INTERNATIONAL REGULATORY UPDATE 11 – 15 MARCH 2019

- **Capital Markets Union: EU Commission publishes progress report**
- **EMIR 2.2: EU Council and Parliament reach preliminary agreement**
- **EMIR: Delegated Regulation extending dates of deferred application of clearing obligation for certain OTC derivative contracts in a no-deal Brexit scenario published in Official Journal**
- **EMIR: Delegated Regulation on risk mitigation techniques to assist Brexit preparations for OTC derivative contracts published in Official Journal**
- **EU Commission adopts two Delegated Regulations to support prospectus rules reform**
- **MiFIR: EU Commission adopts transparency requirements exemption for People's Bank of China**
- **PSD2: RTS and ITS on the EBA register published in Official Journal**
- **PSD2: EU Commission adopts Delegated Regulation on central contact points for payment services**
- **Working group on euro risk-free rates recommends transition path from EONIA to €STR and €STR-based forward-looking term structure methodology**
- **ECB announces start date for euro short-term rate**
- **EU Council Presidency publishes compromise text for low carbon benchmarks amendment to Benchmarks Regulation**
- **Banking Union/NPLs: ECON Committee publishes draft report on proposed directive on credit servicers, credit purchasers and recovery of collateral**
- **Credit rating agencies: FCA and ESMA issue statements on endorsement of credit ratings in a no-deal scenario**
- **EBA publishes annual supervisory convergence report for 2018**
- **Basel Committee publishes statement on crypto-assets**
- **FSB requests further work on fallback language for derivatives referencing**
- **Brexit: SIs under the EU (Withdrawal) Act for 11 - 15 March 2019**
- **Brexit: FCA publishes statement on MiFID2/MiFIR and Benchmark**

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International Regulatory Group Contacts

Chris Bates +44 (0)20 7006 1041
Gareth Old +1 212 878 8539
Marc Benzler +49 69 7199 3304
Steven Gatti +1 202 912 5095
Paul Landless +65 6410 2235
Mark Shipman + 852 2826 8992
Donna Wacker +852 2826 3478

International Regulatory Update Editor

Joachim Richter +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname @cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

Regulation provisions in no-deal scenario

- **MiFID: FCA publishes supervisory statement on transparency regime post-Brexit**
- **EMIR: FCA issues statement on derivatives reporting in a no-deal Brexit scenario**
- **FCA consults on changes to DEPP and EP to reflect application of Securitisation (Amendment) (EU Exit) Regulations 2019 and Securitisation Regulations 2018**
- **PRA consults on updates to Pillar 2 capital framework**
- **CRR: PRA publishes policy statement on eligibility of guarantees as unfunded credit protection**
- **Bank of Italy consults on definition of default and on materiality threshold for credit obligations past due**
- **Bank of Italy updates circular on supervisory provisions for banks**
- **Luxembourg law recognising use of distributed ledger technology by securities depositories published**
- **Grand Ducal regulation on fees to be levied by CSSF published**
- **CSSF issues circular on annual reporting by credit institutions**
- **CSSF issues circular on introduction of quarterly internalised settlement reporting requirements pursuant to CSDR**
- **Swiss Federal Council consults on partial revision of Banking Act**
- **Australian government consults on terms of reference of APRA's capability review**
- **Recent Clifford Chance briefings: US Court Acquits FX Trader of Alleged Frontrunning, the EU Securitisation Regulation, and more. Follow this link to the briefings section**

Capital Markets Union: EU Commission publishes progress report

The EU Commission has published a Communication setting out its progress in delivering the Capital Markets Union (CMU) project.

The Commission has tabled all of the legislative and non-legislative measures it committed to in its original mandate and mid-term review to create the CMU. The Commission calls on its co-legislators to remain committed to ensuring that all pending legislation is adopted as soon as possible.

The Communication acknowledges that more work will be needed to ensure a strong CMU is in place in the EU, calling for further action to reflect the impact of Brexit and other short and medium-term economic and social challenges.

EMIR 2.2: EU Council and Parliament reach preliminary agreement

The EU Council Presidency and the EU Parliament have reached a preliminary agreement on the proposed Regulation amending the European Market Infrastructure Regulation (EMIR) as regards the procedures and

authorities involved for the authorisation of central counterparties (CCPs) and requirements for the recognition of third-country CCPs (EMIR 2.2).

Key elements of the proposed regulation include:

- establishing a CCP supervisory committee within the European Securities and Markets Authority (ESMA) to ensure closer cooperation between supervisory authorities and central banks responsible for EU currency;
- introducing a system for recognising and supervising third country clearing houses, and in particular, differentiating between non-systemically important CCPs and systemically important CCPs (also called Tier 2 CCPs);
- setting stricter rules that Tier 2 CCPs must adhere to in order to be recognised and authorised to operate in the EU; and
- as a measure of last resort, allowing ESMA to be able to conclude that a CCP or some of its clearing services are of such substantial systemic importance that the CCP should not be recognised, requiring the third country CCP to establish itself in the EU in order to be able to operate.

The text will be submitted to EU ambassadors for endorsement and then undergo a legal linguistic revision. The EU Council and the EU Parliament will be called on to adopt the proposed regulation at first reading.

The EU Commission and US Commodity Futures Trading Commission (CFTC) have issued a joint statement welcoming the political agreement. Both regulators expect the implementation of EMIR 2.2 and the CFTC's own regulatory review of its swaps framework and cross-border approach to result in more deference between the CFTC and EU regulators than is currently the case.

EMIR: Delegated Regulation extending dates of deferred application of clearing obligation for certain OTC derivative contracts in a no-deal Brexit scenario published in Official Journal

Commission Delegated Regulation (EU) 2019/396 as regards the date at which the clearing obligation takes effect for certain types of contracts under a no-deal Brexit scenario has been published in the Official Journal.

The Regulation entered into force on 14 March 2019 and will apply on the date following that of the UK's exit from the EU in a no-deal scenario.

EMIR: Delegated Regulation on risk mitigation techniques to assist Brexit preparations for OTC derivative contracts published in Official Journal

Commission Delegated Regulation (EU) 2019/397 as regards the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a CCP has been published in the Official Journal.

The draft RTS relate to the treatment of OTC derivative contracts novated from a counterparty established in the UK to a counterparty established in another Member State, as a consequence of the notification of intention of the UK to withdraw from the EU. The draft RTS propose a limited exemption in

order to facilitate the novation of certain OTC derivative contracts to EU counterparties during a specific time window.

The Regulation entered into force on 14 March 2019 and would only apply in a no-deal scenario.

EU Commission adopts two Delegated Regulations to support prospectus rules reform

The EU Commission has adopted two Delegated Regulations to support the reform of the prospectus requirements as set out in the Capital Markets Union action plan.

The first adopted Regulation repeals Regulation (EC) No 809/2004 and is intended to clarify the format, content, scrutiny and approval of prospectuses to be published when securities are offered to the public or admitted to trading.

The second adopted Regulation, which repeals Delegated Regulations (EU) No 382/2014 and (EU) 2016/301, sets out regulatory technical standards (RTS) on key financial information within the summary of a prospectus as well as the publication and classification of prospectuses, advertisements for securities and the functioning of the notification portal.

The two Delegated Regulations will enter into force on the twentieth day following their publication in the Official Journal.

MiFIR: EU Commission adopts transparency requirements exemption for People's Bank of China

The EU Commission has adopted a Delegated Regulation exempting the People's Bank of China (PBoC) from the pre- and post-trade transparency requirements under MiFIR.

A report published alongside the Delegated Regulation sets out the Commission's assessment and conclusion that the People's Republic of China (PRC) has a legal framework that allows for a sufficient level of transparency, and that trading activity in the EU originating from the PRC is substantial enough to justify granting an exemption to the PBoC.

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

PSD2: RTS and ITS on the EBA register published in Official Journal

RTS and implementing technical standards (ITS) on the electronic central register under the Payment Services Directive (PSD2) have been published in the Official Journal.

The RTS (Delegated Regulation (EU) 2019/411) set technical requirements on the development, operation and maintenance of the register and the procedure for accessing information.

The ITS (Implementing Regulation (EU) 2019/410) set out the details and structure of the information to be transmitted by competent authorities (CA) to the European Banking Authority (EBA).

The Regulations enter into force on 4 April 2019.

PSD2: EU Commission adopts Delegated Regulation on central contact points for payment services

The EU Commission had adopted a Delegated Regulation setting out RTS on central contact points within the field of payment services under the recast Payment Services Directive (PSD2).

Under PSD2, host Member States may require payment institutions or electronic money institutions, whose head office is in another Member State and that operate through agents in their territories under the right of establishment, to set up a central contact point in their territory in order to ensure adequate communication and information reporting in the host Member State and to facilitate supervision by competent authorities in both the home and host Member State. The RTS set out the criteria for determining the circumstances in which the appointment of a central contact point is appropriate and the functions a central contact point must perform.

The Council of the EU and the EU Parliament will not consider the Delegated Regulation. If it receives no objections it will enter into force 20 days after it is published in the Official Journal.

Working group on euro risk-free rates recommends transition path from EONIA to €STR and €STR-based forward-looking term structure methodology

The working group on euro risk-free rates has published its recommendations regarding the transition from the euro overnight index average (EONIA) to the euro short-term rate (€STR) and the calculation of a €STR-based term structure.

Among other things, the working group recommends:

- that market participants gradually replace EONIA with the €STR for all products and contracts, making the €STR their standard reference rate;
- the European Money Market Institute (EMMI) modifies the current EONIA methodology to become the €STR plus a spread until end-2021, to give market participants sufficient time to transition to the €STR. The working group also requests EMMI to engage with the relevant authorities to ensure that EONIA, under its evolved methodology, complies with the EU Benchmarks Regulation; and
- a methodology based on OIS tradeable quotes for calculating a forward-looking term structure based on €STR derivatives markets that could be used as a fallback in EURIBOR-linked contracts.

The working group intends to focus on the adoption of the €STR and on further analysis of both backward- and forward-looking approaches as potential fallbacks for EURIBOR.

ECB announces start date for euro short-term rate

The European Central Bank (ECB) aims to start publishing the euro short-term rate (€STR) as of 2 October 2019, reflecting the trading activity of 1 October 2019.

The ECB also intends to provide the computation of a one-off spread between the €STR and EONIA to support private sector efforts in the transition away from the euro overnight index average EONIA. The spread will be calculated

according to the methodology recommended by the Working Group on Euro Risk-Free Rates. The ECB plans to communicate the resulting spread on the day on which the change in the methodology of EONIA is announced. It will be based on the pre-€STR and EONIA data as publicly available.

EU Council Presidency publishes compromise text for low carbon benchmarks amendment to Benchmarks Regulation

The EU Council Presidency has published a compromise text of the proposed regulation amending the Benchmarks Regulation as regards EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks.

The amendment to the Benchmarks Regulation introduces a regulatory framework which lays down minimum requirements for EU Climate Transition and EU Paris-aligned Benchmarks. It is hoped that introducing a clear distinction between EU Climate Transition and EU Paris-aligned Benchmarks and developing minimum standards for each will contribute to consistency among those benchmarks, better transparency and help to avoid greenwashing.

Under the proposal, only administrators that comply with the requirements laid down in the regulation should be eligible to use the labels 'EU Climate Transition Benchmark' and 'EU Paris-aligned Benchmark' when marketing those benchmarks in the EU.

The EU Council Presidency has asked the Permanent Representatives Committee (COREPER) to approve the compromise text with a view to reaching an agreement at first reading with the EU Parliament.

Banking Union/NPLs: ECON Committee publishes draft report on proposed directive on credit servicers, credit purchasers and recovery of collateral

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published a draft report on the proposed directive on credit servicers, credit purchasers and the recovery of collateral.

The draft report sets out the ECON Committee's amendments to the proposed directive, which forms part of the EU Commission's package of measures aimed at addressing the risks related to high levels of non-performing loans (NPLs) in Europe.

Credit rating agencies: FCA and ESMA issue statements on endorsement of credit ratings in a no-deal scenario

ESMA and the Financial Conduct Authority (FCA) have issued statements on the endorsement of credit ratings in the event of a no-deal Brexit.

ESMA has issued a statement setting out the implications for UK credit rating agencies (CRAs), including the endorsement of UK credit ratings, in a no-deal scenario. ESMA has completed its evaluation and found the foreseen UK legal and supervisory framework as meeting its conditions for endorsement, finding that most UK-based CRAs have taken the necessary steps to prepare for the endorsement regime.

In its corresponding statement, the FCA finds the EU regulatory and supervisory regime to be as stringent as the UK's regime for the purposes of

allowing UK-registered CRAs to endorse credit ratings into the UK from affiliated EU CRAs for regulatory use under the Credit Rating Agencies Regulation.

EBA publishes annual supervisory convergence report for 2018

The EBA has published its 2018 report on the convergence of supervisory practices in the EU. The report sets out the EBA's observations on the current state of supervisory convergence, in particular in the supervisory review and evaluation process (SREP) and the continuum between ongoing supervision, recovery and resolution.

Overall, the EBA found that competent authorities had made good progress in the implementation of the 2014 SREP guidelines and the recommendations made by the EBA during the 2016 and 2017 bilateral convergence visits. However, some key areas required improvement, including the methodologies for capital adequacy assessments and the articulation of institution-specific additional own funds requirements, and in the link between ongoing supervision, early intervention, and resolution.

The EBA also observed that the establishment of internal procedures by competent authorities which take into account the Single Rulebook was of benefit to convergence in the continuum between ongoing supervision, recovery and resolution. However, some key aspects still required improvements, such ensuring that all the institutions that do not benefit from a waiver have developed a recovery plan.

Finally, the report sets out the EBA's upcoming activities in the area of supervisory convergence, including:

- continued monitoring and assessment of convergence in the practical application of the Single Rulebook;
- continued monitoring of compliance with its guidelines on supervisory convergence; and
- a review of the approaches applied by competent authorities to monitor and assess key topics, such as internal governance, operational resilience and non-performing exposures.

Basel Committee publishes statement on crypto-assets

The Basel Committee on Banking Supervision (BCBS) has published a statement setting out its prudential expectations related to banks' exposures to crypto-assets and related services. The BCBS is of the view that crypto-assets present a number of risks for banks due to their volatility, lack of standardisation and rapid evolution. The BCBS therefore expects that banks, which are authorised to and decide to acquire crypto-asset exposures or provide related services, should as a minimum:

- conduct comprehensive due diligence before acquiring exposures to crypto-assets or providing related services;
- have clear and robust risk management frameworks that are appropriate for the risks posed by crypto-asset exposures and related services and are fully integrated into the banks' overall risk management processes;
- publicly disclose any material crypto-asset exposures or related services as part of their regular financial disclosures; and

- inform their supervisory authorities of actual and planned crypto-asset exposures or activities in a timely manner.

The BCBS intends to provide further clarification on the prudential treatment of exposures to crypto-assets at later date and is coordinating its work with other global standard setting bodies and the Financial Stability Board (FSB).

FSB requests further work on fallback language for derivatives referencing

The Co-chairs of the FSB's Official Sector Steering Group (OSSG) have written to the International Swaps and Derivatives Association (ISDA) requesting additional work on options for adopting more robust fallback language for derivatives referencing key interbank offered rates (IBORs).

In its letter, the OSSG raises three issues it views as particularly important:

- the addition of trigger events;
- the timing for an ISDA consultation on US dollar LIBOR and certain other IBORs; and
- the governance and transparency necessary as ISDA makes its final decisions.

Triggers that would only take effect on the date on which LIBOR permanently or indefinitely stopped publication could leave those with LIBOR-referencing contacts exposed to a number of risks. The OSSG encourages ISDA to ask for market opinion on the events that would trigger a move to the spread-adjusted fallback rate. In addition, the OSSG requests that ISDA also consult on the key technical details that ISDA's Board Benchmark Committee will need to decide on before implementation can begin.

The OSSG also supports ISDA's planned consultation on USD LIBOR and certain other IBORs in early 2019 and requests that it confers with the relevant national working group to identify the best time to issue a dedicated consultation on EURIBOR and EUR LIBOR.

Brexit: SIs under the EU (Withdrawal) Act for 11 - 15 March 2019

HM Government published new draft statutory instruments (SIs) under the EU (Withdrawal) Act 2018 last week, including the draft Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2019, which were laid before Parliament.

The following statutory instruments were made:

- the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/541);
- the Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019 (SI 2019/576);
- the Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019 (SI 2019/574);
- the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (SI 2019/589); and

- the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 (SI 2019/542).

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 statement on MiFID2/MiFIR and Benchmark Regulation provisions in no-deal scenario

The FCA has published a statement setting out its approach to the application of some key MiFID2/MiFIR and Benchmark Regulation (BMR) provisions should the UK leave the EU in a no-deal scenario.

This follows ESMA publishing a statement on its approach to the same issues on 7 March 2019.

The FCA statement covers:

- post trade transparency and position limits;
- post-trade transparency for OTC transactions between UK investment firms and EU counterparties;
- trading obligation for derivatives; and
- benchmarks.

The FCA has indicated that these opinions may change depending on the final timing and nature of Brexit.

MiFID: FCA publishes supervisory statement on transparency regime post-Brexit

The FCA has published a supervisory statement on the operation of the MiFID transparency regime if the UK leaves the EU in a no-deal scenario.

The supervisory statement builds on the statements of policy published on 4 March and outlines how the FCA intends to use its temporary powers, for a period of up to four years, to operate the pre- and post-trade transparency regime.

Noting that the FCA will not have fully developed and implemented the technology needed to make the relevant calculations and assessments by 29 March, the statement sets out the FCA's approach to:

- publishing data;
- the scope of 'traded on a trading venue' (ToTV);
- data submissions;
- double volume cap (DVC) calculations and suspensions;
- applications for waivers and deferrals;
- equity and non-equity transparency calculations;
- systematic internaliser (SI) calculations;
- the territorial scope of trade reporting;
- the temporary permission regime and the temporary transitional power in relation to trade reporting; and
- average daily number of transactions (ADNT) calculations.

EMIR: FCA issues statement on derivatives reporting in a no-deal Brexit scenario

The FCA has published a statement setting out the actions it expects trade repositories (TRs) and the UK counterparties that use them to take to ensure that they are compliant with their reporting obligations under the EMIR in the event of a no-deal Brexit.

The FCA advises that UK TRs and UK counterparties cannot make use of transitional relief from their UK regulatory obligations. From Exit day:

- UK counterparties must report details of their derivative trades to an FCA registered or recognised TR; and
- UK TRs must provide UK authorities access to data reported to them by UK counterparties.

TRs who intend to provide services from the UK immediately following Exit day are required to have an FCA-registered UK legal entity. The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 establish regimes for conversion and temporary registration to ensure TRs can be registered and operational from Exit day. The FCA expects to publish a list of TRs intending to offer services in the UK shortly.

The statement sets out how new and outstanding trades should be reported by counterparties in scope under the UK EMIR regime and the conditions under which the FCA would apply a suspension of reporting requirements.

The FCA intends to update the statement if there are areas that need further clarification.

FCA consults on changes to DEPP and EP to reflect application of Securitisation (Amendment) (EU Exit) Regulations 2019 and Securitisation Regulations 2018

The FCA has launched a consultation (CP19/11) to amend the Decision Procedures and Penalties manual (DEPP) and the Enforcement Guide (EP) in relation to its new responsibilities over securitisation repositories (SRs).

HM Treasury intends to transfer responsibility for regulating SRs to the FCA via the Securitisation (Amendment) (EU Exit) Regulations 2019 Statutory Instrument (SI).

The FCA is also consulting on minor amendments to the DEPP and the EG resulting from new enforcement powers granted under the Securitisation Regulations 2018.

In relation to this, the FCA proposes decision-making procedures for imposing a suspension, limitation or other restrictions on an individual or an authorised person for a breach of a requirement imposed by or under the 2018 Securitisation Regulations.

Comments on the consultation are due by 8 April 2019.

PRA consults on updates to Pillar 2 capital framework

The Prudential Regulation Authority (PRA) has launched a consultation (CP5/19) on proposed amendments to the Pillar 2 capital framework. The proposals are intended to:

- ensure the framework reflects recent developments and refinements to the setting of the PRA buffer, such as those instigated by changes to the Bank of England's stress testing hurdle rate and the way micro and macroprudential buffers interact;
- clarify the PRA's approach to assessing weaknesses in risk management and governance;
- set out the process for updating the benchmarks used to calculate Pillar 2A requirements for credit risk; and
- correct minor drafting errors.

To implement the changes, the PRA is proposing to update the following:

- statement of policy, 'The PRA's methodologies for setting Pillar 2 capital'; and
- supervisory statements, 'The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation Process (SREP)' (SS31/15) and 'Implementing CRD IV: Capital buffers' (SS6/14).

Comments are due by 13 June 2019 and the PRA intends to implement the final rules by 1 October 2019.

CRR: PRA publishes policy statement on eligibility of guarantees as unfunded credit protection

The PRA has published a policy statement (PS8/19) setting out feedback to its consultation (CP6/18) and final policy on its expectations regarding the eligibility of guarantees as unfunded credit protection under the Capital Requirements Regulation (CRR).

In CP6/18 the PRA proposed amending its supervisory statements, 'Credit risk mitigation' (SS17/13) and 'The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation Process (SREP)' (SS31/15) to reflect the following key expectations:

- that the guarantee is, at a minimum, legally enforceable under the firm's governing law and in the jurisdiction where the guarantor is incorporated, and that the practical ease of enforcement is considered;
- that an independent legal opinion considers the eligibility criteria;
- that firms ensure a guarantee is incontrovertible by considering its terms, the remedies available and whether the guarantor could, in practice, successfully seek to reduce or be released from liability; and
- that firms review existing agreements to ensure they do not contain clauses that will render a guarantee ineligible.

Although the responses received to the PRA's consultation were predominantly supportive of the proposals, several respondents requested further clarification on some aspects and raised concerns about the impact on certain types of guarantees. Subsequently, the PRA has made three substantial changes to the proposals as consulted upon, as follows:

- removal of the proposal on the meaning of pay out in a timely manner;
- addition of an expectation around risks arising from eligible guarantee arrangements; and
- addition of an expectation around recognising any residual risks.

It has also made minor changes to the draft policy, including to the proposals on legal effectiveness and enforceability of qualifying guarantees and on qualifying guarantees being clearly defined and incontrovertible.

The changes to SS17/13 and SS31/15 will be effective from 13 September 2019.

Bank of Italy consults on definition of default and on materiality threshold for credit obligations past due

The Bank of Italy has launched a consultation process on certain amendments to the Italian prudential regulatory framework. The changes are consequential to the application of the definition of default provided for in the EBA guidelines (EBA/GL/2016/07) and to the definition of the materiality threshold for credit obligations past due set out in Delegated Regulation (EU) 2018/171, in accordance with Article 178 of the Capital Requirements Regulation (CRR).

In particular, the amendments concern Circular No. 115 of 7 August 1990 on the instructions for preparing supervisory reports on a consolidated basis, Circular No. 272 of 30 July 2008, Circular No. 285 of 17 December 2013 on the supervisory provisions for banks, the supervisory provisions relating to investment firms and investments firms' groups and Circular No. 262 of 22 December 2005 on banks' financial statements – layouts and preparation.

The consultation runs until 6 May 2019.

Bank of Italy updates circular on supervisory provisions for banks

The Bank of Italy has released Update No. 26 of 5 March 2019 to its Circular No. 285 of 17 December 2013 on supervisory provisions for banks in order to implement the EBA guidelines on credit institutions' credit risk management practices and accounting for expected credit losses of 20 September 2017 (EBA/GL/2017/06).

In particular, the update modifies Attachment A to the provisions relating to the system of internal controls. In this regard, the amendments are intended to fully implement the EBA guidelines' principles addressed at banks. The update also clarifies the meaning of the terms 'management body' and 'senior management' adopted in the EBA guidelines.

The amendments entered into force on 7 March 2019.

Luxembourg law recognising use of distributed ledger technology by securities depositories published

A new law of 1 March 2019 amending the law of 1 August 2001 on the circulation of securities was published in the Luxembourg official journal (Mémorial A) on 5 March 2019.

The new law introduces a new Article 18bis into the 2001 law, providing for the possibility for Luxembourg securities depositories to hold and register securities in securities accounts within or by virtue of a secured electronic

recording system (dispositif d'enregistrement électronique sécurisé), which can either be centralised or distributed. The law thereby seeks to modernise the Luxembourg legal framework and promote more legal certainty on the use of distributed ledger technology in this area.

The law entered into force on 9 March 2019.

Grand Ducal regulation on fees to be levied by CSSF published

A new Grand Ducal regulation dated 1 March 2019 amending the Grand Ducal regulation of 21 December 2017 on the fees to be levied by the financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has been published in the Luxembourg official journal (Mémorial A).

In addition to amending several existing provisions concerning the fees applicable to undertakings for collective investment, alternative investment fund managers, pension funds, mortgage lending intermediaries, and securitisation structures, the regulation adds a new section on the fees applicable to central securities depositories.

The new regulation entered into force on 9 March 2019.

CSSF issues circular on annual reporting by credit institutions

The CSSF has issued circular CSSF 19/710 dated 25 February 2019 updating circular CSSF 15/602 on the documents to be submitted on an annual basis by credit institutions. In addition to some minor amendments, the circular provides several specifications concerning the reporting by Luxembourg branches of credit institutions licensed in another EU Member State in relation to areas for which the CSSF has supervisory competence as host country authority.

The circular entered into force with immediate effect.

CSSF issues circular on introduction of quarterly internalised settlement reporting requirements pursuant to CSDR

The CSSF has issued circular CSSF 19/709 dated 25 February 2019 on the introduction of quarterly internalised settlement reporting requirements pursuant to Article 9(1) of the Central Securities Depositories Regulation (CSDR).

The circular specifies that, as settlement internalisers, all credit institutions incorporated under Luxembourg law (with the exception of credit institutions that have requested a CSD license under Article 17 of the CSDR), and Luxembourg branches of non-EU credit institutions, as well as investment firms providing services listed in Annex II Section C(1) of the law of 5 April 1993 on the financial sector (with the exception of investment firms of this type that have requested a CSD license under Article 17 of the CSDR), will need to submit to the CSSF one report for their activities in Luxembourg (including the activity of their branches in Luxembourg), separate reports for the activity of their branches per EU Member State, and one report for the activity of their branches in third countries.

For further information and technical details regarding the reporting requirements, the circular refers to (i) Commission Delegated Regulation (EU) 2017/391 of 11 November 2016, (ii) Commission Implementing Regulation (EU) 2017/393 of 11 November 2016 (which both entered into force on 10 March 2019), (iii) the ESMA guidelines on internalised settlement reporting within its final report of 28 March 2018 (ESMA70-151-1258), as well as (iv) related IT technical documentation available on the ESMA website.

The first internalised settlement reporting should be sent to the CSSF via the transmission channels E-File or SOFiE within 10 working days from the end of the first quarter following 10 March 2019, i.e. on 12 July 2019 at the latest.

The next reports will have to be sent to CSSF on a quarterly basis via the transmission channels E-File or SOFiE within 10 working days from the end quarter of a calendar year.

Swiss Federal Council consults on partial revision of Banking Act

The Federal Council has initiated a consultation on the partial revision of the Banking Act (BankA). The revisions are proposed to cover the following areas:

- *restructuring procedure* – the Banking Act only regulates the main features of the restructuring procedure for banks, while details are set out in the FINMA Banking Insolvency Ordinance. In order to strengthen legal certainty, instruments such as capital measures (e.g. a bail-in) which interfere with the rights of the bank's owners and creditors are now to be anchored in the Banking Act itself. An adjustment to the Mortgage Bond Act will also strengthen the functioning of the Swiss mortgage bond system in the event of insolvency or bankruptcy of a member bank;
- *deposit insurance* – banks will no longer be required to secure half of their contribution obligations to deposit insurance in the form of additional liquidity, but by depositing securities or Swiss francs in cash with a custodian. If a bank liable to pay contributions does not meet its payment obligations, deposit insurance will use these deposited values; and
- *segregation of intermediated securities* – an adjustment to the Intermediated Securities Act will introduce the obligation for all custodians of intermediated securities to separate their own and clients' portfolios. If the custody chain leads abroad, the last Swiss custodian has to take measures to protect the intermediated securities booked with the foreign custodian.

The consultation will end on 14 June 2019.

Australian government consults on terms of reference of APRA's capability review

The Australian government has launched a public consultation on the terms of reference of the Australian Prudential Regulation Authority's (APRA's) capability review. The review will be led by an expert panel comprising Chair Graeme Samuel AC, Diane Smith-Gander and Grant Spencer, and follows the recommendations of the Royal Commission's final report relating to misconduct in the banking, superannuation and financial services industry.

The review is intended to:

- assess APRA's capability to deliver upon its statutory mandate under the APRA Act and relevant industry acts;
- undertake a forward-looking assessment of APRA's ability to respond to an environment of growing complexity and emerging risks for its regulated sectors; and
- identify recommendations to enhance APRA's future capability, having regard to the changing operating environment and any relevant organisational initiatives which are already underway.

The expert panel will commence the review in March 2019 and submit its report to the government by 30 June 2019.

Comments on the consultation paper are due by 10 April 2019.

RECENT CLIFFORD CHANCE BRIEFINGS

The EU Securitisation Regulation – considerations for Asia Pacific issuers, originators, sponsors and their advisers

The EU Securitisation Regulation, which replaces previously sectoral securitisation rules and provides a harmonised regime, took effect on 1 January 2019. EU law continues to impose significant (and somewhat increased) compliance obligations on certain EU entities that invest in securitisations. As a result, Asia Pacific managers and originators offering securities to EU institutional investors or structuring securitisations funded by EU institutional investors are likely to be indirectly affected by the EU Securitisation Regulation's requirements.

This briefing paper considers the main elements of the EU Securitisation Regulation relevant to Asia Pacific securitisation transactions, and what compliance under the EU Securitisation Regulation would mean for these transactions.

https://www.cliffordchance.com/briefings/2019/03/the_eu_securitisationregulation-consideration.html

India Arbitration Round-up – March 2019

For most foreign investors in India, arbitration remains the preferred method of dispute resolution. In our latest India Arbitration Round-Up, we review significant developments in Indian arbitration from the past 6 months. During this period, Indian court decisions have covered a broad range of issues arising out of investment disputes, domestic arbitration and the enforcement of foreign arbitral awards.

With a general election fast approaching in 2019, India's foreign investment climate is likely to face renewed scrutiny. But while the inherent difficulties in enforcing contracts still create a headache for foreign investors in India, recent decisions at least reflect the growing pro-arbitration outlook in the Indian courts.

https://www.cliffordchance.com/briefings/2019/03/india_arbitrationround-upmarch2019.html

US Court Acquits FX Trader of Alleged Frontrunning

An FX Trader was acquitted of charges that he had fraudulently traded ahead of a counterparty, based on a California federal court's finding that he and the counterparty had traded at armslength and that the trader had not violated any assurances or otherwise misled the counterparty. Rather than allow the case to go the jury, the court took the unusual step of acquitting the trader after the government had finished presenting its evidence. The acquittal, which comes less than two years after the conviction of an FX trader for broadly similar conduct, provides valuable guidance for FX dealers and other dealer businesses. Most importantly, it underscores the need for dealers engaging in principal-to-principal trading to provide proper disclosures to their counterparties and to ensure that their contracts, including ISDA Master Agreements and standard terms of business, clearly set forth that they will be trading at arms-length.

This briefing paper discusses the case.

https://www.cliffordchance.com/briefings/2019/03/u_s_court_acquitsfxtraderofallege.html

FCPA and the Commodity Exchange Act – A New Relationship

On 6 March 2019, the Enforcement Division of the US CFTC issued an Enforcement Advisory applicable to non-registered companies and individuals regarding its cooperation and self-reporting program specifically relating to violations of the Commodity Exchange Act that involve foreign corrupt practices. The CFTC Foreign Corrupt Practices Advisory indicates a potential new front of the CFTC's enforcement program based on a novel application of the CEA. In recent remarks, the CFTC's Division of Enforcement Director has indicated that the Commission may bring enforcement actions in cases involving foreign corrupt practices under CEA provisions that are analogous to those contained in statutes enforced by the US Securities and Exchange Commission. In addition, the Advisory builds upon and incorporates the CFTC's January 2017 and September 2017 Enforcement Advisories, which promised meaningful reductions in penalties where a company or individual self-reports, fully cooperates, and takes remedial measures (see our January 2017 and September 2017 briefing papers). And in keeping with the CFTC's stated desire to harmonize its enforcement regime with those of authorities holding concurrent jurisdiction, the Advisory echoes guidance that the US Department of Justice published in its November 2017 FCPA Corporate Enforcement Policy.

This briefing paper discusses the Advisory.

https://www.cliffordchance.com/briefings/2019/03/fcpa_and_the_commodityexchangeactane.html

FinCEN Cautions Financial Institutions on North Korea, Iran & Jurisdictions Exhibiting Strategic AML and Terrorist Financing Deficiencies

The US Financial Crimes Enforcement Network's first 'Advisory' of 2019 highlights restrictions on business activity with North Korea and Iran, and notes other jurisdictions with strategic AML and terrorism financing deficiencies. The FinCEN Advisory follows recent publications by the

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Financial Action Task Force on similar issues. US financial institutions should review the Advisory to ensure compliance with their AML, combating the financing of terrorism, and sanctions obligations.

This briefing paper discusses the Advisory.

https://www.cliffordchance.com/briefings/2019/03/fincen_cautions_financialinstitutionsonnort.html