specific chapters for credit, market and counterparty credit risk.

The ECB consulted on a draft version of the guide in February 2017 and consulted with national competent authorities (NCAs) on its content.

IOSCO consults on proposed framework assessing leverage in investment funds

The International Organization of Securities Commissions (IOSCO) has published a proposed framework to assess leverage used by investment funds.

In its January 2017 report on assessing structural vulnerabilities from asset management activities, the Financial Stability Board (FSB) asked IOSCO to identify and/or develop consistent measures of leverage in funds to facilitate more meaningful monitoring of leverage for financial stability purposes and help enable direct comparisons between funds and at a global level.

IOSCO proposes a two-step framework:

- the first step provides an approach to how regulators could use exposure metrics complemented by additional information to filter and select a subset of investment funds for further analysis;

- the second step then focuses on risk-based analysis on the subset of funds identified in the first step. IOSCO expects each jurisdiction to determine the most appropriate risk assessment for it to adopt as some risk-based measures are not appropriate for all funds.

The consultation's main focus is the first step, although IOSCO welcomes feedback on the second step and the design of its two-step approach.

IOSCO's framework aims to balance achieving precise leverage measurements and devising simple, robust metrics that can be applied in a consistent manner to a wide range of funds in different jurisdictions. It also addresses synthetic leverage by including exposure created by derivatives, different approaches to analysing netting and hedging and the directionality of positions and includes approaches that limit model risk.

Comments are due by 1 February 2019.

FSB publishes progress report on reforming major interest rate benchmarks

The FSB has published its latest progress report on the implementation of its recommendations to reform major interest rate benchmarks.

In 2014, the FSB set out recommendations to reform major interest rate benchmarks, such as key interbank offered rates (IBORs). The report sets out the progress made since the 2017 report on the development of overnight nearly risk-free rates (RFRs), markets based on these rates, and on further reforms to IBORs.

The progress report considers three key areas:

- IBORs – work has continued among EURIBOR and TIBOR to strengthen existing methodologies to make them more grounded in actual transactions, as well as to strengthen regulatory frameworks and supervision;
- alternative reference rates – progress has been made to identify RFRs and other alternative reference rates in currency areas currently reliant on LIBOR benchmarks, as well as to plan for, and in some markets begin to execute, transition to those RFRs; and
- enhancing contractual robustness – work continues on the part of FSB member authorities, national working groups, the International Swaps and Derivatives Association (ISDA) and other trade associations on the task of strengthening contractual robustness to the risk of discontinuation of major interest rate benchmarks.

The FSB intends to publish a further progress report in late 2019.

Resolution of CCPs: FSB consults on financial resources and publishes 2018 resolution report

The FSB has published its 2018 resolution report and issued a discussion paper on financial resources to support central counterparty (CCP) resolution and on the treatment of equity in resolution.

The FSB, along with the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO), has drafted considerations that may be relevant for authorities and crisis management groups (CMGs) with regard to evaluating whether existing financial resources and tools are adequate to implement the resolution strategy for individual CCPs and considerations that could guide authorities in developing possible approaches to the treatment of CCP equity in resolution.

The FSB does not intend the discussion paper to be viewed as proposed guidance, but that any responses to the paper along with the experience of authorities in evaluating financial resources for resolution should assist the FSB in the development of further guidance by end 2020. Comments on the discussion paper are due by 1 February 2019.

The FSB's 2018 resolution report provides an update on progress in implementing the framework and policy measures to enhance the resolvability of systemically important financial institutions and sets out priorities for the FSB's resolution work.

The report finds that substantial reforms to mitigate too-big-to-fail (TBTF) have been undertaken in most jurisdictions, with implementation most advanced in the banking sector. For insurance companies and CCPs progress is less advanced. The report concludes that it is necessary to maintain pressure on firms to continue strengthening their resolvability and on authorities to complete and fully implement the reforms.

Beginning in 2019, the FSB plans to evaluate the efforts of the TBTF reforms in order to determine whether they are achieving their objectives and if there have been any unintended material consequences.

FSB publishes annual list of G-SIBs

The FSB has published its annual list of global systemically important banks (G-SIBs). Groupe BPCE has been added back to the list after being removed in 2017, and Nordea and the Royal Bank of Scotland have been removed, reducing the overall number of G-SIBs to 29, one fewer than the 2017 list. Several banks have also been allocated to different buckets, which determine the level of capital buffers they require.

Alongside the updated list of G-SIBs, the Basel Committee on Banking Supervision (BCBS) has published further details on the assessment process, including the full sample of banks assessed, updated denominators used to calculate their scores and the thresholds used to allocate them to buckets.

Brexit: SIs under the EU (Withdrawal) Act for 12 – 16 November 2018

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

HM Treasury (HMT) published guidance drafts of the:

- Interchange Fee (Amendment) (EU Exit) Regulations 2018; and
- Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018.

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 proposals, may change before the final instruments are laid before Parliament.

The Provision of Services (Amendment) (EU Exit) Regulations 2018 have been laid for sifting. SIs going through the sifting process are considered by a committee in the House of Commons and the House of Lords, which determine the suitability of the 'negative procedure'. The sifting end date for this instrument is 27 November 2018.

The draft Venture Capital Funds (Amendment) (EU Exit) Regulations 2018, draft Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2018, and draft Capital Requirements (Amendment) (EU Exit) Regulations 2018 have been laid before Parliament.

The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1184) have been made. SI 2018/1184 amends the European Market Infrastructure Regulation (EMIR) in relation to the recognition of third country central counterparties (CCPs) and makes consequential amendments and transitional provisions.

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

Securitisation Regulation: PRA publishes policy and supervisory statements on new EU framework and significant risk transfer

The Prudential Regulation Authority (PRA) has published a policy statement (PS29/18) providing feedback to its earlier consultation (CP12/18) on its approach to the new EU securitisation framework and certain aspects of the revised Capital Requirements Regulation (CRR) framework.

PS29/18 also sets out the PRA's final policy in relation to:

- general requirements and capital framework (SS10/18);
- significant risk transfer (SS9/13); and
- the internal capital adequacy assessment process (ICAAP) and the supervisory review and evaluation process (SREP)(SS31/15).

SS10/18 and SS31/15 come into effect from 1 January 2019. The updated policies amending SS9/13 apply from 15 November 2018.

PS29/18 affects all PRA-authorised CRD 4 and all PRA-authorised Solvency II firms with reference to the implementation of the Securitisation Regulation, but some parts of the policy relating to the revision to the banking securitisation capital framework and SRT securitisation are only relevant to PRA-authorised CRD 4 firms.

PRA publishes policy statement on applying systemic risk buffer framework

The PRA has published a policy statement setting out feedback to its consultation and final policy on amending the UK leverage ratio to reflect the systemic risk buffer (SRB) framework. The SRB framework, which is expected to be implemented in 2019, subjects domestic systemically important banks (D-SIBs) to a leverage ratio buffer which mirrors their risk-weighted capital requirements.

The PRA received one response to its consultation, which requested clarification on the scope and timing of the proposals. This has been addressed by the PRA in chapter 2 of its statement and the rules have otherwise been published without change from the version consulted upon.

The final policy applies the SRB framework in the UK leverage ratio by amending the following:

- the Leverage Ratio, Public Disclosure, Reporting Leverage Ratio, and Ring-fenced Bodies Parts of the PRA Rulebook; and
- supervisory statements 'The UK leverage ratio framework' (SS45/15) and 'UK leverage ratio: instructions for completing data items FSA083 and FSA084' (SS46/15); and
- FSA083 Leverage Ratio Reporting template and instructions.

The changes to the rules and expectations and the new versions of the FSA083 template and accompanying instructions come into effect from 1 January 2019.

FCA consults on fees and levies policies for 2019/20

The Financial Conduct Authority (FCA) has launched a consultation (CP18/34) on proposed policy changes to the way it will raise fees from 2019/20.

CP18/34 is part of the FCA's annual cycle of consultation on fees, and sets out the FCA's proposals on:

- the fees structure for credit rating agencies and trade repositories if responsibility for their regulation passes to the FCA from the European Securities and Markets Authority (ESMA) when the UK leaves the European Union on 29 March 2019;
- discontinuing fee-block F. This contains mutual societies that are registered by the FCA on the mutuals register but not authorised or regulated by the FCA. The register is maintained as a public service, the cost of which the FCA intends to recover as an FCA overhead;
- defining the data used to calculate periodic fees for insurers and making adjustments to the weightings the FCA applies to the premium and liabilities elements of the data;
- clarifying how the FCA applies on-account payment rules to the illegal moneylending levy and the Single Financial Guidance Body (SFGB) levies;
- streamlining the process of setting consumer credit fees by exempting community finance organisations and credit unions; and
- designating part of the contributions by UK firms to debt advice funding across the UK for the devolved authorities' debt advice in Scotland, Wales and Northern Ireland.

Comments are due by 14 January 2018.

BaFin publishes guidance note on outsourcing to cloud providers

The German Federal Financial Supervisory Authority (BaFin) has published a guidance note on outsourcing to cloud service providers.

In the guidance note BaFin and Deutsche Bundesbank describe the current supervisory practice regarding outsourcing to cloud service providers.

The guidance note is addressed to credit institutions, financial services institutions, insurance companies, pension funds, securities service providers, capital management companies, payment institutions and e-money institutions.

DNB calls on exempted payment service providers and electronic money institutions to renew their registration under PSD2

The Dutch Central Bank (DNB) has called on exempted payment service providers and electronic money institutions to renew their registration under PSD2. PSD2 has not yet been implemented in the Netherlands, but the current implementation proposal provides that registrations of exempt firms under PSD1 remain valid until 13 January 2019. After that date, their exemption and registration in the public register will remain valid only if they have submitted evidence showing that they meet the PSD2 exemption requirements.

As the exemption requirements under PDS2 do not differ substantively from the requirements under PSD1, entities renewing their registration would typically submit the previously submitted evidence. If DNB has not established that a relevant firm meets the exemption requirements by 13 January 2019, it will have to delete that firm from the public register. In that case, firms must discontinue their operations as soon as possible or legalise them, for example by modifying them or obtaining a licence.

DNB has indicated that it has notified the exempted payment services providers which are known to it and requested them to reply no later than 1 December 2018 through DNB's Digital Supervision Portal. Any other relevant firm should contact DNB.

CNMV suspends certain waivers on pre-trade transparency requirements for trading in specific listed shares for six months

On 9 November 2018, ESMA published data relating to the double volume cap volume limitation mechanism which showed that the 8% threshold set out in Article 5(1)(b) of MiFIR had been exceeded with respect to certain financial instruments admitted to trading on the Spanish Stock Exchange Markets.

Accordingly, the Spanish National Securities Market Commission (CNMV) has decided to suspend, from 14 November 2018 until 13 May 2019 inclusive, the use of transparency waivers on trading orders at prices referenced to another market, regulated under Article 4(1)(a) of MiFIR, on the Stock Exchanges, since the 8% threshold referred to in Article 5(1)(b) of MiFIR has been exceeded with respect to the trading in the following financial instrument: ISIN code ES0105251005 ISSUER name Neinor Homes, S.A.

MiFIR establishes certain pre-trading transparency requirements applicable to shares and other financial instruments, in recognition of the possibility of trading venues requesting the competent authority to implement waivers. The waivers granted include those on orders at reference prices (reference price waivers) and those on negotiated or pre-agreed transactions (negotiated transaction waivers).

However, in order to ensure that the use of reference price waivers and certain negotiated transaction waivers does not unnecessarily hinder price formation, MiFIR imposes a double cap on trading carried out under such waivers and, consequently, the competent authority must suspend the use of waivers in both the following scenarios for six months:

- the percentage of trading in a financial instrument on a single trading venue under the waivers exceeds 4% of the total trading volume in that financial instrument across all EU trading venues over the previous 12 months; or
- the total trading in a financial instrument throughout the EU under these waivers exceeds 8% of the total trading volume in that financial instrument across all EU trading venues over the previous 12 months.

In Spain, the CNMV has authorised a waiver on transaction matching, on shares or ETFs admitted to trading on the Spanish Stock Exchange Markets and MAB or LATIBEX, at the average price of the best current buying and selling position in a reference market. This waiver is included in the categorisation of reference price waivers and is, therefore, subject to the volume limitation mechanism described above.

Ministry of Economy and Business launches public hearing on amendments to Law 10/2010 on prevention of money laundering and terrorism financing

The Ministry of Economy and Business is conducting a public hearing on the amendment of Law 10/2010, of 28 April, on prevention of money laundering and terrorism financing, to adapt its content to the Fifth Anti-Money Laundering Directive (EU) 2018/843 (AMLD5), to gather the opinions and proposals of persons and entities that might be affected by the implementation of these rules.

The public hearing responds to the need to adapt the Spanish legal framework to the relevant European regulations so that AMLD5 is fully applicable and enforceable by 10 January 2020, in accordance with the scheduled timeline.

Among other things, the public hearing is intended to:

- review the content of the relevant register or data retrieval system regarding the information on the identity of holders of bank and payment accounts and safe-deposit boxes, their proxy holders, and their beneficial owners;
- determine how to monitor and record the relevant beneficial ownership information of trusts or similar legal arrangements as well as corporate legal entities in Spain;
- regulate new sectors such as providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers;
- review and update Spanish data protection rules in order to adapt their content to the General Data Protection Regulation (GDPR); and
- review the relevant electronic identification systems as set out in Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

The public hearing will end on 27 November 2018.

Public hearing on CNMV's adoption of intervention measures regarding binary options and CFDs launched

A public hearing on the adoption by the CNMV of intervention measures regarding binary options and contracts for differences (CFDs) has been launched to gather relevant opinions from market participants in connection with the measures.

On 22 May 2018, the European Securities and Markets Authority (ESMA) decided to temporarily prohibit the marketing, distribution or selling of binary options and to restrict the marketing, distribution or selling of CFDs to retail investors. These measures were applied pursuant to Article 40 of MiFIR, which also states that ESMA should review these measures at appropriate intervals and at least every three months.

The CNMV has decided to adopt a resolution on the implementation of these measures in Spain on an indefinite basis. Among others, measures adopted by ESMA that the CNMV is considering adopting are:

- the prohibition of marketing, distribution or selling of binary options to retail investors; and
- the implementation of a series of limits and requirements on the marketing, distribution or selling of CFDs to retail investors, such as leverage limits on opening positions, a margin close-out protection and the standardisation of the percentage at which CFD providers are required to close out a client's open CFD, a negative balance protection on a per account basis, preventing the use of incentives by CFD providers, and a firm specific risk warning delivered in a standardised way.

The public hearing is mainly intended for issuing companies, investment firms, credit institutions and investor associations and will be open until 30 November 2018.

Commencement notice, exposure limits rules, revised capital rules and revised disclosure rules under Banking Ordinance gazetted

The Hong Kong Government has gazetted the Banking (Amendment) Ordinance 2018 (Commencement) (No. 2) Notice 2018, the Banking (Exposure Limits) Rules, the Banking (Capital) (Amendment) Rules 2018 and the Banking (Disclosure) (Amendment) (No. 2) Rules 2018 to implement recent international standards on banking regulation in Hong Kong.

The three sets of banking rules are principally intended to implement the following standards issued by the Basel Committee on Banking Supervision:

- the 'internal assessment approach' of the 2014 revised securitisation framework (further revised in 2016), which is a methodology for calculating capital requirements of certain securitisation exposures in asset-backed commercial paper programmes;
- the 2016 'total loss absorbing capacity' (TLAC) holdings standard, which generally sets out the regulatory capital treatment of banks' holdings of certain subordinated instruments capable of absorbing losses should the issuing entities become non-viable; and
- the 2014 'standards supervisory framework' for measuring and controlling large exposures, together with certain local capital and disclosure

requirements on concentration risk in sovereign exposures to complement the implementation of the standards.

The Commencement Notice appoints 1 July 2019 as the commencement date for repeal of the relevant provisions of the Banking Ordinance, which will be replaced by the Banking (Exposure Limits) Rules to be effected on the same day.

The four pieces of subsidiary legislation will be tabled before the Legislative Council on 21 November 2018 for negative vetting and will come into operation respectively on 11 January 2019 for 'internal assessment approach' under the revised securitisation framework, 1 April 2019 for TLAC holdings standard and 1 July 2019 for standards supervisory framework.

MAS responds to feedback on proposed regulations to enhance resolution regime for financial institutions in Singapore, commences further provisions of MAS (Amendment) Act 2017 and issues new regulations

The Monetary Authority of Singapore (MAS) has published its responses to the feedback it received on its July 2018 public consultation on proposed regulations to enhance the resolution regime for financial institutions (FIs) in Singapore to support the amendments in the Monetary Authority of Singapore (Amendment) Act 2017.

Amongst other things, the MAS has provided responses in relation to:

- temporary stays on termination rights;
- the statutory bail-in regime;
- the creditor compensation framework; and
- resolution funding arrangements.

In its responses, the MAS has clarified the following:

- that the entities exempted from the operation of temporary stays on termination rights are intended to be limited to the scope of entities consulted on for now, i.e. central banks, designated payment systems, approved clearing houses, recognised clearing houses and depositories;
- that the exemption from temporary stays on termination rights applies to both financial and non-financial contracts;
- that at this time, the MAS will not promulgate regulations on the framework for a contractual recognition requirement in relation to the MAS' temporary stay powers;
- the scope of eligible instruments subject to statutory bail-in;
- that in-scope financial institutions will be required to provide an independent legal opinion on the enforceability of the contractual recognition provisions in relation to the MAS' statutory bail-in powers prior to the issuance of an eligible instrument, but that the MAS may allow the financial institution up to 10 days after the issuance date of the eligible instrument to provide that legal opinion;
- that the front cover of the offering document of eligible instructions subject to the statutory bail-in regime must state, at the minimum, that the instrument or certain instruments issued under the programme may be

subject to cancellation, modification, conversion, or change in form under a bail-in certificate; and

- that the revised requirements in relation to the statutory bail-in regime will apply in respect of eligible instruments issued on or after 29 November 2018.

In addition, the MAS has indicated that the Monetary Authority of Singapore (Control and Resolution of FIs) Regulations 2013 and the Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018 will be revoked.

In their place the MAS has issued:

- the Monetary Authority of Singapore (Control of FIs) Regulations 2018; and
- the Monetary Authority of Singapore (Resolution of FIs) Regulations 2018.

The changes have been effective from 29 October 2018 unless otherwise stated. In addition, new regulations relating to resolution funding arrangements under the Deposit Insurance and Policy Owners' Protection Schemes Act will be issued at a later date.

The MAS has also issued the Monetary Authority of Singapore (Amendment) Act 2017 (Commencement) (No.2) Notification 2018 which designates 29 October 2018 as the commencement date of sections 8, 13, 14, 17 to 32, 36(1) and (4), 40, 43(c) to (i), 46(a) and (b) and 48(a) of the Amendment Act.

MAS responds to feedback received on its proposed regulatory capital treatment of banks' holdings of TLAC liabilities

The MAS has published its responses to the feedback it received in relation to the consultation paper issued on 9 April 2018 on the proposed regulatory capital treatment of banks' holdings of total loss-absorbing capacity liabilities (TLAC) set out in MAS Notice 637 on risk-based capital adequacy requirements for banks incorporated in Singapore.

The revisions to MAS Notice 637 relating to the proposals in the 9 April 2018 consultation paper will take effect from 1 January 2019.

Amongst other things, the MAS has clarified its proposals as follows:

- the regulatory adjustments relating to TLAC holdings:
  - will apply to TLAC-eligible instruments issued by global systemically important banks (G-SIBs) from the date at which the issuing G-SIB becomes subject to a minimum TLAC requirement by its home authority; and
  - will not apply to TLAC-eligible instruments issued by non-G-SIBs that are subject to minimum TLAC requirements;
- the TLAC-specific threshold will be 5%, which is aligned with the Basel Committee on Banking Supervision's TLAC holdings standard and a deduction of non-regulatory capital TLAC instruments from Tier 2 capital will still be required to provide a single treatment that can be applied consistently by both G-SIBs and non-G-SIBs; and
- reporting banks are not required to obtain the MAS' approval for the designation of other TLAC liabilities under the additional 5% TLAC-specific

threshold, but are required to report the amount of other TLAC liabilities designated for the 5% threshold under Reporting Schedule 1A Part A.

MAS responds to feedback received on proposed amendments to widen scope of eligible collateral

The MAS has published its response to the feedback it received in relation to its consultation paper issued on 20 December 2017 on proposed amendments to the MAS Notice 637 on risk-based capital adequacy requirements for banks incorporated in Singapore to widen the scope of eligible collateral relating to commodities and equity securities that may be recognised for credit risk mitigation purposes.

The revisions to MAS Notice 637 relating to the proposals in the 20 December 2017 consultation paper will take effect from 16 November 2018.

The MAS has clarified that:

- the term 'commodity' will be defined in paragraph 2.5A of Annex 7F of the MAS Notice 637 to mean:
  - any produce, item, good or article; or
  - any index, right or interest in any produce, item, good or article, and
- a reporting bank must ensure that it meets the legal and operational requirements for the recognition of eligible physical collateral set out in Annex 7F of MAS Notice 637. This includes ensuring that any commodity it recognises has liquid markets for disposal in an expeditious and economically efficient manner, and well-established and publicly available market prices.

MAS responds to feedback received on proposed amendments to capital framework for interest rate risk in banking book

The MAS issued a consultation paper on 9 January 2017 on proposed amendments to the capital framework for securitisation exposures and interest rate risk in the banking book (IRRBB) set out in the MAS Notice 637. Its responses to the feedback received on the proposed amendments for securitisation exposures were published on 29 November 2017 and took effect from 1 January 2018.

On 13 November 2018, the MAS published its responses to the feedback received on the proposed amendments for IRRBB. The amendments relating to IRRBB in MAS Notice 637 will take effect from 31 December 2018.

Amongst other things, the MAS has clarified its proposals as follows:

- where a reporting bank has adopted the Standardised Approach for calculating IRRBB (SA(IR)) wholly as its internal measurement system for baseline estimates for loan prepayments and early withdrawal of fixed-term deposits, the bank is required to submit all relevant documentation on computing such baseline estimates, including the methodology and assumptions used, for the MAS' approval prior to the use of such baseline estimates. However, the MAS does not require a reporting bank to seek prior approval of the baseline estimates where the bank has elected to adopt the SA(IR) in part as its internal measurement system, unless directed otherwise by the MAS;

- the MAS will collect IRRBB data on economic value of equity and net interest income relating to material currencies rather than the top six currencies; and
- the MAS will delay the implementation of the revised Pillar 3 disclosure requirements for IRRBB until a later date. In the interim, banks will continue to be subject to current Pillar 3 disclosure requirements for IRRBB.

MAS introduces new FEAT principles to promote responsible use of artificial intelligence and data analytics in Singapore's financial sector

The MAS has released a set of principles to promote fairness, ethics, accountability and transparency (FEAT) in the use of artificial intelligence and data analytics (AIDA) in Singapore's financial sector. The principles aim to:

- provide firms with a set of foundational principles to consider when using AIDA in decision-making;
- assist firms in contextualising and operationalising governance of the use of AIDA in their own business models and structures; and
- promote public confidence and trust in the use of AIDA.

Amongst other things, firms are advised to consider the following principles when assessing existing or developing new internal frameworks to govern the use of AIDA:

- the principle of fairness, which focuses on two key aspects:
  - justifiability – individual or groups of individuals should not be systematically disadvantaged through AIDA-driven decisions, unless these decisions can be justified. Use of personal attributes as input factors for AIDA-driven decisions is justified; and
  - accuracy and bias – data and models used for AIDA-driven decisions should be regularly reviewed and validated for accuracy and relevance, to minimise unintentional bias, and to ensure that they behave as designed and intended;
- the principle of ethics – use of AIDA should be aligned with firms' ethical standards, values and codes of conduct and AIDA-driven decisions should be held at least to the same ethical standards as human decisions;
- the principle of accountability, which focuses on two key aspects:
  - internal accountability – use of AIDA should be approved by the appropriate internal authority and firms using AIDA should be accountable for both internally developed and externally sourced AIDA models and should proactively raise management and Board awareness of the use of AIDA; and
  - external accountability – data subjects should be provided with channels to enquire about, submit appeals for and request reviews of AIDA-driven decisions that affect them and verified and relevant supplementary data provided by data subjects should be considered when performing a review of AIDA-driven decisions; and
- the principle of transparency – use of AIDA should be proactively disclosed to data subjects to increase public confidence and data subjects should be

provided, upon request, with clear explanations on what data is used to make AIDA-driven decisions about the data subject and how the data affects the decision together with clear explanations on the consequences that AIDA-driven decisions may have on them.

MAS proposes new regulatory sandbox with fast-track approvals

The MAS has launched a consultation on the creation of pre-defined sandboxes, known as Sandbox Express, to complement the existing FinTech Regulatory Sandbox that was launched in 2016.

The Sandbox Express is intended to enable firms that are proposing to conduct certain regulated activities, which MAS has identified as generally low risk and well understood, to embark on experiments more quickly without needing to go through the existing bespoke sandbox application and approval process.

The MAS has proposed that the Sandbox Express start with sandboxes specifically pre-defined for insurance broking, recognised market operators (RMOs) and remittances. The list will be reviewed over time to meet the evolving needs and interests of the financial industry.

When using the Sandbox Express, each applicant will need to declare that it is able to comply with all expectations of the pre-defined sandbox that it has applied for, including providing clear disclosure and obtaining an acknowledgement from the user before the user can be on-boarded as a customer.

The applications will be fast-tracked, and the MAS will endeavour to respond to an applicant within 21 days from the date of receiving the application. The MAS' assessment will be based on the following two criteria:

- the level of technological innovation of the financial service; and
- the fitness and propriety of the applicant's key stakeholders.

An approved pre-defined sandbox entity will be required to submit periodic progress reports to the MAS and ensure that the pre-defined sandbox expectations are adhered to.

In particular, the MAS is seeking comments on:

- the initial set of pre-defined sandboxes, and whether other regulated activities could be suitable for the Sandbox Express;
- the proposed guidelines for the Sandbox Express; and
- the proposed constructs for (a) the insurance broking predefined sandbox, (b) the RMO pre-defined sandbox and (c) the remittances pre-defined sandbox.

Comments on the consultation are due by 13 December 2018.

RECENT CLIFFORD CHANCE BRIEFINGS

UK and EU agree Brexit deal – what does it mean, and what happens next?

The UK and EU have provisionally agreed a draft Withdrawal Agreement and outline Political Declaration on their future relationship. A special European

Council has been scheduled to take place on 25 November to sign the agreement.

The greatest risks are posed by the lack of Cabinet support (with key resignations already announced), disparate factions within the Conservatives and, ultimately if it gets that far, the UK House of Commons voting against the deal. The Withdrawal Agreement has generated intense opposition from across the UK political spectrum – not least the resignation of Dominic Raab, the Brexit Secretary.

This briefing considers the substance and implications of the emerging deal, the next steps, and the complex risks and multiple possible scenarios that arise between now and 29 March 2019, and beyond.

https://www.cliffordchance.com/briefings/2018/11/uk_and_eu_agree_brexitdealwhatdoesitmean.html

Contentious Commentary – a review for litigators

The latest edition of Clifford Chance's 'Contentious Commentary' has been published. Produced by lawyers in the litigation and dispute resolution practice at Clifford Chance, this issue covers cases dealing with questions of contract, crime, private international law, tort and the courts.

https://www.cliffordchance.com/briefings/2018/11/contentious_commentary-november2018.html

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