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### **Working group on euro risk-free rates sets out guiding principles for fallback provisions in new contracts for euro-denominated cash products**

The working group on euro risk-free rates, for which the European Central Bank (ECB) provides the secretariat, has published a [paper](#) on guiding principles for fallback provisions in new contracts for euro-denominated cash products.

The paper provides an overview of the legal frameworks and market practices applicable to cash products that reference EURIBOR and EONIA, such as mortgages, loans and bonds, with a specific focus on fallback clauses. The working group highlights the importance of market participants preparing for

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the transition to risk-free rates and the paper proposes a set of guiding principles promoting the use of effective fallback provisions in new contracts for euro-denominated cash products.

In the course of 2019, the working group intends to recommend more detailed fallback language to be used in legacy and new euro-denominated contracts.

## **Brexit: Treasury Committee inquiry into future of UK's financial services launched**

The House of Commons Treasury Committee has launched an [inquiry](#) into the future of the UK's financial services post-Brexit.

The Committee intends to take evidence from industry, regulators, ministers and officials in order to make recommendations to the UK government and regulators on financial services priorities in negotiations on the UK's future trading relationship with the EU and third countries.

It will also examine:

- regulatory actions required for each segment of the UK financial services industry to maximise access to EU markets;
- how the sector can take advantage of the UK's new trading environment;
- current regulatory barriers that apply to third countries; and
- skills and immigration policy.

There is no deadline for the submission of written evidence.

## **Brexit: SIs under the EU (Withdrawal) Act for 21 – 25 January 2019**

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

The following instruments have been laid before Parliament:

- the [draft Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#), which seek to ensure that the financial benchmarks regime continues to operate effectively;
- the [draft Money Market Funds \(Amendment\) \(EU Exit\) Regulations 2019](#), which, among other things, provide a transitional arrangement for the duration of the temporary permissions regime;
- the [draft Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#), which seek to ensure the continued operation of the EU framework governing securitisations, including simple, transparent and standardised securitisations (STS);
- the [draft Official Listing of Securities, Prospectus and Transparency \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), covering the listing regime and transparency framework;
- the [draft Public Record, Disclosure of Information and Co-operation \(Financial Services\) \(Amendment\) \(EU Exit\) Regulations 2019](#), covering the disclosure of confidential information between the UK and EEA and third-country regulatory and supervisory authorities;

- the [draft State Aid \(EU Exit\) Regulations 2019](#), which seek to transpose the EU State aid regime into domestic law; and
- the [draft Financial Services \(Gibraltar\) \(Amendment\) \(EU Exit\) Regulations 2019](#), concerning passporting rights between the UK and Gibraltar.

The following instruments have been made and subsequently laid under the negative procedure:

- the [EU Export Credits Legislation \(Revocation\) \(EU Exit\) Regulations 2019](#) (SI 2019/102), which revoke EU legislation relating to the OECD Arrangement, in which the UK intends to participate in its own right; and
- the [Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(EU Exit\) Regulations 2019](#) (SI 2019/107), which seek to ensure that the monitoring, reporting and verification (MRV) of greenhouse gas emissions remains operable.

The [Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (SI 2019/93) have been made.

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

## FCA consults on amendments to SM&CR

The Financial Conduct Authority (FCA) has published a [consultation paper \(CP19/4\)](#) on [proposed amendments](#) to the rules on the Senior Managers & Certification Regime (SM&CR).

The proposals, which build on previous discussion papers and policy statements and are intended to provide extra clarity, include:

- excluding the legal function from the overall responsibility requirement;
- implementing a notification requirement to bring certain intermediaries into scope of the enhanced regime;
- amending the scope of the client dealing function in the certification regime to exclude purely administrative roles;
- including systems and controls functions in the certification regime; and
- extending senior manager disclosure requirements to non-approved executive and non-executive directors at limited scope firms.

The FCA proposes to make the changes before the extended SM&CR comes into force for solo-regulated firms on 9 December 2019.

Comments are due by 23 April 2019.

## FCA consults on cryptoassets guidance

The FCA has launched a [consultation \(CP19/3\)](#) on proposed guidance setting out the cryptoasset activities the FCA regulates.

The guidance is intended to help firms understand whether their cryptoasset activities fall under FCA regulation. The guidance uses a framework developed by the Cryptoasset Taskforce for different types of cryptoassets and explains whether they are within the FCA's regulatory remit and, if so, what this means for market participants, supported by case studies. The FCA hopes that firms will have a better understanding of whether they need to be

authorised and can ensure they are compliant and have appropriate consumer safeguards in place.

The consultation is being carried out in response to industry requests for greater clarity, and to the Cryptoasset Taskforce's recommendation that the FCA provides additional guidance on the existing regulatory perimeter.

Later this year the FCA intends to consult on banning the sale of derivatives linked to certain types of cryptoassets to retail investors. The UK government is planning to consult on whether to expand the regulatory perimeter to include further cryptoassets activities.

Comments are due by 5 April 2019.

### **Brexit: Law allowing French government to adopt measures by way of ordinance to prepare for no deal Brexit published**

A [law](#) allowing the French government to adopt measures by way of ordinance to prepare for a no deal Brexit has been published in the Official Journal.

Once such ordinances are issued by the French government, and within six months from their publication, a ratification bill would have to be tabled in the French Parliament.

### **Brexit: Italian government continues preparations**

Further to two press releases published on 21 December 2018 and 15 January 2019 respectively, in which the Italian government had briefly indicated that preparatory legislative work was in progress in relation to Brexit, with a particular focus on a 'no deal' scenario, the Ministry of Economy and Finance has officially [announced](#) that it has prepared the necessary measures to ensure full continuity of markets and intermediaries in the case of the UK withdrawing from the EU without a deal. In case of urgency, the measures will likely take the form a law decree (decreto legge) adopted by the Italian government.

The measures are intended to ensure the financial stability, integrity and operational continuity of markets and intermediaries, as well as the protection of depositors, investors and customers in general, through the introduction of a reasonable transitional period – similar to the transitional period foreseen in the event of an agreement between the UK and the EU – during which these entities may continue to operate.

During this transitional regime, institutions – of a banking, financial or insurance nature – may continue to operate in accordance with the existing legislation. These measures will also provide for the requirements that these institutions will be required to meet in order to continue to operate beyond the defined transitional period. Similar provisions will govern trading venues.

With respect to the existing investments of Italian pension funds in collective investment funds established in the UK, the measures will provide for the possibility for said pension funds to remain invested during the transitional regime.

The decree will be published at an appropriate time, depending on developments in the UK.

## Bank of Italy implements new sanctions regime

The Bank of Italy has amended its supervisory [regulations](#) governing anti-money laundering sanctions and procedures following the publication of Legislative Decree of 25 May 2017 No. 90, which implemented the Fourth Anti-Money Laundering Directive (EU) 849/2015 (AMLD 4) in Italy. The amendments are also intended to align the Italian sanctions regime with the ones provided for in the latest version of the Italian Financial Act (Legislative Decree of 24 February 1998 No. 58), which implemented the UCITS V Directive and MiFID 2.

The amendments will come into force fifteen days after publication in the Official Gazette and will apply to offences and procedures that take place after their effective date.

## Spanish Council of Ministers sets out contingency plan for 'no deal' Brexit, including legislative measures to be adopted in February

The Spanish Council of Ministers has [published](#) a Brexit plan for a 'no deal' scenario, in light of the uncertainty regarding the approval of the Withdrawal Agreement negotiated between the UK Government and the EU.

The plan includes three kinds of measures:

- legislative;
- logistical; and
- those regarding communication with citizens.

The Council of Ministers states that in respect of citizens' rights, the rights of Spanish citizens in the United Kingdom as well as their British counterparts in Spain will be protected, while existing bilateral agreements between Spain and the UK will remain valid in Gibraltar. In the matter of commercial relations, the Spanish government has provided for measures to facilitate the transit of goods to help minimise the impact on businesses. In respect of particularly sensitive economic sectors, the Spanish government has foreseen [measures](#) in the following areas: air transport, [finance](#), and agriculture and fishing.

In addition, the Spanish government has set up a number of webpages with specific information regarding Brexit.

## German Federal Parliament adopts Brexit Transition Act

The German Federal Parliament has [adopted](#), by a broad majority, the Brexit Transition Act (Brexit-Übergangsgesetz) as recommended by the Committee for European Affairs.

The Brexit Transition Act makes provisions for the transition period following the UK's withdrawal from the EU in accordance with the Withdrawal Agreement negotiated between the UK Government and the EU. It will only become effective if the Withdrawal Agreement enters into force.

The Brexit Transition Act, in the interest of legal clarity, essentially stipulates that during the transition period the UK should still be considered an EU Member State for the purposes of German federal law provisions which refer to membership of the EU or the European Atomic Energy Community. In addition, in relation to applications for citizenship made by British citizens in Germany or vice versa before the end of the transition period, the date of the

application (and not the decision thereon) will be relevant, so that applicants do not have to renounce or lose their original citizenship if the application is decided upon after the end of the transition period.

## **FSC announces follow-up measures for capital market reform**

The Financial Services Commission (FSC) has announced the [follow-up measures for capital market reform](#), which are part of its capital market reform proposal announced in November 2018. The follow-up measures are intended to include new schemes of introducing a specialised brokerage company to facilitate investment into unlisted securities of small and medium-sized enterprises (SMEs) and venture companies, and expanding a pool of professional investors.

Some of the key measures include the following:

- SME-specialised brokerage company to be introduced:
  - the FSC will introduce a new category of brokerage companies specialised in capital raising business for SMEs and venture companies;
  - the new type of brokerage firms will be permitted mainly to engage in brokering transactions of private and unlisted securities. They can also engage in a broader range of corporate financing for SMEs and venture companies – e.g. advisory services for securities issuance and evaluation of corporate value in regard with mergers and acquisitions;
  - to facilitate the establishment of new specialised brokerage companies, the FSC will lower barriers to entry – newcomers will be allowed to enter the business with registration only, with the minimum capital of KRW 500 million and professional workforce of two or more;
  - the FSC will reduce regulatory requirements, given their limited scope of business and limited impact in financial markets; and
- pool of professional investors to be expanded – to broaden and diversify the pool of professional investors, the FSC will ease registration requirements and streamline the procedures in order to make SME-specialised brokerage companies to be successful.

The FSC has indicated that a proposal to amend the Financial Investment Services and Capital Market Act (FSCMA) will be submitted to the National Assembly in the first quarter of 2019 to make the creation of the first SME-specialised brokerage company possible in 2019. The FSC intends to propose amendments to the Enforcement Decree of the FSCMA in January 2019, aimed at being implemented in the second half of 2019.

## **MAS publishes guidelines on risk mitigation requirements for non-centrally cleared over-the-counter derivatives contracts**

The Monetary Authority of Singapore (MAS) has published [guidelines](#) on the risk mitigation requirements for non-centrally cleared over-the-counter derivatives (OTCD) contracts.

The guidelines provide guidance to entities exempted under section 99(1)(a), (b) and (c) of the Securities and Futures Act for dealing in capital markets



products that are OTCD contracts which are not centrally cleared by a clearing house (non-centrally cleared OTCD contracts) on their obligations under regulation 54B of the Securities and Futures (Licensing and Conduct of Business) Regulations.

Amongst other things, the guidelines provide guidance on:

- the content, manner of execution and retention period for trading relationship documentation;
- the content, manner of execution, and policies and procedures to be implemented in respect of trade confirmations;
- the process for determining the values of non-centrally cleared OTCD transactions;
- the policies and procedures, scope and frequency, for portfolio reconciliation;
- the factors to be considered for portfolio compression;
- dispute resolution mechanisms with counterparties, including when disputes should be escalated to senior management and reported to the MAS; and
- the approval and review of policies and procedures by the board of directors.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **The EU Securitisation Regulation – do I need to worry?**

On 1 January 2019 the EU Securitisation Regulation began to apply. The Regulation is both complex and far-reaching, and contemplates serious consequences for failure to comply. It creates many pitfalls for the unwary because its scope includes transactions that may not be thought of by the parties as 'securitisations' and entities that were not previously subject to regulation of securitisation activities. It also has a very wide geographic scope of application because its broadly applicable due diligence rules mean non-EU securitisations will need to consider compliance as well to the extent they wish to market to EU institutional investors.

This briefing provides an overview of the Regulation, with a focus on the situations where a transaction may be brought into scope. It also provides a brief overview of the consequences of being brought into scope.

[https://www.cliffordchance.com/briefings/2019/01/the\\_eu\\_securitisationregulationdoineedt.html](https://www.cliffordchance.com/briefings/2019/01/the_eu_securitisationregulationdoineedt.html)

### **European High Yield – looking back to look forward**

The 2018 European High Yield Market was marked by several notable bond transactions despite a significant reduction in volumes. Equally, 2018 included a number of notable trends including a growing diversity of issuer, a buy-side becoming increasingly more involved in the dialogue and an alignment of documentary terms across European High Yield and the leveraged loan market.

This briefing examines these trends and then looks forward into 2019 to consider what further changes and developments may be seen in the European High Yield Market during 2019.

[https://www.cliffordchance.com/briefings/2019/01/european\\_high\\_yieldlookingbacktolookforward.html](https://www.cliffordchance.com/briefings/2019/01/european_high_yieldlookingbacktolookforward.html)

### **Brexit deal or no deal? – The Netherlands mitigates the risks with legislative measures**

The Netherlands is introducing a number of contingency measures to anticipate a potential hard Brexit, including:

- providing the Dutch Government with legislative tools to act quickly to mitigate unforeseen but unacceptable adverse consequences; and
- ensuring that settlement systems currently designated by the UK will continue to qualify as systems within the meaning of the EU Settlement Finality Directive in case of an insolvency of a Dutch member firm.

This briefing discusses the measures as well as some market entry considerations for UK firms in case of a hard Brexit.

[https://www.cliffordchance.com/briefings/2019/01/brexit\\_deal\\_or\\_nodealthenetherland.html](https://www.cliffordchance.com/briefings/2019/01/brexit_deal_or_nodealthenetherland.html)



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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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