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## **Brexit: EU Commission adopts ESCB exemptions for Bank of England and UK Debt Management Office**

The EU Commission has adopted Delegated Regulations exempting the Bank of England and the UK Debt Management Office (DMO) from certain requirements under the European Market Infrastructure Regulation (EMIR), the Market Abuse Regulation (MAR), the Markets in Financial Instruments Regulation (MiFIR) and the Securities Financing Transactions Regulation (SFTR). In particular:

- the [Delegated Regulation amending EMIR](#) exempts the Bank of England and other UK public bodies charged with or intervening in the management of the public debt from the clearing and reporting requirements, and the requirement to apply risk-mitigation techniques to non-cleared transactions;

- the [Delegated Regulation relating to MAR](#) adds the Bank of England and DMO to the list of public bodies and central banks of third countries exempt from the scope of MAR for certain operations undertaken in the public interest;
- the [Delegated Regulation relating to MiFIR](#) adds the Bank of England to the list of central banks of third countries exempt from pre- and post-trade transparency requirements; and
- the [Delegated Regulation amending the SFTR](#) exempts the Bank of England and other UK public bodies charged with or intervening in the management of public debt from the reporting obligation and the reuse transparency requirements.

Reports published alongside the Delegated Regulations set out the Commission's assessments and conclusions that the UK domestic legislative framework is sufficient to exempt the UK central bank and public bodies from these requirements.

In its explanatory memoranda, the Commission notes that the UK has given assurances that it will exempt members of the European System of Central Banks (ESCB) and other Member States' bodies from the application of equivalent domestic law in a comparable way.

The Delegated Regulations will enter into force on the day following their publication in the Official Journal and will apply from the day after EU law ceases to apply in the UK.

### **Brexit: ESMA publishes Q&As on prospectus and transparency rules in no deal scenario**

The European Securities and Markets Authority (ESMA) has published three new questions and answers (Q&A) on the [Prospectus Directive \(PD\)](#) and [Transparency Directive \(TD\)](#). The new Q&As clarify the application of certain provisions in the Directives in the event of a no deal Brexit.

The new Q&As relate to:

- choice of PD home Member State for third country issuers;
- use of prospectuses approved by UK law; and
- choice of TD home Member State for third country issuers.

### **EMIR: ESMA issues statement on handling of derivatives data in the event of a no deal Brexit**

ESMA has issued a [statement](#) on how derivatives data should be reported under EMIR in the event of a no deal Brexit.

Under EMIR, derivatives must be reported to ESMA supervised trade repositories (TRs), who centrally collect and maintain the records of all derivatives contracts. EMIR requires both counterparties to a derivative contract to report its details to TRs.

However, in the event of a no deal Brexit, UK counterparties would not be mandated to report under EMIR to EU27 TRs. ESMA's statement clarifies different reporting scenarios where both counterparties are from the EU27, both are from the UK and where one is from the EU27 and one from the UK, specifically:

- reporting by CCPs and counterparties;
- reconciliation and recordkeeping by TRs;
- access by EU27 authorities; and
- portability and aggregation by TRs.

ESMA's statement also sets out the timeline for completion of relevant adjustments by the EU27 TRs.

### **EMIR: ESMA issues statement on REFIT implementation issues**

ESMA has issued a [statement](#) on the proposal for a regulation amending EMIR as regards the clearing obligation, reporting requirements, risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, and the supervision of trade repositories (EMIR REFIT).

The statement addresses issues around the clearing and trading obligations for small financial counterparties and the backloading requirement for reporting entities ahead of upcoming deadlines which, ESMA notes, would represent challenges in the context of the ongoing EMIR REFIT negotiations.

Under EMIR, the clearing obligations start date for Category 3 counterparties is 21 June 2019 for the interest rate and credit derivative classes subject to the clearing obligation.

A new category of financial counterparties whose derivative positions are below the clearing thresholds and who will be exempted from the clearing obligation, known as small counterparties, has been created under the REFIT proposal. As the REFIT negotiations have not yet concluded, the resulting text could potentially begin to apply after the phase-in for Category 3 counterparties expires, leaving a gap during which small financial counterparties with derivative positions below the clearing thresholds would need to have clearing arrangements in place and start clearing their derivative contracts before they are once again not required to once REFIT comes into force.

In the event the amendments under REFIT are not applicable by 21 June 2019, ESMA expects competent authorities not to prioritise their supervisory activities towards financial counterparties whose positions are expected to be below the clearing thresholds when REFIT enters into force and to generally apply their risk-based supervisory powers in a proportionate manner.

ESMA is also aware of material operational challenges for reporting entities in complying with the requirements for reporting of derivatives outstanding on or after 16 August 2012 and terminated before 12 February 2014, the EMIR reporting start date, commonly referred to as backloading.

To meet regulatory needs and reduce the adjustments that reporting entities need to make to comply with the backloading requirements, the REFIT proposal removes the backloading requirement from Article 9 of EMIR. The EU Commission has previously extended the deadline for the completion of backloading to 12 February 2019. At the time it was expected that REFIT would have come into force before then, however at this stage it is unclear that these amendments will enter into force before 12 February 2019.

In light of the known difficulties, market concerns and legislative developments, ESMA expects competent authorities to apply their risk-based

supervisory powers in the day-to-day enforcement of EMIR proportionately. This may include not prioritising counterparties' reporting of backloaded transaction in their day-to-day supervision and enforcement of EMIR.

## **Securitisation Regulation: ESMA publishes opinion and Q&A on disclosure standards**

ESMA has published an [opinion](#) and [Q&A document](#) on disclosure requirements under the Securitisation Regulation.

In December 2018 the EU Commission requested that amendments be made to the disclosure technical standards that ESMA had submitted in August 2018. ESMA agreed with the Commission's advice and amended the disclosure technical standards in order to:

- broaden the ability for reporting entities to use the 'no data' options in the respective templates, in particular in the templates for asset-backed commercial securitisation;
- adjust the content of certain fields in the templates where it considered that it could more appropriately address the Commission's request; and
- clarify the templates to be used to provide any inside information as well as information on significant events affecting the securitisation (under (f) and (g) and Article 7(1) of the Regulation).

ESMA has also published a document that covers technical issues on how to complete template fields and aims to assist market participants seeking further context on complying with the technical standards.

ESMA has submitted its opinion with the revised draft technical standards to the Commission for endorsement.

## **MiFID2/MiFIR: ESMA updates action plan for publishing systematic internaliser calculations**

ESMA has updated its [MiFID2 Q&A document](#) on transparency topics in order to update its action plan for the publication of systematic internaliser calculations.

The updated action plan postpones the publication of the systematic internaliser clarifications for ETCs, ETNs, SFPs, securitised derivatives, emission allowances and derivatives until at the latest 2020. The ongoing publication for equity, equity-like and bond instruments is maintained.

ESMA has amended its action plan due to inadequate levels of data for various non-equity asset classes. It intends to carry out additional work, along with national competent authorities (NCAs) and trading venues, to improve the quality and completeness of submitted data to ensure the publication of the systematic internaliser calculations as quickly as possible.

## **MiFID2/MiFIR: ESMA updates Q&As on market structures and transparency topics**

ESMA has updated its MiFID2 Q&A documents on [market structures topics](#) and [transparency topics](#), both dated 1 February 2019.

The market structures Q&A has been updated with a new question and answer on how the tests to identify high frequency trading techniques should be undertaken.

The transparency topics Q&A has been updated with a new question and answer on how APAs should report trading activity volume for the purpose of the transparency calculations.

## **ESMA Decision renewing product intervention measures for CfDs published in Official Journal**

ESMA's [Decision \(EU\) 2019/155](#) renewing the temporary restriction on the marketing, distribution or sale of contract for differences (CfDs) to retail clients has been published in the Official Journal.

In December 2018 ESMA took the view that a significant investor protection concern related to the offer of CFDs continues to exist and agreed to renew the measure for a further three month period. The renewed restriction applied from 1 February 2019.

## **EU Commission consults on enhancing role of euro in foreign exchange markets**

The EU Commission has launched a [consultation](#) to assess the role of the euro in foreign exchange markets, notably in comparison with other major currencies, and to determine whether trading the euro is conducted efficiently and on the basis of adequate market liquidity.

The consultation follows on from a communication issued by the Commission in December 2018 on strengthening the international role of the euro.

Comments are due by 31 March 2019.

## **AMLD 4: EU Commission adopts Delegated Regulation on managing ML/TF risks in third countries**

The EU Commission has adopted a [Delegated Regulation](#), which supplements the fourth Anti-money Laundering Directive (AMLD 4) with respect to managing the money laundering and terrorist financing (ML/TF) risks that credit or financial institutions face as a result of their operations in a third country.

AMLD 4 requires, amongst other things, that obliged entities ensure their anti-money laundering and counter terrorist financing (AML/CFT) policies and procedures are implemented effectively across all branches and majority-owned subsidiaries to the extent that local law permits. Where a third country's law does not permit the effective implementation of AML/CFT policies and procedures, obliged entities are required to take steps to handle the resultant risks effectively.

The adopted Regulation sets out regulatory technical standards (RTS) providing further detail on the measures obliged entities should take in those situations in order to manage ML/TF risks effectively. It sets out obligations on:

- individual risk assessments;
- customer data sharing and processing, including transfer of customer data to Member States;
- disclosure of information on suspicious transactions; and
- record-keeping.



The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal.

## **FCA publishes update and terms of reference on Global Financial Innovation Network**

The UK Financial Conduct Authority (FCA) has published a new [webpage](#) and [terms of reference](#) for the Global Financial Innovation Network (GFIN), which was launched in January 2019. The GFIN is a network of 29 organisations seeking to provide a more efficient way for innovative firms to interact with regulators across the world and for regulators to co-operate with one another on innovation related topics.

The new webpage sets out a summary of responses the FCA received to its consultation paper of August 2018, which recommended establishing the GFIN. The majority of respondents were in favour of establishing the network and of creating an environment in which firms could trial new technologies in multiple jurisdictions. As a result, GFIN finalised terms of reference for its governance and membership and confirmed its key functions, namely to:

- act as a network of regulators to collaborate and share experience of innovation in respective markets;
- provide a forum for joint policy work and discussions; and
- provide firms with an environment in which to trial cross-border solutions.

The GFIN has also opened up its membership and welcomes financial regulators and related organisations with a commitment to supporting innovation in the interest of consumers to join the network. Finally, the GFIN has launched a pilot of its cross-border testing environment. It invites firms interested in trialling and scaling new technologies in multiple jurisdictions to apply by 28 February 2019.

## **Brexit: SIs under the EU (Withdrawal) Act for 28 January – 1 February 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 European Structural and Investment Funds Common Provisions and Common Provision Rules etc. \(Amendment\) \(EU Exit\) Regulations 2019](#), which relate to the European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), and European Territorial Cooperation (ETC), and the HM Government's funding guarantee in the event of 'no deal';
- the [draft European Union \(Withdrawal\) Act 2018 \(Consequential Modifications and Repeals and Revocations\) \(EU Exit\) Regulations 2019](#), on the interpretation of EU-derived domestic legislation post-exit;
- the [draft Financial Regulators' Powers \(Technical Standards etc.\) and Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2019](#), which seek to ensure that recently adopted binding technical standards (BTS) continue to operate effectively;

- the [draft Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019](#), which make changes aimed at reflecting the UK's future position as a standalone regulatory regime outside the single market;
- the [draft Financial Services \(Distance Marketing\) \(Amendment and Savings Provisions\) \(EU Exit\) Regulations 2019](#), which seek to ensure the continuity of distance marketing requirements in the UK;
- the [draft International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), which aim to provide a national framework for the endorsement and adoption of International Financial Reporting Standards (IFRS); and
- the [draft Transparency of Securities Financing Transactions and of Reuse \(Amendment\) \(EU Exit\) Regulations 2019](#), which, among other things, transfer SFTR responsibilities to UK bodies, and seek to bring the treatment of EEA branches in line with the current treatment of third country branches in the UK.

The [Accounts and Reports \(Amendment\) \(EU Exit\) Regulations 2019 \(SI 2019/145\)](#) and the [Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(SI 2019/146\)](#) 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).

## **Brexit: FCA issues statement on use of temporary transitional power and new obligations**

The FCA has published a [statement](#) on how it intends to use a power granted under the draft Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 to make transitional provisions connected to changes to financial services legislation in a no deal scenario. An annex to the statement also sets out regulatory obligations that will change as a result of Brexit and that firms and other regulated entities should begin preparing for to ensure compliance on exit day.

The FCA states that it intends to use the power broadly to ensure that firms and other regulated entities can continue to comply with regulatory obligations as they did before exit day for a temporary period. However, post-exit regulatory obligations for which the FCA will not be making transitional provision include:

- MiFID2 transaction reporting;
- EMIR reporting obligations;
- issuer rules;
- contractual recognition of bail-in;
- short selling notifications;
- use of credit ratings for regulatory purposes; and,
- securitisation.

In respect of the onshored MiFID2 reporting regime, the FCA has published a [high-level overview](#) of how it expects firms to comply with FCA FIRDS and transaction reporting. The FCA has also published a [short statement](#) on requirements for UK trade repositories and reporting counterparties in a no deal scenario.



The FCA intends to publish more information on compliance before exit day, and is coordinating its approach with the Bank of England and Prudential Regulation Authority (PRA).

If the UK leaves the EU without an implementation period, the FCA intends to act proportionately in assessing compliance. It will not take a strict liability approach, nor will it take enforcement action where there is evidence that firms took reasonable steps to prepare to meet the new obligations.

### **Brexit: FCA signs MoUs with ESMA and EU regulators**

The FCA has [signed](#) memoranda of understanding (MoUs) with the ESMA and the EU/EEA securities regulators to allow continued cooperation and exchange of information in the event that the UK leaves the EU without a withdrawal agreement.

The MoU with ESMA covers the exchange of information in relation to the supervision of credit rating agencies and trade repositories. The MoU with the EU/EEA NCAs covers supervisory cooperation, enforcement and information exchange. It will allow the FCA and NCAs to share information on, amongst other things, market surveillance, investment services and asset management activities and will allow certain activities, such as fund manager outsourcing and delegation, to continue to be carried out by UK-based entities on behalf of counterparties based in the EEA.

Both MoUs will only take effect in the event of a no deal Brexit.

### **Brexit: FCA publishes list of EEA ROIE applicants**

The FCA has published a [list](#) of EEA market operators that have applied or given a formal intention to apply to become a recognised overseas investment exchange (ROIE).

ROIE status enables EEA operators unable to rely on MiFID2 passport rights, unable to use the overseas persons exclusion or that carry out regulated activities in the UK, to continue to provide users based in the UK with access to their market.

The following are the current and intended ROIE applicants:

- Boerse Frankfurt Zertifikate AG;
- Deutsche Boerse AG;
- Eurex Frankfurt AG;
- European Energy Exchange AG;
- Powernext SAS;
- ICE Endex Market B.V.;
- Euronext Amsterdam NV;
- Euronext Paris SA;
- The Irish Stock Exchange plc, trading as Euronext Dublin; and
- Nasdaq Oslo ASA.

The FCA intends to update the list from time to time.

## **FCA publishes policy statement on standards and communication rules for payment services and e-money**

The FCA has published a [policy statement \(CP19/3\)](#) setting out final changes to the FCA Handbook regarding general standards and communication rules for payment service providers (PSPs) and e-money issuers. The changes are made under the FCA's new rulemaking powers granted by the Payment Services Regulations 2017 and are intended to address differences in the regulatory treatment of FSMA and non-FSMA firms operating in the payment services and e-money sectors. The changes include:

- extending the application of the Principle of Business to the provision of payment services and e-money activities by certain PSPs and e-money issuers;
- extending the application of certain communication rules and guidance in Chapter 2, Banking Conduct of Business Sourcebook (BCOBS 2) to communications with payment service and e-money customers; and
- extending the application of rules and guidance on the communication and marketing of currency transfer services, applicable to payment services and the issuance of e-money involving a currency conversion.

Firms must comply with the new rules and guidance from 1 August 2019.

## **Financial Services Compensation Scheme: FCA and PRA consult on management expenses levy limit for 2019/20**

The FCA and PRA have launched a [consultation \(CP2/19\)](#) on proposals for the management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FSCS) for 2019/20.

The proposed MELL for 2019/20 is GBP 79.6 million and consists of FSCS management expenses of GBP 74.6 million and an unlevied contingency reserve of GBP 5 million.

The MELL for 2019/20 is an increase of 2.4% from the 2018/19 MELL, which is roughly in line with inflation. The rise in budget reflects a projected increase in volumes across pension/self-invested personal pension (SIPP) claims, but the increase is expected to be offset by FSCS cost efficiencies. GBP 53.1 million covers claims handling, which is the FSCS' core function.

Comments are due by 28 February 2019. Following consideration of responses, the FCA intends to issue a Handbook notice and the PRA a policy statement so that the final rules can be in place for the start of the FSCS' financial year on 1 April 2019.

## **Prospectus Regulation: FCA consults on changes to its Handbook**

The FCA has issued a [consultation paper \(CP19/6\)](#) on changes to its Handbook to ensure it remains consistent with the Prospectus Regulation (EU) 2017/1129 due to come into effect in July 2019.

The Prospectus Regulation sets out the information companies need to disclose to investors and potential investors in a prospectus when they are raising capital.

The proposed Handbook:

- reproduces key provisions of the Prospectus Regulation, other relevant EU legislation and domestic law; and
- incorporates rules the FCA is required to provide under the Prospectus Regulation.

Comments are due by 28 March 2019 and the FCA aims to publish a policy statement by the end of May.

## **FCA consults on proposals to promote effective stewardship**

The FCA has published two papers containing measures aimed at encouraging effective stewardship in the interest of consumers. The first is a [consultation paper \(CP19/7\)](#) which sets out proposed regulatory measures to implement certain provisions of the amended Shareholder Rights Directive (SRD2), which, assuming a transition period for the UK's withdrawal from the EU is agreed, will need to be transposed in the UK by 10 June 2019. The consultation only relates to the SRD2 provisions which apply to financial services firms that the FCA regulates, and to issuers in respect of related party transactions. Comments are due by 27 March 2019.

The second publication is a [joint discussion paper \(DP19/1\)](#) with the Financial Reporting Council (FRC) which considers how best to encourage the institutional investment community to engage more actively in stewardship of the assets in which they invest. In particular the FCA and FRC are seeking input on what effective stewardship should look like, what the minimum expectations should be for financial services firms that invest for clients and beneficiaries, what standards the UK should aspire to and how these standards could be achieved. Comments are due by 30 April 2019.

## **Brexit: Irish Government publishes draft no-deal legislation**

The Irish Government has published the [draft General Scheme of the Miscellaneous Provisions \(Withdrawal of the UK from the EU on 29 March 2019\) Bill 2019](#).

The draft Bill, which is intended to be consistent with and complementary to the EU Commission's contingency action plan and associated legislative measures, sets out proposals aimed at protecting citizens, supporting key economy sectors and maintaining the Common Travel Area (CTA) in the event of a no deal Brexit.

In respect of financial services, proposals include:

- supporting the implementation of the EU Commission's equivalence decision under the Central Securities Depositories Regulation (CSDR) and extending the protections contained in the Settlement Finality Directive to Irish participants in relevant third country domiciled settlement systems; and
- providing a temporary run-off regime, which, subject to certain conditions, will enable insurance undertakings and intermediaries to continue to fulfil contractual obligations to Irish customers for a period of three years after the date of the withdrawal of the UK from the EU.

## **BaFin launches renewed market survey on MiFID2**

One year following the implementation of MiFID2 into German law, the German Federal Financial Supervisory Authority (BaFin) is [re-examining](#) how private, foreign, cooperative and savings banks have put the MiFID2 requirements into practice.

BaFin carried out a corresponding market survey in January 2018 at 40 randomly selected investment services companies where problems were detected, in particular with the documentation of the suitability of investment recommendations and with the information on costs.

With the follow-up survey BaFin intends to get a current, market-wide overview and identify the developments since the first survey. The focus is once again on the new rules of conduct relevant for consumer protection, such as taping (telephone recording), the suitability declaration and the ex-ante cost information. BaFin is particularly interested in whether and how the new rules have an impact on investor protection in practice. To this end, BaFin has requested documents from the 40 banks on ten transactions each, on which they must state by 22 February 2019 for each individual case how they comply with the regulatory requirements.

## **Brexit: Luxembourg bill on measures to be taken in financial and insurance sector in no deal scenario published**

A new [Bill \(document parlementaire no. 7401/00\)](#) concerning measures to be taken in relation to the financial sector in the case of a withdrawal of the UK from the EU without a withdrawal agreement, and amending relevant laws governing the financial sector, the investment fund industry and the insurance sector has been lodged with the Luxembourg Parliament.

The Bill is intended to ensure financial stability and the orderly functioning of the financial markets, as well as to secure the situation of all actors of the Luxembourg financial sector and their clients, including depositors, payment services users, electronic money holders, holders of insurance policies and their beneficiaries, and investment fund investors, in case of a no deal Brexit.

For these purposes, the Bill confers temporary powers (for a maximum of 21 months) to the Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), and to the Luxembourg insurance sector supervisory authority, the Commissariat aux Assurances (CAA), to apply the legal provisions on EU passports to UK firms carrying out licensable activities in Luxembourg under free provision of services or through a branch or a tied agent at the time of a no deal Brexit. These powers relate only to contractual relationships that were entered into by UK firms before a no deal Brexit or to contracts concluded thereafter where they are closely linked to these preexisting contractual relationships.

Furthermore, the Bill amends the Luxembourg settlement finality regime, amongst others, by introducing certain provisions on the recognition of non EU/EEA payment and securities settlement systems. These amendments are not specifically targeting Brexit and are not temporary. They are intended to provide legal comfort to non EU/EEA systems recognised in Luxembourg so that they can admit participants established in Luxembourg to the system without unpredictable risk.

The Bill foresees an entry into force on 29 March 2019.

The lodging of the Bill with the Parliament constitutes the start of the legislative procedure.

### **Brexit: CSSF issues press release on delegation of investment management and temporary permissions regime in no deal scenario**

The Luxembourg supervisory authority for the financial sector (CSSF) has issued a [press release \(19/05\)](#) on:

- the delegation of investment management in relation to Luxembourg investment funds to undertakings in the UK; and
- the use of the temporary permissions regime (TPR) by firms and investment funds established in Luxembourg.

As regards the delegation of investment management/portfolio management and/or risk management activities, the CSSF notes that Luxembourg fund legislation (in particular, Article 110 of the law of 17 December 2010 on undertakings for collective investment as regards UCITS, Article 18 of the law of 12 July 2013 on alternative investment fund managers as regards AIFs, and Article 42b of the law of 13 February 2007 on specialised investment funds as regards SIFs non-AIFs) allows such delegations to undertakings in the UK (which would have the status of a third country in the event of a no deal Brexit), provided that (i) the relevant UK delegates are authorised or registered for the purpose of asset management and subject to prudential supervision and that (ii) cooperation is ensured between the FCA in the UK and the CSSF in Luxembourg. In this respect, the CSSF intends for the required cooperation between the FCA and the CSSF to be in place on 29 March 2019 in the event of a no deal Brexit.

As regards the use of the TPR, the CSSF notes that this permission regime was opened by the FCA on 7 January 2019 and allows relevant Luxembourg firms and investment funds that passport activities in the UK (e.g. under the AIFMD and UCITS passports) to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period of time once the UK leaves the EU after 29 March 2019 in a no deal scenario. The CSSF has reminded the relevant Luxembourg firms and investment funds that to benefit from the use of the TPR they must notify the FCA before 28 March 2019 at the latest; otherwise they will not be allowed to pursue their activities under the TPR.

In addition, the CSSF requires that those Luxembourg firms and investment funds that use the TPR duly inform the CSSF of any notifications made under the TPR by sending an email notification to the CSSF's dedicated address ([opc@cssf.lu](mailto:opc@cssf.lu)) as soon as they have submitted their notification to the FCA. The email notification must include the name of the firm, fund or sub-fund and a detail of the services/activities for which the TPR notification has been submitted as well as the date of the TPR notification.

The CSSF has also informed the public that a draft regulation published by HM Treasury foresees a similar TPR for other financial institutions, including banks, which would allow such institutions to continue operating in the UK for a limited period of time in the case of a no deal Brexit. However, the CSSF has reminded Luxembourg financial institutions that the foreseen notification window opened on 7 January 2019 and will close on 28 March 2019.

## **CSSF issues circular on electronic transmission of documents**

The CSSF has issued [Circular 19/708](#) concerning the electronic transmission of documents to the CSSF by:

- regulated investment funds, including (i) UCITS and Part II UCIs governed by the law of 17 December 2010 on undertakings for collective investment (UCI Law), (ii) SIFs governed by the law of 13 February 2007 on specialised investment funds, and (iii) SICARs governed by the law of 15 June 2004 on investment companies in risk capital; and
- investment fund managers (IFMs), including (i) management companies governed by Chapter 15 and Chapter 16 of the UCI Law, (ii) external and internally-managed AIFMs authorised under the law of 12 July 2013 on alternative investment fund managers, and (iii) Luxembourg branches of foreign non-UCITS management companies governed by Chapter 17 of the UCI Law.

The main purpose of Circular 19/708 is to clarify the documents that must be transmitted electronically by the above entities to the CSSF as of 1 February 2019, as well as the procedures and nomenclature to be complied with in this respect. The circular also aims to extend the electronic transmission of documents to pensions funds governed by the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs) and to securitisation undertakings governed by the law of 22 March 2004 on securitisation.

The relevant documents that must be transmitted to the CSSF by electronic means include, without limitation, the prospectus/offering documents, the constitutive documents, the annual and other reports, the risk management procedure and certain tables such as the table listing the professional activities and the mandates performed by the members of the management body and the conducting officers of the entities concerned. A complete list of these documents is enclosed in an Annex to Circular 19/708, which will be kept up-to-date on the CSSF's website and which shall be consulted regularly by the entities concerned as the CSSF no longer expects to receive these documents by other means as of 1 February 2019.

As regards the technical procedure, the CSSF notes that the relevant documents shall be transmitted in their final form, in principle in PDF-text format, by using only the secured channels that have been accepted by the CSSF, i.e. for the moment 'e-file' and 'SOFIE'. The circular also emphasises that the applicant (déposant) will be responsible for the content and format of the transmitted file, and it is its particular responsibility to ensure that the documents transmitted by electronic means correspond to the official and final paper version.

Circular 19/708 replaces Circular 08/371 on the electronic transmission of prospectuses and financial reports of UCIs and SIFs to the CSSF and Circular 09/423 on the electronic transmission to the CSSF of long form reports and management letters.



## **Polish Financial Supervision Authority issues bulletin regarding amendments to Banking Law**

The Polish Financial Supervision Authority (PFSA) has issued a [bulletin](#) announcing that it has forwarded its proposal for amendments to the Act – Banking Law to the Minister of Finance. The amendments would allow informing the public about decisions on sanctions made by the PFSA against banks prior to the decision imposing such sanctions becoming final and binding, if the interest of the participants in the financial market so requires.

## **Brexit: Polish Financial Supervision Authority issues bulletin with respect to financial market**

The PFSA has issued a [bulletin](#) setting out that in the event of a no deal Brexit, entities from the United Kingdom operating in the financial market will have the status of entities from a third country. Therefore, such entities will be able to conduct business activity in Poland only after relevant proceedings before the PFSA have been completed (depending on the entity and type of its activity, this may mean, among other things, the necessity to obtain a relevant approval from the PFSA) and supervision over such entities will be exercised in the scope provided for by relevant provisions of law.

Moreover, the PFSA has specified the following major risks in relation to the financial market in the event of the UK leaving the EU without an agreement:

- as of 30 March 2019, entities with their registered office in the UK will no longer have the right to provide financial services in the EU under current licenses or approvals issued by British financial supervision authorities (pursuant to the single European passport, under the freedom of establishment and the freedom to provide services in the EU);
- the separation of legal systems and, consequentially, the emergence of differences between them (including differences in regulations and standards regarding the financial market, the protection of statutory-protected secrets, processing of data or outsourcing);
- no free movement of persons, relevant for entities conducting business activity.

## **CSRC proposes to consolidate QFII and RQFII regimes and expand investment scope**

The China Securities Regulatory Commission (CSRC) has published the [draft 'Measures for the Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors \(QFII\) and RMB Qualified Foreign Institutional Investors \(RQFII\) \(Consultation Paper\)'](#), together with draft implementing rules.

The aim of the draft Measures is to consolidate the QFII and RQFII regimes and further broaden their investment scope to cover both China's securities and futures markets. The following proposals under the draft Measures are worth noting:

- consolidating QFII and RQFII regimes – the draft Measures propose to consolidate the existing rules for QFII and RQFII regimes into one set of rules so that an approved foreign investor may invest using both foreign currencies and RMB;

- simplified vetting process – the quantitative criteria in the existing QFII and RQFII rules shall be removed and the application process further streamlined;
- broadening investment scope and type – shares listed on the National Equities Exchange and Quotations, bond repos, private investment funds, financial futures, commodity futures, options as well as securities margin trading will become available under the combined QFII/RQFII regime; and
- relaxing custodian management – qualification for a QFII's custodian will be subject to only a post-filing requirement and a QFII can appoint multiple custodians.

Comments are due by 2 March 2019.

## **Hong Kong and China sign arrangement on reciprocal recognition and enforcement of judgments in civil and commercial matters**

Hong Kong and China have signed an arrangement on reciprocal recognition and enforcement of judgments (REJ) in civil and commercial matters. The [arrangement](#) is intended to establish a bilateral legal mechanism with greater clarity and certainty for REJ in civil and commercial matters between Hong Kong and China to reduce the need for re-litigation of the same disputes in both places and offer better protection to the parties' interests.

Hong Kong has by now concluded six arrangements with China concerning various aspects of mutual legal assistance in civil and commercial matters. Among them, this arrangement is the third one providing for REJ between the two places in civil and commercial matters.

The arrangement applies to matters considered to be of a 'civil and commercial' nature under both Hong Kong and China law and covers both monetary and non-monetary relief. However, it does not apply to non-judicial proceedings and judicial proceedings relating to administrative or regulatory matters. It also sets out jurisdictional grounds for the purposes of recognition and enforcement as well as grounds for refusal of recognition and enforcement.

The Department of Justice (DOJ) has indicated that the arrangement will be implemented by local legislation in Hong Kong. It will take effect after both places have completed the necessary procedures to enable implementation and will apply to judgments made on or after the commencement date.

## **SFC announces new measures to update licensing processes**

The Securities and Futures Commission (SFC) has [announced](#) new measures to enhance the efficiency and transparency of its gatekeeping function. The new measures include introducing revamped licensing forms, a new edition of the SFC's Licensing Handbook and mandatory electronic submission of all annual returns and notifications.

From 11 April 2019, all intermediaries will have to submit their annual returns and notifications to the SFC electronically via the SFC Online Portal. Individual licensees are already required to submit these documents online. The revamped forms, which have been standardised and come with new instructions and navigation guides, are intended to help the SFC more efficiently gather the information it needs to assess an applicant's fitness and

properness to be licensed. Applicants for corporate licences will also be required to complete newly-introduced business profile and internal control questionnaires which will allow the SFC to identify potential regulatory issues at an early stage.

The new licensing forms are now available on the SFC website and should be used starting 11 February 2019. Current forms will be accepted during a two-month transition period. Use of the new forms will be compulsory from 11 April 2019, when mandatory electronic submission of annual returns and notifications will also take effect. The SFC will organise workshops on the revamped licensing processes for the industry in February and March 2019.

### **SFC and HKEX launch joint consultation on uncertificated securities market model**

The SFC, Hong Kong Exchanges and Clearing Limited (HKEX) and the Federation of Share Registrars Limited (FSR) have jointly issued a [consultation paper](#) proposing a revised operational model for implementing an uncertificated securities market in Hong Kong. With the support of the government, a working group led by the SFC with representatives from HKEX and the FSR was set up to develop an operational model for implementing an uncertificated securities market in Hong Kong.

In an uncertificated/paperless securities market, investors could hold and transfer securities in their own name without share certificates or other paper documents. The digitisation of securities holdings and elimination of manual processes is intended to enhance post-trade settlement and servicing and make Hong Kong's markets more efficient and globally competitive.

According to the SFC, the costs of the new systems to support the revised model will largely be borne by HKEX and share registrars as part of their commitment to the ongoing technological development of Hong Kong's markets. Many existing processes can also be retained. The consultation paper states that the cost implications for market participants will therefore be low.

The proposed model is intended to strike a balance between preserving existing efficiencies in the clearing and settlement process and providing options for investors to hold securities in uncertificated form. The regulators plan to implement the proposed model in phases.

The market was previously consulted (in 2009/2010) on a possible operational model (2010 Model). Work proceeded on the basis of that model, including the enactment of relevant primary law amendments. However, in the course of developing the details of the 2010 Model, market concerns were raised about the limitations of that model. In view of this, the regulators have had to revisit the 2010 Model and identify an alternative approach.

Comments on the consultation are due by 27 April 2019.

### **MAS revises Notices 610 and 1003 on submission of statistics and returns by banks and merchant banks**

The Monetary Authority of Singapore (MAS) has revised [Notice 610](#) and [Notice 1003](#), which provide for the submission of statistics and returns by banks and merchant banks respectively.

Amongst other things, the revised Notices provide revised guidance for the completion of:

- the return on monthly foreign exchange business and other derivatives transacted by banks and merchant banks. Where the transactions do not involve Singapore dollars, the foreign currency amount should be converted into Singapore dollars using the bank's internal currency conversion rates at the close of business on the last business day of each corresponding month; and
- the quarterly return on classified exposures of the Asian Currency Unit and Domestic Banking Unit. The exchange rates used to convert foreign currency exposures should be the bank's internal currency conversion exchange rates at the close of business on the last business day of the corresponding quarter of March, June, September and December.

The revised Notices are effective from the monthly returns for January 2019 and the quarterly return for the quarter ending March 2019.

### **MAS revises guidelines on electronic offers of securities, securities-based derivatives contracts or units in collective investment schemes**

The MAS has published [revised guidelines](#) on electronic offers of securities, securities-based derivatives contracts or units in collective investment schemes (CIS), which replace the previous guidelines on offers of securities through the internet published in 2002.

The guidelines apply primarily to offers of securities, securities-based derivatives contracts and units in CIS made through the internet, including offers made via internet banking platforms and mobile applications.

The revisions to the guidelines relate to the following, amongst other things:

- statutory requirements for a prospectus, offer information statement and product highlights sheet;
- security issues concerning electronic versions of offering documents, electronic subscriptions of securities, securities-based derivatives contracts or units in a CIS; and
- the actions to be taken by an offeror when an offer closes.

### **PDPC consults on Model Artificial Intelligence Governance Framework**

The Personal Data Protection Commission (PDPC) has released the [Model Artificial Intelligence \(AI\) Governance Framework](#) for public consultation, pilot adoption and feedback.

The Model Framework provides guidance to private sector organisations to address key ethical and governance issues when deploying AI solutions and is underpinned by the following two high-level guiding principles:

- organisations using AI in decision-making should ensure that the decision-making process is explainable, transparent and fair; and
- AI solutions should be human-centric.

The Model Framework provides guidance on measures promoting the responsible use of AI that organisations should adopt in the following key areas:

- internal governance structures and measures;
- risk management in autonomous decision-making;
- operations management; and
- customer relationship management.

Comments on the consultation are due by 30 June 2019.

In connection with the above, the PDPC has announced a collaboration with the World Economic Forum's (WEF's) Centre for the Fourth Industrial Revolution (C4IR) to further drive AI and data innovation. The IMDA and the WEF will be engaging with organisations to discuss the Model Framework in greater detail and facilitate its adoption. The C4IR and IMDA will also develop a measurement matrix for the Model Framework which regulators and certification bodies globally can adopt and use when assessing their AI deployment initiatives, and a discussion paper outlining policy options on the facilitation of cross-border data flows under the collaboration.

### **Australian government consults on initial coin offerings**

The Australian government has launched a [public consultation](#) on initial coin offerings (ICOs). The consultation paper forms part of the Australian Treasury's review into ICOs.

The consultation paper is intended to seek feedback on:

- the opportunities and risks posed by ICOs for Australia;
- whether the Australian regulatory framework is well placed to allow opportunities created by ICOs to be harnessed whilst appropriately managing the associated risks; and
- whether there are other actions that could be taken to best position Australia to capitalise on new opportunities.

Comments on the consultation are due by 28 February 2019.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Brexit Update – EU 'No Deal' contingency planning**

The UK is due to leave the EU in just two months, and there is no clarity about whether an orderly withdrawal is possible. The EU has begun preparations for a 'No Deal' outcome, where the UK would leave the EU on 29 March 2019 and become a third country with no formal trade or political agreement in place.

This briefing provides an overview of the contingency planning for this scenario, including action by the remaining 27 EU Member States, action by businesses and citizens, and action at EU level – in particular on financial services, air transport, road haulage, customs and dual-use goods, sanitary and phytosanitary (SPS) requirements, climate policy, fisheries policy and citizens.

[https://www.cliffordchance.com/briefings/2019/01/brexit\\_update\\_-\\_eunodealcontingencyplanning.html](https://www.cliffordchance.com/briefings/2019/01/brexit_update_-_eunodealcontingencyplanning.html)

## **EU financial services horizon scanner, January 2019**

The financial services horizon scanner provides a high level overview of ongoing and expected EU legislative initiatives that are likely to impact firms providing financial services in the EU.

The horizon scanner has been prepared as of January 2019 and sets out projected timelines for the finalisation and implementation of relevant requirements, covering approximately the next 18 months to two years.

[https://www.cliffordchance.com/briefings/2018/01/eu\\_financial\\_serviceshorizonscanner.html](https://www.cliffordchance.com/briefings/2018/01/eu_financial_serviceshorizonscanner.html)

## **The Asia Pacific Top Ten FCPA Enforcement Actions of 2018**

The pace of Foreign Corrupt Practices Act (FCPA) enforcement in Asia Pacific remained steady in 2018, but not of torrential proportions. Notable cases from the region included Panasonic's USD 280 million settlement with the US Department of Justice (DOJ) and the US Securities and Exchange Commission (SEC), a 'princelings' settlement with Credit Suisse in Hong Kong, and ongoing investigations related to 1 Malaysia Development Berhad (1MDB). Two of the five unrelated cases concluded by the DOJ in 2018, and half of the SEC's 14 cases, involved conduct arising in Asia Pacific.

This briefing provides a roundup of the top-ten FCPA enforcement actions in Asia Pacific from the last year.

[https://www.cliffordchance.com/briefings/2019/01/the\\_asia\\_pacifictoptenfcpaenforcementaction.html](https://www.cliffordchance.com/briefings/2019/01/the_asia_pacifictoptenfcpaenforcementaction.html)

## **Davos 2019 – The next global crisis – are we ready?**

China and the US are heading towards a new cold war which may radically alter the global economy, argued Nouriel Roubini, Professor of Economics at New York University's Stern School of Business, at an event hosted by Clifford Chance in Davos. In a wide-ranging and thought-provoking speech, Professor Roubini explored medium to long-term issues including the clash between the world's two superpowers, the balkanisation of the global economy and the dramatic impact that technology will have on all our lives. This briefing showcases some of the highlights.

[https://www.cliffordchance.com/briefings/2019/01/davos\\_2019\\_the\\_nextglobal\\_crisis-areweready.html](https://www.cliffordchance.com/briefings/2019/01/davos_2019_the_nextglobal_crisis-areweready.html)

## **Fintech in 2019 – Five trends to watch**

Technology continues to have an enormous impact on financial services and the pace of change shows no signs of abating. This briefing highlights the five stand-out trends for fintech in 2019.

[https://www.cliffordchance.com/briefings/2019/01/fintech\\_in\\_2019\\_fivetrendstowatch.html](https://www.cliffordchance.com/briefings/2019/01/fintech_in_2019_fivetrendstowatch.html)



## **Preparing for an imminent Brexit – potential disputes under commercial contracts**

Brexit is now imminent, and with it will come the potential for problems under existing contracts. Companies must explore in advance the risks they face, what their options are, and what choices they should make.

This briefing considers the potential disputes under commercial contracts that could arise on Brexit and which contractual clauses will be most relevant.

[https://www.cliffordchance.com/briefings/2019/01/preparing\\_for\\_animminentbrexitpotentialia.html](https://www.cliffordchance.com/briefings/2019/01/preparing_for_animminentbrexitpotentialia.html)

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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