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ESMA issues public statement on managing no-deal Brexit risks in area of central clearing

The European Securities and Markets Authority (ESMA) has issued a public statement on managing the risks of a no-deal Brexit in the area of central clearing. ESMA has welcomed the EU Commission's approach set out in the contingency Action Plan, which was published on 13 November 2018, and stated that the Commission will adopt a temporary and conditional equivalence decision in order to ensure that there will be no disruption to central clearing arising from the withdrawal of the UK without any agreement.

ESMA has highlighted that it is engaging with the Commission to plan, as far as possible, preparatory actions for the recognition process of UK CCPs in case of a no-deal scenario. ESMA has also started to engage with UK CCPs to carry out preparatory work.

EPC publishes revised versions of 2017 SEPA payment schemes rulebooks

The European Payments Council (EPC) has published updated versions of the 2017 rulebooks for the SEPA Credit Transfer (SCT) scheme, SEPA Instant Credit Transfer (SCT Inst) scheme, SEPA Direct Debit Core (SDD Core) scheme and SDD Business-to-Business (SDD B2B) scheme.

The rulebooks have been revised to reflect:

- the updated definition of 'major incidents' to refer to the Eurosystem major incident reporting framework for payment schemes and retail payment systems, which enters into force on 1 January 2019; and
- version 4.2 of the Scheme Management Internal Rules (SMIRs).

No changes have been made to the business and operational rules.

The updated rulebooks will become effective on 1 January 2019 and will be applicable until 17 November 2019.

CRR: EBA publishes final draft technical standards on specification of an economic downturn

The European Banking Authority (EBA) has published its final draft regulatory technical standards (RTS) specifying the nature, severity and duration of an economic downturn. The standards conclude the EBA's regulatory review of the internal rating-based (IRB) approach.

The final draft RTS set out the notion of economic downturn to be taken into account when estimating the loss given default (LGD) and the conversion factors (CF).

The notion of an economic downturn to be taken into account for the purpose of loss given default downturn conditions (LGD DT) and conversion factors downturn conditions (CF DT) estimation and introduced in these draft RTS comprises all downturn periods that may be relevant for the type of exposures under consideration. The economic downturn is specified via three aspects:

- its nature, defined as a set of economic factors relevant for the type of exposures under consideration;
- its severity, specified as the set of the most severe values observed over a given historical period on the relevant economic factors; and
- its duration, specified as the set of durations of the downturn periods constituting the economic downturn under consideration. A downturn period in the context of these RTS is defined as a period of time of at least 12 months during which the most severe values of several correlated relevant economic factors are reached simultaneously or shortly after each other.

An institution's identification of an economic downturn for a considered rating system has to be reviewed annually and updated in the event a new downturn period is identified.

The draft RTS will be submitted to the Commission for endorsement before being published in the Official Journal. The RTS will apply from 1 January 2021.

MREL: SRB publishes 2018 policy statement

The Single Resolution Board (SRB), alongside Banking Union national resolution authorities, has published the 2018 policy statement on the minimum requirement for own funds and eligible liabilities (MREL).

The policy statement is intended to serve as a point of reference for the determination of SRB decisions on MREL for banks that did not have binding targets in 2017. The policy statement updates the general MREL approach published in December 2017, by catering for all resolution tools and removing references to the Basel I floor in the MREL formula.

For the most complex banks, the current planning cycle started in summer 2018. Therefore, the SRB has determined that MREL setting for these groups will be based on an enhanced MREL policy to be published separately.

FSB publishes reports on OTC derivatives market reforms

The Financial Stability Board (FSB) has published reports on the implementation of the G20's OTC derivatives reform agenda and FSB member jurisdictions' actions to remove legal barriers relating to OTC derivatives trade reporting.

The FSB's thirteenth progress report on the implementation of OTC derivatives market reforms finds that good progress overall continued to be made in member jurisdictions in the areas of trade reporting, central clearing, margin requirements for non-centrally cleared derivatives, platform trading and cross-border coordination. In the area of higher capital requirements for margin, the report finds that the number of jurisdictions that have implemented the final standardised approach for counterparty credit risk and capital requirements for bank exposures to central counterparties (CCPs) is low, and the FSB has urged jurisdictions to implement those requirements without delay.

In 2015 the FSB published a peer review setting out recommendations to remove or address legal barriers to full reporting of OTC derivatives data to trade repositories (TRs), and to access by authorities to trade data held in TRs. The follow-up report assesses the progress on the below recommendations with implementation dates in 2018:

- barriers to full trade reporting – all but three member jurisdictions have removed or addressed barriers;
- masking – five member jurisdictions allow masking of counterparty identifiers for some transactions, and the percentage of masked trades is relatively low, typically 5% or under; and
- regulators' access to TR data – changes are underway in seven jurisdictions to address or remove barriers to access to TR data by foreign authorities and/or non-primary domestic authorities, including legal barriers which have only recently been removed.

A number of supplementary recommendations have been made by the FSB, which will continue to monitor implementation.

FSB, Basel Committee, CPMI and IOSCO publish final report on incentives to centrally clear OTC derivatives

The FSB, the Basel Committee on Banking Supervision (BCBS), the Committee on Payments and Market Infrastructures (CPMI), and the International Organization of Securities Commissions (IOSCO), have jointly published a final report on the effects of reforms on incentives to centrally clear OTC derivatives.

The report follows on from a joint consultative report issued in August 2018 evaluating the effects of the G20 financial regulatory reforms and considering how the reforms interact and how they affected incentives. Along with the report, an overview of responses to the August 2018 consultative report has also been published.

The central clearing of standardised OTC derivatives is a pillar of the G20 leaders' commitments to reform OTC derivatives markets in response to the financial crisis. The report sets out the findings of work undertaken by the four

standard-setting bodies to re-examine whether adequate incentives to clear OTC derivatives were in place.

The data and analysis suggests that:

- changes observed in OTC derivatives markets are consistent with the G20 leaders' objective of promoting central clearing as part of mitigating systemic risk and making derivatives safer;
- relevant post-crisis reforms, in particular the capital, margin and clearing reforms, taken together, appear to create an overall incentive, at least for dealers and larger and more active clients, to centrally clear OTC derivatives;
- non-regulatory factors are also important and can interact with regulatory factors to affect incentives to centrally clear;
- some categories of clients have less strong incentives to use central clearing, and may have a lower degree of access to central clearing;
- the provision of client clearing services is concentrated in a relatively small number of bank-affiliated clearing firms; and
- some aspects of regulatory reform may not incentivise provision of client clearing services.

While the analysis suggests that overall the reforms are achieving the goal of promoting central clearing, it has also found that the treatment of initial margin in the leverage ratio can be a disincentive for banks to offer or expand client clearing services. In this regard, the BCBS issued a consultation in October 2018 on options for adjusting, or not, the leverage ratio treatment of client cleared derivatives.

Any decisions for amending a standard or policy will remain with the body responsible for issuing that standard or policy.

FSB reports on effects of regulatory reform on infrastructure finance

The FSB has published a final report evaluating the effects of the G20 financial regulatory reforms on infrastructure finance. The report focuses specifically on infrastructure finance that is provided in the form of corporate and project debt financing. Amongst other things, the FSB has concluded that:

- the effect of the G20 reforms is secondary to the effect of other factors, such as the macro-financial environment, government policy and institutional drivers;
- those reforms that have already been largely implemented (such as the Basel III capital and liquidity requirements and the over-the-counter derivatives reforms) do not appear to have had any material negative effect on the provision and cost of infrastructure finance;
- overall the amount of infrastructure finance has grown over recent years, in particular project and corporate bond issuances;
- lending spreads for infrastructure finance have returned to lower levels in recent years following a spike during the financial crisis;

- the provision of infrastructure finance differs depending on how developed the market is, for instance emerging and developing economies tend to rely more on bank loans, have a higher proportion of cross-border financing and use local currency less;
- market-based financing has begun to replace bank financing in some advanced economies;
- the reforms have contributed to shorter average maturities of infrastructure loans by global systemically important banks; and
- the wider benefits to the financial system caused by enhanced resilience appear to also apply in the narrower context of infrastructure finance.

Alongside the report, the FSB has published its responses to feedback it received to a consultation on its initial conclusions on the subject that formed the basis of the final report. In its response the FSB summarises the issues raised in the consultation and sets out the main changes that have been made in the report as a result.

FSB publishes progress report and updated data on correspondent banking

The FSB has published two reports as part of its work to assess and address the decline in correspondent banking relationships. First, it has published a report with updated data on correspondent banking relationships using information provided by SWIFT. The report shows that the number of active correspondents has continued to decline in 2017 across all continents and sub-continents. From January 2011 to the end of 2017, the number of active correspondents globally has declined by 15.5%. Small economies have seen a stronger decline in the number of foreign counterparties per local bank compared to larger economies.

Secondly, the FSB has published a progress report setting out the work it has undertaken to implement its four-point action plan to address the decline in correspondent banking. This includes:

- encouraging the industry to use the Wolfsberg Group correspondent banking due diligence questionnaire, which is intended to improve efficiencies and standardisation in know your customer utilities;
- launching a peer review on legal entity identifier (LEI) implementation;
- holding a workshop on the coordination and prioritisation of capacity development to strengthen domestic anti-money laundering and countering the finance of terrorism public supervision; and
- working with the World Trade Organisation (WTO) and the International Finance Corporation (IFC) to see whether some of the solutions already developed can be adapted to better capture the trade finance components of correspondent banking.

The FSB intends to deliver this report to the G20 Summit.

Press release

FSB publishes recommendations on compensation data reporting to address potential misconduct risks

The FSB has published recommendations for national supervisors on compensation data reporting to address potential misconduct risk. The recommendations are intended to complement the FSB's supplementary guidance on its principles and standards on sound compensation practices by setting out the types of data that can support improved monitoring by supervisory authorities on the use of compensation tools in significant financial institutions.

The recommendations are intended to suggest certain categories of data that may enhance supervisory dialogue with firms and have been designed to help firms and supervisors answer important questions on governance and risk management processes relating to compensation, including whether compensation and incentive systems:

- include appropriate conduct considerations;
- promote good conduct;
- promote wider risk management goals; and
- support the identification of emerging misconduct risks.

The recommendations are intended to further the FSB's objectives to develop comparative baselines, promote accountability and identify areas of weakness or emerging risks that could usefully be addressed through compensation and performance management processes.

Global Legal Entity Identifier System: Regulatory Oversight Committee consults on recording of fund relationships

The Regulatory Oversight Committee (ROC) of the Legal Entity Identifier (LEI) System has launched a consultation on proposed updates to the way relationships affecting funds are recorded in the Global LEI System (GLEIS). The consultation aims to ensure that the implementation of relationship data is consistent throughout the GLEIS and provide a standardised means for collecting fund relationship information at a global level.

Amongst other things the LEIROC is seeking feedback on proposals to:

- provide definitions for each fund relationship, including 'fund management entity', 'umbrella structures' and 'master-feeder';
- remove the 'other fund family' generic category;
- flag whether applicable relationships have been reported; and
- provide the option to report that a fund is self-managed (so as to distinguish from cases where the fund has not opted to report relationships).

The LEI ROC proposes that the collection of these relationships would be optional unless there is a requirement in the relevant jurisdiction to report the relationship and the LEI is mandatory for the related entity.

Comments are due by 14 January 2019.

Brexit: Financial Services (Implementation of Legislation) Bill introduced to Parliament

The Financial Services (Implementation of Legislation) Bill has been introduced to the House of Lords. The Bill provides for a delegated power to implement and make changes to 'in flight' files of financial services legislation, which relate to expected changes to the body of EU financial services law that are currently in the EU pipeline, in a no-deal scenario.

The Bill provides for two types of 'in-flight' file:

- those that have been adopted, but do not yet apply and so are not captured by the European Union (Withdrawal) Act 2018; and
- those that are proposed while the UK is an EU Member State but which will be finalised in the two years subsequent to the UK's exit from the EU.

The Bill contains a list of specified EU legislation to which this power, which is sunsetted to two years after exit day, can apply.

Second reading of the Bill is scheduled for 4 December 2018.

Brexit: SIs under the EU (Withdrawal) Act for 19 – 23 November 2018

HM Government published new draft statutory instruments (SIs) under the EU (Withdrawal) Act 2018 last week, as well as explanatory information on its approach to certain instruments.

HM Treasury (HMT) published explanatory notes on:

- draft Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019;
- draft Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;
- draft Financial Services (Distance Marketing) (Amendment) (EU Exit) Regulations 2019;
- draft Market Abuse (Amendment) (EU Exit) Regulations 2018;
- draft Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019; and
- onshoring of elements of the E-Commerce Directive relating to financial services.

The explanatory notes relate to draft instruments that 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.

Among the instruments laid before Parliament last week were the draft Interchange Fee (Amendment) (EU Exit) Regulations 2018, which proposes amendments to the Payment Card Interchange Fee Regulations 2015 (SI 2015/1911) and the retained EU law Interchange Fees Regulation (Regulation (EU) 2015/751 – IFR, also known as the MIF Regulation).

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

Brexit: FCA publishes second consultation on Handbook and BTS changes in case of no implementation period

The Financial Conduct Authority (FCA) has launched a consultation (CP18/36) on further proposals to amend the FCA Handbook and EU derived binding technical standards (BTS) if the UK leaves the EU without an implementation period in place.

The consultation follows two previous consultations launched in October 2018:

- a first consultation on proposed amendments to the Handbook and BTS, as well as the FCA's approach to EU Level 3 materials (CP18/28); and
- the FCA's proposed temporary permissions regime to allow EEA firms and funds to continue regulated business in the UK if there is no implementation period (CP18/29).

CP18/36 sets out a range of amendments to the Handbook and BTS that were not covered in the earlier consultations, including:

- further changes to the Handbook to reflect the temporary permissions regime;
- amendments to reflect the new credit rating agency and trade repository regimes;
- proposed guidance on how non-Handbook guidance should be interpreted after exit day; and
- the FCA's proposed approach to forms in the Handbook which may contain references and provisions that will no longer have their intended effect after exit day.

Comments on the consultation are due by 21 December 2018.

Brexit: PSR consults on onshoring approach for Interchange Fee Regulation RTS

The Payment Systems Regulator (PSR) has launched a consultation on onshoring EU regulatory technical standards (RTS) adopted under Article 7 of the Interchange Fee Regulation (IFR, also known as the MIF Regulation). Under Article 7(1)(a) of the MIF Regulation, payment card schemes and processing entities are required to be independent in terms of accounting, organisation and decision-making processes; the RTS set out specific requirements applicable to payment card schemes and processing entities.

HM Treasury has published an indicative draft of the Interchange Fee (Amendment) (EU Exit) Regulations 2018. Although the statutory instrument (SI) is still in development, the PSR is consulting on its proposed amendments to the onshored RTS adopted under Article 7 of the MIF Regulation. The PSR's amendments are intended to ensure that the RTS continue to operate effectively once the UK leaves the EU in a no-deal scenario, and is not intended to revisit previous policy decisions or amend the RTS for purposes unconnected to EU withdrawal.

The PSR expects the consultation to be of interest to stakeholders, including card schemes subject to Article 7 of the MIF Regulation, parties contracting with card schemes or processing entities, and third-party card payment processors.

Comments on the consultation are due by 17 December 2018.

PSR consults on implementation of Confirmation of Payee

The PSR has launched a consultation on its approach to implementing Confirmation of Payee (CoP).

CoP is the industry-agreed way of ensuring that names of recipients are checked before payments are sent. The consultation considers whether regulatory intervention is needed to require banks and payment service providers (PSPs) to implement CoP. The PSR believes that CoP needs to be implemented quickly and be widely available in order to be effective in protecting both consumers and banks.

Among other things, the consultation considers timescales for introducing CoP and proposes that:

- PSPs should be capable of receiving and responding to CoP requests from other PSPs by 1 April 2019; and
- PSPs should send CoP requests and present responses to their customers by 1 July 2019.

Comments on the consultation are due by 4 January 2019.

PRA consults on minor amendments to SoP on systemic risk buffer

The Prudential Regulation Authority (PRA) has published a consultation paper on proposed minor amendments to its Statement of Policy (SoP) on its approach to the systemic risk buffer (SRB). The consultation is relevant to SRB institutions, specifically ring-fenced bodies (RFBs) under section 142A of the Financial Services and Markets Act 2000 and certain large building societies.

Comments on the consultation are due by 6 December 2018.

Decrees on modernising asset management and debt financing frameworks published in Official Journal

Following publication of Ordinance 2017-1432 of 4 October 2017 on modernising the legal framework for asset management and debt financing, two Decrees, both dated 19 November 2018, have been published in the Official Journal. Among other things, the Ordinance is intended to overhaul the regime for securitisation vehicles and to create specialised financing vehicles (organismes de financement spécialisés).

The Decrees (no. 2018-1004 and no. 2018-1008) implement Ordinance 2017-1432 and specify certain conditions under which specialised professional funds (fonds professionnels spécialisés (FPS)), securitisation vehicles (Organismes de titrisation (OT)) and specialised financing vehicles (Organisme de Financement Spécialisé (OFS)) may grant direct loans to businesses.

Except for some provisions detailed in Decree no. 2018-1008, the texts entered into force the day following their publication.

German Federal Ministry of Finance publishes draft law addressing potential 'no deal' Brexit on 29 March 2019

The German Federal Ministry of Finance (BMF) has published a draft law addressing the possibility of a 'no deal' Brexit on 29 March 2019 (Gesetz zur Ergänzung des Brexit-Steuerbegleitgesetzes – Brexit-StBG).

The key points are as follows:

- in the event that the UK leaves the EU without a withdrawal agreement, the German Federal Financial Supervisory Authority (BaFin) may decide to continue to apply (in whole or in part) the provisions applicable to passported branches and cross-border services mutatis mutandis to undertakings with their seat in the UK that currently provide banking or financial services in Germany through a branch or on a cross-border basis for a period of up to 21 months after the exit date;
- a similar provision applies to insurance companies operating through a branch or providing cross border services on the basis of a passport, however only for the purposes of unwinding of insurance contracts entered into prior to 29 March 2019; and
- there are provisions loosening dismissal protection for certain risk takers of major institutions, who are in certain cases to be treated as equivalent to senior executives.

Italian Council of Ministers approves preliminary draft legislation implementing EU Benchmarks Regulation and EMIR

The Italian Council of Ministers has approved a preliminary draft legislative decree, proposed by the Ministry of Economy and Finance, for the adaptation of national legislation to the provisions of the EU Benchmarks Regulation (Regulation (EU) 2016/1011 - BMR) and the European Market Infrastructure Regulation (EMIR).

The draft legislative decree provides for:

- directors' obligations in proportion to governance and internal controls;
- the use of data and methodologies to define the reference indexes in compliance with certain requirements;
- internal violation reporting systems;
- the elaboration of codes of conduct for the people in charge of providing data used to calculate the reference indexes;
- transparency requirements of the methodologies used to determine the indexes;
- requirements for 'critical' reference indexes; and
- the establishment of a supervisory board with the main task of providing its opinion to the competent National Authority on the administration of a critical benchmark.

The draft legislation will be subject to further assessments before its final approval and publication in the Official Gazette.

SFC announces thematic review of remote booking, operational and data risk management practices

The Securities and Futures Commission (SFC) has commenced its thematic review of selected licensed corporations to assess their risk governance and oversight framework as well as their risk management practices. The review comprises three work streams focusing on the underlying risks of licensed corporations' remote booking models, operational risk and data risk, with the aim of providing further guidance for licensed corporations to cope with these evolving risks.

The SFC has advised licensed corporations to exercise due skill, care and diligence, and have in place operational capabilities to protect their operations and clients. In addition, effective resources should be deployed, and procedures should be implemented to properly manage the risks to which licensed corporations are exposed, and information should be provided to management to adequately manage the risks.

The SFC also notes that the growing complexity of trading and business models, extensive use of technology, greater reliance on big data and more challenging liquidity conditions all pose increasing risks to financial institutions in Hong Kong and expects licensed corporations to evaluate their risk management processes periodically to ensure that they adequately manage the risk of losses, whether financial or otherwise, resulting from fraud, errors, omissions and other operational and compliance matters.

The findings from the thematic review will form the basis for the SFC to issue further guidance to the market to promote good practices and mitigate the risks facing licensed corporations and the financial market. The SFC has indicated that it will also share the findings with the industry, where appropriate.

Japan and France sign cooperation frameworks to promote innovation in financial sector

The Financial Services Agency of Japan (FSA) has signed two cooperation frameworks, with the French Autorité des Marchés Financiers (AMF) and the Autorité de Contrôle Prudentiel et de Résolution (ACPR) respectively, to promote innovation in their respective markets. The cooperation frameworks are intended to enhance exchanges regarding innovative trends, regulatory issues and any other relevant information pertaining to innovation in the financial sector and include referral mechanisms for financial innovators to facilitate their entry into French or Japanese markets.

While seeking to secure consumer protection and financial stability, the two countries also support the development of fintechs and innovation in the financial industry. More specifically, the authorities of both countries aim to support these new market participants with regard to authorisation applications and how regulation applies to them. The FSA believes that enhanced cooperation between the authorities is essential as fintechs and other financial innovators are increasingly offering services at a global level.

MAS announces conclusion of key agreements with Chinese financial regulators and financial institutions

The Monetary Authority of Singapore (MAS) has announced the conclusion of the following agreements between financial regulators and financial institutions from China and Singapore:

- a cooperative agreement between Singapore Exchange and China Foreign Exchange Trade System (CFETS) and Bank of China (BOC) to launch CFETS-BOC Traded Bond Indices on SGX;
- a memorandum of understanding between NETS and UnionPay International to, amongst other things, allow NETSPay users to pay for purchases at around 10 million UnionPay QR code merchants globally and for UnionPay customers to spend at NETS merchants in Singapore;
- a fintech co-operation agreement between the MAS and the People's Bank of China (PBC) to promote fintech co-operation between the MAS and the PBC, pave the way for joint innovation projects in the application of key technologies as well as joint research in technology, and provide regulatory co-ordination in relation to the expansion of fintech companies in each other's markets; and
- a memorandum of understanding between the MAS and the China Securities Regulatory Commission (CSRC) for co-operation and the exchange of information on the regulation of derivatives activities. The MAS and the CSRC will also co-ordinate with each other on the listing and trading of exchange-traded derivative products with nexus to each other's capital markets.

MAS, Bank of Canada and Bank of England publish joint report assessing opportunities for digital transformation in cross-border payments

The MAS, the Bank of Canada and the Bank of England have published a joint report entitled 'Cross-border interbank payments and settlements: Emerging opportunities for digital transformation', which assesses alternative models that could enhance cross-border payments and transactions.

The report discusses how three possible cross-border payment models could be implemented, from both a technical and non-technical perspective, and provides an initial framework for the global financial community to assess cross-border payments and settlements in greater depth. The report also discusses the challenges faced by key stakeholders in cross-border payments, such as central banks, commercial banks and end-users.

The three proposed models for cross-border payments are briefly as follows:

- Model 1 – is based on ongoing and planned enhancements to existing payments and settlement systems and infrastructure within and across jurisdictions;
- Model 2 – is based on an expanded role for in-country real-time gross settlement operators, which would act as correspondent agencies (or 'super correspondents') for their member banks for cross-border payments, instead of relying on intermediary banks as correspondent banks; and

- Model 3 – comprises variations of a model based on the settlement of cross-border payments between banks using wholesale central bank digital currency (W-CBDCs).

The report concludes that the findings provide a starting point for further analysis but that further consideration should be given to legal and regulatory requirements and risks, cross-jurisdictional governance frameworks, impact on monetary policy, legislative changes necessary to recognise W-CBDCs as legal tender, eligibility criteria for financial institutions and payment system participants and industry adoption of the selected model via incentives and regulatory changes.

Payment Services Bill moved for first reading in Parliament

The Payment Services Bill was read for the first time in the Singapore Parliament on 19 November 2018 and the MAS has published its responses to the second consultation paper in relation to the key proposals of the Bill, which was issued on 21 November 2017.

The Bill streamlines the regulation of payment services within a single piece of legislation by combining the requirements under the Payment Systems (Oversight) Act (the PS(O)A) and the Money-Changing and Remittance Businesses Act (the MCRBA). The Bill also expands the scope of regulated payment services to take into account new developments in payment services and the risks they pose.

The Bill comprises two parallel regulatory frameworks:

- the first is a designation regime that enables the MAS to designate significant payment systems and regulate operators, settlement institutions and participants; and
- the second is a licensing regime that will enable the MAS to regulate the provision of certain payment services (i.e., account issuance service, domestic money transfer service, cross border money transfer service, merchant acquisition services, e-money issuance service, digital payment token service, and money-changing service) provided in Singapore. Providers of such payment services will be required to hold a licence from one of the following three classes which correspond to the risk posed by the scale of the payment service provided:
  - money-changing licence, under which a provider may only provide money-changing services;
  - standard payment institution licence, under which a provider may conduct any combination of regulated payment activities below specified thresholds; or
  - major payment institution licence, under which a provider may carry out payment services above specified thresholds, but which will be regulated more comprehensively.

Subject to the satisfaction of certain requirements, the grace period for most new payment services has been extended to 12 months. A grace period of 6 months will be retained for entities that provide digital payment token services. Transitional arrangements have been proposed for existing regulated entities as well. Other key differences between the MAS' proposals in the consultation and the Bill are summarised in the responses to the consultation.

With respect to the MAS' proposals in the consultation that involve measures to be imposed through subsidiary legislation, the MAS has advised that it will publish such proposed subsidiary legislation for consultation in due course.

Ministry of Law implements sections of Moneylenders (Amendment) Act 2018 and new amendment rules are issued

The Ministry of Law (MOL) has announced that it will implement the first phase of the amendments to the existing legislation for moneylenders to provide better protection for borrowers and to strengthen the regulation of licensed moneylenders and has issued:

- the Moneylenders (Amendment) Act 2018 (Commencement) Notification 2018, which announces the commencement of sections 2, 3(1)(a) and (b), 4(1)(b), 5(b), 7(1), 8, 9(1), 10(1), 11 to 16, 18(1), 19 and 20(1) to (5) and (7) of the Moneylenders (Amendment) Act 2018;
- the Moneylenders (Amendment) Rules 2018; and
- the Moneylenders (Composition of Offences) (Amendment) Rules 2018,

all of which will come into operation on 30 November 2018.

The Moneylenders (Amendment) Rules 2018 will introduce the following aggregate loan caps to limit the amount an individual may borrow from all licensed moneylenders combined:

- Singapore citizens and PRs:
  - with an annual income of less than SGD 20,000 will be able to borrow up to SGD 3,000;
  - with an annual income of at least SGD 20,000 may borrow up to six times their monthly income; and
- foreigners residing in Singapore:
  - with an annual income of less than SGD 10,000 will be able to borrow up to SGD 1,500;
  - with an annual income of at least SGD 10,000 and less than SGD 20,000 may borrow up to SGD 3,000; and
  - with an annual income of at least SGD 20,000 may borrow up to six times their monthly income.

To facilitate the implementation of the aggregate loan cap, a regulatory framework has also been introduced for the Moneylenders Credit Bureau (MLCB) which places obligations on the MLCB and licensed moneylenders to strengthen the confidentiality, security, and integrity of borrower data. The new rules also provide for a self-exclusion framework, to help borrowers regulate their borrowing behaviour and participate in debt assistance schemes which typically require self-exclusion.

The MOL has announced that the second phase of implementation, relating to the professionalisation of the moneylending industry, will take effect in the first quarter of 2019 which will require all licensed moneylenders to be incorporated as companies limited by shares with a minimum paid-up capital of SGD100,000 and to submit annual audited accounts to the Registry of Moneylenders.

CFTC amends swap margin requirements

The US Commodities Futures Trading Commission (CFTC) has approved a final rule to amend its uncleared swap margin requirements (margin rule) to address recent rule changes applicable to certain qualified financial contracts of systemically important banking organizations (QFC rules).

The amendments ensure that master netting agreements are not excluded from the definition of 'eligible master netting agreement' under the CFTC margin rule based solely on such agreements' compliance with the QFC rules. They also ensure that any legacy uncleared swap that is not subject to the CFTC margin rule would not become so subject if it is amended solely to comply with the QFC rules.

These amendments will be effective 30 days after publication in the Federal Register.

ASIC reports findings on impact of high-frequency trading in equities and wholesale foreign exchange markets

The Australian Securities and Investments Commission (ASIC) has published a report on its latest review of the impact of high-frequency trading in the Australian equity and Australian-US dollar cross-rate markets. The review builds on ASIC's 2013 and 2015 analysis of high-frequency trading.

Notable findings from the review are that:

- high-frequency traders are responsible for a quarter of all market transactions in equities and the AUD/USD cross rate, and it is trending down;
- traders continue to invest in faster technologies and are accessing markets more quickly. They are undertaking less arbitrage and more position taking, with less intraday trading and longer holding times;
- high-frequency traders contribute positively to price formation, benefiting all investors in the market. They also provide important liquidity during market stress or peak demand; and
- there is a cost to natural market users from high-frequency trader intermediation, but this cost is small, and it is trending down.

The review of high-frequency trading in the AUD/USD cross rate forms part of ASIC's wider examination of wholesale foreign exchange markets. According to ASIC, high-frequency trading activity in the cross rate peaked at 35% in early 2013, and it has since fallen and now fluctuates at around 25%.

ASIC extends relief for non-cash payment facilities

ASIC has amended the ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 to remove an expiry date that would have seen the instrument cease operating in March 2019. The amendment means that the instrument will continue to operate beyond March 2019.

ASIC is extending the operational period of the relief given in the ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 to allow for government policy settings for retail payments products to be clarified by the Australian Treasury, ASIC, Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia. ASIC has indicated that, once the

government's policy settings have been clarified, it will undertake a review of the ASIC Corporations (Non-cash Payment Facilities) 2016/211 and the guidance in Regulatory Guide 185 Non-cash payment facilities to determine whether the instrument is operating effectively and appropriately.

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 provides relief for the following types of non-cash payment products:

- travellers' cheques, which are exempt from the requirement to provide confirmation of transaction under the Corporations Act;
- loyalty schemes and road toll facilities, which are not subject to the financial services laws in the Corporations Act;
- prepaid mobile arrangements and some single use gift vouchers, which are exempt from the licensing, conduct and disclosure obligations in the Corporations Act; and
- low value payment products, which are exempt from the licensing, conduct and disclosure obligations in the Corporations Act but are subject to alternative disclosure and dispute resolution obligations.

ASIC originally provided this relief because it was apparent that the financial services regulatory regime was unintentionally broad in relation to these products.

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Globalisation at the crossroads – Populism, Protectionism and Trade - what it means for business

The rise of populism, protectionism, and increasing tensions in trade around the globe, are having a significant impact on businesses and how they prepare for the future. In this briefing, our experts identify the trends that will have far-reaching economic and legal consequences.

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

France getting ready for a 'no deal' Brexit

The French government is implementing changes to allow UK firms operating in banking and finance to continue their activities in France in the event of a 'no deal' Brexit and to ensure that French firms will still be able to work with UK entities under their new third country firm status. This briefing discusses the measures.

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

Proposal for a Law on the Financial Transactions Tax

On 23 October 2018, the Spanish Government made public its proposal for a Law on Financial Transactions Tax (FTT). Intended to be construed in terms similar to those of the existing tax in France or Italy, the proposed FTT will affect certain acquisitions of shares in Spanish listed companies. This briefing discusses the proposed law.

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