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NPLs: EU Council adopts minimum loss coverage for non-performing exposures regulation

The EU Council has adopted the proposed regulation amending the Capital Requirements Regulation (CRR) as regards minimum loss coverage for non-performing exposures.

The regulation is intended to ensure that banks set aside sufficient own resources when new loans become non-performing and to create appropriate incentives to avoid the accumulation of non-performing loans (NPLs). The proposed new rules introduce a ‘prudential backstop’, i.e. common minimum loss coverage for the amount of money banks need to set aside to cover losses caused by future loans that turn non-performing.

The regulation will enter into force on the day following its publication in the Official Journal.

Brexit: EU and UK agree further extension of Article 50 period

The European Council has adopted conclusions and taken a decision to approve the UK’s request for an extension to the Article 50 process.

The Council has agreed to an extension to last as long as necessary to allow for the ratification of the Withdrawal Agreement by both parties and, in any event, no longer than 31 October 2019. The Council noted that the Withdrawal Agreement may enter into force on an earlier date, should the parties complete their respective ratification procedures before 31 October 2019. In such a case the withdrawal would take place on the first day of the month following the completion of the ratification procedures or on 1 November 2019, whichever is the earliest.

The Council decision also states that:

- the further extension cannot be allowed to undermine the regular functioning of the EU and its institutions;
- if the United Kingdom is still a Member State on 23-26 May 2019, and if it has not ratified the Withdrawal Agreement by 22 May 2019, it will be under an obligation to hold the elections to the EU Parliament – in the event that those elections do not take place in the UK, the extension will end on 31 May 2019;
- the Council expects the UK to fulfil its commitment to act in a constructive and responsible manner throughout the extension period in accordance with the duty of sincere cooperation, in a manner that reflects its situation as a withdrawing Member State;
- the extension excludes any re-opening of the Withdrawal Agreement; and
- the European Council will review progress at its meeting in June 2019.

The UK's Permanent Representative to the EU has written to the President of the European Council formally confirming the UK government's agreement to the decision.

Brexit: Amending Delegated Regulations to facilitate novation under EMIR published in Official Journal

Two Delegated Regulations supplementing the European Market Infrastructure Regulation (EMIR) to facilitate novation, for a fixed period, of certain OTC derivatives contracts with a central counterparty (CCP) established in the UK have been published in the Official Journal.

In March 2019 two Delegated Regulations amending existing regulatory technical standards (RTS) on the clearing obligation under EMIR were published in the Official Journal. These amendments were intended to address a disincentive to transfer contracts to firms established in the EU27 by extending the current exemptions envisaged in the existing Delegated Regulation for a fixed period of time to help ensure the smooth functioning of the market and a level playing field between counterparties established in the EU.

The two Delegated Regulations that have been published in the Official Journal, Commission Delegated Regulation (EU) 2019/564 as regards the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivatives contracts not cleared by a CCP, and Commission Delegated Regulation (EU) 2019/565 as regards the date at which the clearing obligation takes effect for certain types of contracts, amend the existing RTS to address the extension of the Article 50 period.

Both Delegated Regulations entered into force on 11 April 2019 and will apply from the date following that of the UK's exit from the EU unless a withdrawal agreement has been agreed prior to that date or the Article 50 period has been extended beyond 31 December 2019.

EU Commission consults on distance marketing of financial services

The EU Commission has launched a public consultation on the effectiveness of Directive 2002/65/EC on distance marketing of financial services. The consultation is intended to assess whether the directive is still fit for purpose given market and legislative developments since 2002.

Responses to the consultation are due by 2 July 2019. The Commission is expected to publish the conclusions of the evaluation exercise by the end of 2019.

Securitisation Regulation: EBA issues final draft RTS on conditions for using purchased receivables approach to calculate KIRB under CRR

The European Banking Authority (EBA) has published its final draft regulatory technical standards (RTS) on the conditions for allowing institutions to calculate the capital requirements of securitised exposures (KIRB) in accordance with the purchased receivable approach under article 255 of the Capital Requirements Regulation (CRR).

The final draft RTS, aimed at striking a balance between the specific circumstances of institutions calculating capital requirements in the context of a securitisation transaction and the need for safe and prudent requirements on internal modelling, cover the following areas:

- the relationship between the Internal Ratings-Based (IRB) rules on purchased receivables and the securitisation framework (SEC-IRBA);
- eligibility conditions to allow institutions to calculate KIRB;
- IRB permissions and prior experience;
- eligibility to use the retail risk quantification standards; and
- use of proxy data.

Alongside the final draft RTS, the EBA has published feedback on the responses received to its June 2018 consultation.

The EBA has submitted its final draft RTS to the EU Commission for endorsement.

Basel Committee consults on draft consolidated version of global standards

The Basel Committee on Banking Supervision (BCBS) has launched a consultation on a draft consolidated version of its global standards for the regulation and supervision of banks.

The consolidated framework has been developed to allow users to find standards that are in force more easily. In the preparation of the standards it was observed that there were some inconsistencies between Basel requirements as well as ambiguities that needed to be addressed through policy changes. The Committee is seeking feedback on the proposed changes which have been incorporated into the draft framework.

Comments are due by 9 August 2019. As the Committee does not consider the proposed changes to the framework to be substantial, it expects members to implement the final requirements no later than 1 January 2022.

PRA consults on changes to branch return form for international banks

The Prudential Regulation Authority (PRA) has launched a consultation on proposed changes to the format and content of its branch return form, as well as its related guidance. The changes are intended to ensure that the form fulfils the objectives set out in supervisory statement 'International banks: the Prudential Regulation Authority's approach to branch authorisation and supervision' (SS1/18), namely to inform the PRA's understanding of the systemic importance, economic function and supervisory requirements of branches of deposit-takers and designated investment firms which are not headquartered in the UK.

The PRA is seeking feedback on proposals to:

- amend SS34/15, 'Guidelines for completing regulatory reports', to include guidance for completing the branch return form;
- align balance sheet concepts used in the form with the concepts and guidance in the PRA's wider reporting framework;
- reduce the number of data points required;
- clarify that firms must report within 30 business days; and
- replace the current Excel reporting format with XBRL.

Comments are due by 7 July 2019.

Brexit: FCA extends notification window for temporary permissions regime

The Financial Conduct Authority (FCA) has extended the notification window for the temporary permissions regime (TPR) to 30 May 2019 following the extension of the Article 50 period by the European Council and UK Government. The FCA has also published guidance for inbound passporting EEA investment funds on the notification process.

Brexit: FCA and ASIC sign MoUs on alternative investment funds and trade repositories

The Australian Securities and Investments Commission (ASIC) and the Financial Conduct Authority (FCA) have signed memoranda of understanding (MoUs) to reflect the regulatory regimes that will apply to alternative investment funds (AIFs) and trade repositories (TRs) after the UK leaves the EU.

Functions and supervisory powers in relation to TRs are currently supervised in the UK by the European Securities and Markets Authority (ESMA). The MoU on TRs will allow ASIC to continue to access data on derivatives contracts held in UK TRs where needed.

The MoU on AIFs provides a framework to allow ASIC and the FCA to ensure cross-border alternative investment fund managers (AIFMs) and AIFs are adequately supervised in Australia and the UK. The MoU is necessary for the UK's AIFM regime, allowing third country managers access to the UK market.

HM Treasury has confirmed that existing equivalence decisions granted in respect of Australia by the EU Commission before exit day will generally be incorporated into UK law and will continue to apply post-Brexit. Existing equivalence decisions relating to Australia's supervisory and regulatory regime for trading venues, OTC derivatives markets and credit rating agencies will be adopted by the UK.

ASIC has also signalled its intention to provide for continuing recognition post-Brexit of the equivalence of the UK's regulatory and supervisory regime in relation to UK-based foreign financial services providers and market operators that operate in Australia under licences and exemptions or are otherwise recognised for the purposes of the Australian regulatory regime.

Brexit: SIs under the EU (Withdrawal) Act for 8 – 12 April 2019

New statutory instruments (SIs) were made under the EU (Withdrawal) Act 2018 last week, including:

- the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019 (SI 2019/859), which amend the definition of 'exit day' to reflect the further extension to the Article 50 period from 12 April 2019 to 31 October 2019;
- the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/834), which aim to ensure the substantive rules in Rome I, Rome II and the 1980 Rome Convention continue to apply (as amended) as UK domestic law from exit day; and
- the REACH etc. (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (SI 2019/858), which insert new transitional import provisions in the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/758).

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

BaFin consults on IT requirements applicable to capital management companies

The German Federal Financial Supervisory Authority (BaFin) has published a draft circular on capital management supervision requirements for IT (KAIT) for consultation.

The circular applies to all capital management companies within the meaning of section 17 of the German Capital Investment Act (KAGB) authorised by BaFin in accordance with section 20 KAGB. It contains guidance on the interpretation of national and European governance rules to the extent that they refer to the technical-organisational infrastructure of capital management companies, in particular for the management of IT resources and IT risks, and on outsourcing of IT activities and processes.

The main objective of the circular is to improve IT security in the market and to raise capital management companies' IT risk awareness.

The requirements applicable to IT as contained in the minimum requirements for risk management of capital management companies (KAMaRisk) remain unaffected.

Comments on the draft circular are due by 6 May 2019.

Payment services: BaFin publishes application form for exemption from obligation to set up contingency mechanism under Delegated Regulation (EU) 2018/389

Account servicing payment service providers that provide access to their online payment accounts through a dedicated interface in accordance with sections 45, 48, 50 of the Payment Services Supervision Law may upon application be exempted from the obligation to implement the contingency mechanism under Article 33 paragraph 4 of Delegated Regulation (EU) 2018/389.

BaFin has provided an application form, in which account servicing payment service providers can indicate that they comply with the requirements stipulated in the Delegated Regulation. The application form is modelled on the requirements of the relevant European Banking Authority (EBA) guidelines, which can be consulted alongside the form. In addition, the guidance in the annex should be observed.

PSD2: CSSF issues circular on EBA guidelines on reporting requirements for fraud data under Article 96(6)

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a circular (19/712) dated 14 March 2019 on the European Banking Authority (EBA) guidelines on reporting requirements for fraud data under Article 96(6) of the Payment Services Directive (EU) 2015/2366 (PSD2).

The circular is addressed to all payment services providers for which the CSSF is the designated competent authority for supervisory purposes (PSPs) (except account information service providers) and aims to draw their attention to the guidelines.

The guidelines provide details with regard to the obligations of reporting fraud data related to different means of payment that PSPs have to report to their competent authorities, as well as on the aggregated data that the competent authorities have to share with the EBA and the European Central Bank, in accordance with Article 96(6) of PSD2. The guidelines define the types of payment transactions and the fraudulent payment transactions to be reported as well as the reporting frequency (every six months according to the applicable data breakdown(s) set out in Annex 2 to the guidelines), the reporting timelines and the reporting periods.

The CSSF specifies that fraud reporting is to be carried out even if no fraud occurred during the reporting period. In particular, the data reported shall be submitted to the CSSF within 3 months after the end of the reporting period; the two half-yearly reporting periods are 1 January – 30 June and 1 July – 31 December respectively and the first report will be due by 30 September 2020. These instructions should also apply with regard to PSPs' obligation to report adjustments to data referring to any past reporting period, by submitting the respective revised reporting tables (and indicating the past reporting period they refer to). Such adjustments should be reported during the next reporting window after the information necessitating the adjustments is discovered.

Detailed technical instructions for sending the fraud reporting data will be published separately on the CSSF website at a later stage.

The circular will apply from 1 January 2020.

PSD2: CSSF issues circular on EBA guidelines on security measures for operational and security risks of payment services

The CSSF has issued a circular (19/713) dated 14 March 2019 on the European Banking Authority (EBA) guidelines on the security measures for operational and security risks of payment services under the Payment Services Directive (EU) 2015/2366 (PSD2).

The circular is addressed to all payment services providers for which the CSSF is the designated competent authority for supervisory purposes (PSPs) and aims to draw their attention to the guidelines.

The guidelines provide details with regard to the security measures that have to be taken in order to manage the operational and security risks in relation to the payment services provided. Such security measures need to be audited in accordance with point 2.6 of the guidelines on an annual basis by the PSP's internal auditor.

The circular further provides guidance in relation to the form and timeframe for the submission to the CSSF of the updated and comprehensive assessment of the operational and security risks relating to the payment services that the PSP provides and of the adequacy of the mitigation measures and control mechanisms implemented in response to those risks. In particular:

- for credit institutions, this assessment, signed by the management body, has to be submitted as soon as possible after the closure of the financial year and no later than 30 April of each year;
- for payment institutions and e-money institutions, this assessment should be a dedicated section within the management report on internal control, to be issued as per the requirements of Circular CSSF 15/614, at the latest on the last day of the third month after the closing date of the financial year; and
- for POST Luxembourg, this assessment should be a dedicated section within the management report on internal control, to be issued as per the requirements of Circular CSSF 98/143, at the latest one month after the annual general meeting approving the annual accounts of the PSP.

The circular applied with immediate effect from its publication.

Brexit: Law on measures to be taken in financial and insurance sector in no-deal scenario published

A new law of 8 April 2019 concerning measures to be taken in relation to the financial sector in case of the UK's withdrawal from the EU, and amending relevant laws governing the financial sector, the investment fund industry and the insurance sector, has been published in the Luxembourg official journal (Mémorial A).

The overall objective of the law is to ensure financial stability and the orderly functioning of the financial markets, as well as protecting the position of all Luxembourg financial sector actors and their clients, including depositors, payment services users, electronic money holders, holders of insurance policies and their beneficiaries, and investment fund investors, in a no-deal Brexit scenario.

For these purposes, the law confers temporary powers (for a maximum of 21 months) on the CSSF and the Luxembourg insurance sector supervisory authority, the Commissariat aux Assurances (CAA), to apply the legal provisions governing EU firms 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. The measures which can be taken under such powers relate to contracts that were entered into by UK firms prior to Brexit as well as to contracts concluded thereafter to the extent they are closely linked to such prior continuing contracts.

The law also 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 do not specifically deal with the situation created by a no-deal Brexit and are not temporary. They are intended to provide legal comfort to non-EU/EEA systems as to their recognition in Luxembourg so that they can admit participants established in Luxembourg to the system without unpredictable risk. The law also foresees the criteria and procedure for recognition of such systems and registration with the Luxembourg Central Bank.

The law will enter into force on the date of the UK's withdrawal from the EU without a withdrawal agreement in accordance with Article 50 (2) of the Treaty on European Union, with the exception of the new provisions in relation to third-country systems, which will enter into force on 15 April 2019.

Brexit: Law of 8 April 2019 on measures to be taken in relation to certain Luxembourg and UK funds published

The Luxembourg law of 8 April 2019 concerning measures to be taken in relation to certain Luxembourg and UK funds in case of a UK withdrawal from the EU has been published in the Mémorial A. This law is mainly intended to ensure the stability of financial markets and the protection of investors of Luxembourg undertakings for collective investment in transferable securities (UCITS), undertakings for collective investment subject to Part II of the UCI Law (Part II UCIs) and specialised investment funds (SIFs), and addresses the problem of breaches of investment policies, rules and restrictions resulting from Brexit by Luxembourg UCITS, Part II UCIs and SIFs.

After Brexit, those Luxembourg investment funds that are, among others, invested in assets located in the UK or issued by UK issuers may no longer be in compliance with the asset eligibility criteria and risk diversification requirements as set out in their prospectus, constitutional documents or by law. For these purposes, the law amends the law of 17 December 2010 on UCIs (UCI Law) and the law of 13 February 2007 on SIFs (SIF Law) to grant a maximum period of twelve months from the date the UK leaves the EU in favour of the relevant affected UCITS, Part II UCIs and SIFs in order to allow them to regularise the situation caused by such non-compliance with or breaches of their investment rules and restrictions, provided that such regularisation must be done while taking into account the stability of financial markets and the protection of investors and, as regards UCITS, it should also intervene as soon as possible without undue delay within the twelve-month timeframe. The benefit of the twelve-month regularisation period will only be granted by the law in relation to the investment positions acquired by Luxembourg UCITS, Part II UCIs and SIFs before the date of the UK's withdrawal from the EU and only in relation to non-compliant situations caused by this withdrawal.

The law also contains specific temporary provisions in favour of UK UCITS, which are currently marketed to retail investors in Luxembourg under the UCITS marketing passport and which will lose the benefit of this passport as a result of Brexit. Therefore, in order to allow these UK UCITS to continue their marketing activities in Luxembourg and in order to protect the interests of their investors, the law amends the UCI Law by providing that:

- UK UCITS authorised by the FCA which are managed by a UK UCITS management company (UCITS ManCo), and which are marketed to retail investors in Luxembourg at the date of the UK's withdrawal from the EU, will be ipso jure authorised to continue marketing to retail investors in Luxembourg under article 100 of the UCI Law for a period of twelve months from the date the UK leaves the EU.
- UK UCITS authorised by the FCA, which are managed by a UCITS ManCo established in another EU Member State than the UK, and which are marketed to retail investors in Luxembourg at the date of the UK's withdrawal from the EU, will be only be allowed to continue marketing to retail investors in Luxembourg under article 46 of the AIFM Law for a period of twelve months from the date of the UK's withdrawal from the EU provided that the relevant UCITS ManCo is also duly authorised and licensed as alternative investment fund manager (AIFM) at the date of the UK's withdrawal from the EU.

The measures provided for by the law are expected to be taken in all possible cases of UK withdrawal from the EU (and not only in the case of a no-deal Brexit), and the law will enter into force on the date of the UK's withdrawal from the EU.

Brexit: Ministerial Orders on approval of systems governed by third country law in a no-deal scenario published

Six Ministerial Orders (arrêtés) of the Minister of Economy for the approval (homologation) of third country systems in case of a no-deal Brexit have been published in the Official Journal.

These texts approve the following systems:

- Continuous Linked Settlement (CLS) System, operated by CLS Bank International;
- CREST UK System, operated by Euroclear UK & Ireland Limited;
- CHAPS Payment System, operated by the Bank of England;
- ICE Clear Europe System, operated by ICE Clear Europe;
- Systems operated by LCH Limited; and
- Systems operated by the LME Clear Limited.

The texts will be applicable from the date of the UK's withdrawal from the EU in the absence of any deal and would enable the approved systems to benefit from the French settlement finality regime as of that date.

Brexit: Law addressing no-deal scenario published in Belgium

The law of 3 April 2019 addressing certain aspects of a no-deal Brexit scenario has been published in the Moniteur Belge. With respect to financial services, the draft law provides that:

- the 'light touch' regime remains available to third country firms (including UK firms when the UK will have left the EU) but the government may impose additional obligations on third country firms that applied for the light touch regime – in particular, the government may require those firms to comply with the MiFID/MiFIR reporting obligations;
- the government will be entitled to impose additional conditions on third country regulated markets, MTFs and OTFs, where those markets are active in Belgium – in particular, the government may set criteria to determine when those activities are exercised in Belgium; and
- the government will be entitled to take measures on continuity of contracts – the government notes that certain life cycle events may result in a new investment service or investment activity being provided, which would then breach the licensing requirements (after Brexit). The government may grant temporary permissions or grandfathering for existing contracts, but also define what life cycle events would indeed give rise to a new investment service or investment activity being provided.

The law also creates a new category of insurance intermediaries, namely intermediaries which are authorised to accept risks or enter into insurance policies for and on behalf of insurance undertakings. Insurance intermediaries that currently perform this activity must notify the Belgian Financial Services and Markets Authority (FSMA) within three months, and then apply for a license within twelve months.

Consob notifies ESMA of new market practice on liquidity

For the purposes of the European Securities and Markets Authority's (ESMA's) opinion provided for in Article 13(4) of the Market Abuse Regulation (MAR), the Italian securities regulator Consob has decided to notify ESMA of its new Market Practice No.1 concerning liquidity support.

In particular, the market practice will update the one currently in place in order to implement the new regulatory framework and the remarks submitted in the context of the consultation process launched by Consob in September 2018.

In addition, two existing market practices concerning share buybacks and bond repurchases will no longer apply as of 30 June 2019.

FINMA adjusts circulars to implement small banks regime

The Swiss Financial Supervisory Authority (FINMA) has announced that it is adjusting some of its circulars to implement the small banks regime.

The small banks regime seeks to increase efficiency in regulation and supervision for small and particularly solid institutions. The goal is to reduce the regulatory burden on such institutions without jeopardising their stability and safety. Institutions in the regime must therefore be extremely well capitalised and enjoy high liquidity. In return, they are able to benefit from a regulatory regime with significantly reduced complexity. They no longer need to calculate risk-weighted assets, for example.

In order to implement the small banks regime, apart from the amendment of the Federal Council's Capital Adequacy Ordinance, FINMA proposes to adjust its circulars on 'Outsourcing – banks and insurers', 'Operational risks – banks', 'Corporate governance – banks', and 'Disclosure – banks' based on the Capital Adequacy Ordinance.

The consultation exercise on the revised FINMA circulars is being conducted in parallel with the consultation on the amendments to the Capital Adequacy Ordinance. The consultation ends on 12 July 2019.

FSA proposes regulating ICOs as offerings of securities

The Japanese Financial Services Agency (JFSA) has proposed that cryptocurrencies be categorised as 'money' in its bill for the amendment of the Financial Instruments and Exchange Act (FIEA), submitted to the Diet on 15 March 2019. The amendment has been proposed by adding a new Article 2-2 to the FIEA, but it will cause substantial changes to ICOs.

Through the amendment, ICOs with a purpose of investment business will be regulated as offerings of 'securities' categorised within collective investment schemes under the FIEA, while currently only the transfer of cryptocurrencies is regulated by the Payment Services Act.

The implementing ordinances thereunder have not been released yet, so the details are still unclear but such ICOs will (i) need to be handled by securities companies licensed under the FIEA and (ii) trigger a securities registration unless the ICO complies with the conditions for relying on a private placement exemption. Also fund rasing by way of a ICO for the purpose of investment business may require a licence as an investment manager under the FIEA unless exemptions such as Article 63 registration can be relied upon.

MAS issues information paper on incentive structures in banking industry to foster sound behaviour and conduct

The Monetary Authority of Singapore (MAS) has issued an information paper setting out the results of its series of thematic inspections on incentive structures of selected banks in 2018. The MAS' focus on incentive structures is intended to ensure that banks' practices promote ethical behaviour, consider customers' interests and prudent risk-taking for long-term financial soundness, and achieve a healthy organisational culture.

The MAS' inspections covered incentive structures of front office staff in the Private Banking, Global Markets and Corporate Banking businesses. They included assessments of the banks' governance over, and frameworks and policies for, performance evaluation, remuneration and consequence management, and whether these were aligned with the FSB Principles and Standards for Sound Compensation Practices.

The MAS has highlighted that it looks to banks' board of directors and senior management to set the appropriate tone from the top. In addition, performance evaluation should translate into a tangible impact on actual compensation awarded to staff and promotion decisions. Banks should also guard against actions that could undermine the effectiveness of the performance evaluation process and disciplinary actions. Feedback mechanisms should be established to monitor the effective implementation of frameworks and policies.

The information paper sets out several desired outcomes that the MAS expects to see in banks. In particular:

- performance evaluation of staff should take into consideration both the ability to meet financial targets and how the targets are achieved;
- remuneration frameworks should adequately consider behavioural and conduct factors, in addition to financial targets; and
- ethical behaviour that considers customers' interests and demonstrates prudent-risk taking should be actively promoted, while there should be clear processes to deter staff from, and hold them accountable for, misconduct.

The MAS expects banks to benchmark themselves against the desired outcomes set out in the paper. Banks should assess the ability of their internal controls and processes to achieve the outcomes, and take steps to address gaps in a risk-appropriate manner.

MAS consults on proposed payment services regulations and order

The MAS has launched a public consultation on the following subsidiary legislation proposed to be issued under the Payment Services Act 2019 (PS Act):

- the Payment Services Regulations (PS Regulations);
- the Payment Services (Exemptions for a limited period of time) Regulations;
- the Payment Services (Singapore Dollar Cheque Clearing System and Inter-Bank GIRO System) Regulations (Clearing Regulations); and
- the Payment Services (Designated Payment Systems) Order (DPS Order).

Amongst other things, the MAS is seeking comments on:

- the processes and timelines for licence application, lapsing and variation;
- the fee structures and fee quantum;
- the considerations for determining whether an offer, invitation or advertisement is being made or issued to the public in Singapore or any section of the public in Singapore;
- the expansion of options to allow applicants to meet the residency requirement for executive directors more easily;
- the quantum and components of the proposed minimum financial requirements for standard payment institutions and major payment institutions;
- the financial institutions that major payment institutions may work with to meet the safeguarding requirements, whether the other requirements proposed help to reinforce the safeguarding (for the protection of customer monies) against the insolvency of the major payment institution, and the proposed security deposit;
- the requirements for designated payment system entities;
- the duties of the chief executive officer, directors and partners of a licensee, and the audit requirements;

- the four types of exemptions proposed, whether the scope of each type of exemption is suitable, as well as what other types of exemptions the industry considers necessary under the PS Act;
- the general provisions as well as other matters that should be covered in the PS Regulations;
- the quantitative thresholds (such as e-wallet load capacity and limits) set out under the PS Regulations; and
- the proposed PS Regulations, Payment Services (Exemptions for a limited period of time) Regulations, the Clearing Regulations and the DPS Order.

Comments on the consultation are due by 10 May 2019.

MAS issues notice on criteria for rules of a designated system

The MAS has issued a notice on criteria for rules of a designated system pursuant to section 20A read with section 19A(3)(a) of the Payment and Settlement Systems (Finality and Netting) Act (FNA).

The notice applies to an operator, a settlement institution and a collateral holder of a designated system and sets out the criteria that the MAS will apply when considering an application to approve the rules of a designated system in relation to the operator, settlement institution or collateral holder of the designated system.

The criteria for the rules include:

- whether the following terms are defined or clearly set out: 'book-entry securities', 'business day', 'collateral holder', 'collateral security', 'default arrangements', 'defaulter', 'disposition of property', 'netting', 'operator', 'participant', 'Rules', 'settlement institution', 'system' and 'transfer order';
- for the purposes of section 7(1) of the FNA, whether the rules clearly set out the specific points at which transfers, netting or settlement are final and irrevocable;
- for the purposes of section 8 of the FNA, whether the rules clearly set out the steps/actions to be taken for transfers, netting or settlement to take precedence over the law of insolvency; and
- for the purposes of sections 12 and 13 of the FNA, whether the rules clearly set out the steps to be taken for transfer orders entered into and netting in a designated system.

The notice became effective on 8 April 2019.

SFC publishes guidance on enhanced disclosures for green or ESG funds

The Securities and Futures Commission (SFC) has issued a circular to provide guidance to management companies of SFC-authorised unit trusts and mutual funds on enhanced disclosures for SFC-authorised green or environmental, social and governance (ESG) funds.

The guidance is one of the regulatory initiatives of the SFC's Strategic Framework for Green Finance which includes, among other things, providing disclosure guidance to facilitate disclosure and reporting of green-related investment products.

The SFC has evaluated the quality of disclosure of SFC-authorised funds with an investment focus on climate, green, environmental or sustainable development and found that a majority of them do not specifically disclose how investment managers integrate ESG factors into the criteria used in their investment selection process.

To enhance disclosure comparability between similar types of SFC-authorised green or ESG funds and their transparency and visibility, the circular sets out the SFC's expectation on how the existing Code on Unit Trusts and Mutual Funds and disclosure requirements apply for SFC-authorised green or ESG funds and provides guidance to narrow the disclosure gap among these funds.

Given the evolving nature of the green or ESG investment landscape, the SFC intends to keep in view local and international market and regulatory developments and may provide further guidance or impose additional requirements for green or ESG funds, where it considers appropriate.

The SFC will also create a central database of SFC-authorised green or ESG funds on its website to enhance the visibility of these funds.

CFTC staff issues no-action relief to address issues raised by Brexit

The staff of the Commodity Futures Trading Commission (CFTC) has published three no-action letters addressing issues related to Brexit.

CFTC Letter 19-08 provides time-limited no-action relief in order to account for the anticipated withdrawal of the UK from the EU in connection with the following actions:

- CFTC comparability determinations for the EU regarding certain entity-level requirements, certain transaction-level requirements and certain margin requirements; and
- an order exempting multilateral trading facilities and organized trading facilities authorized within the EU from the requirement to register as swap execution facilities.

The CFTC staff recognizes that the UK authorities intend that the regulatory environment affecting UK entities relevant to these CFTC actions will not change in any material respect. This relief permits UK entities to continue to rely on these existing comparability determinations and such exemptive order during specified transition periods and will become effective if and when the UK withdraws from the EU.

CFTC Letter 19-09 permits UK entities to rely on regulatory relief issued by CFTC staff in a series of five no-action letters involving EU entities (CFTC Letters 12-70, 13-45, 17-64, 17,66 and 17-67). The CFTC staff recognizes that the UK authorities intend that the regulatory environment affecting UK entities relevant to this existing relief will not change in any material respect. This relief will become effective if and when the UK withdraws from the EU.

CFTC Letter 19-10 grants time-limited relief from the requirement to register as an introducing broker to a global financial institution that has been realigning its operations consistent with forthcoming regulatory changes in the UK. This institution recently submitted a petition to the CFTC requesting an exemption pursuant to CFTC regulation 30.10 after having merged a subsidiary that had received an exemptive order pursuant to CFTC regulation 30.10 into another subsidiary not eligible for such relief. This no-action letter permits such institution's London branch to accept futures and options orders from US persons for execution on US designated contracts markets to be cleared through its affiliated futures commission merchant located in the United States while the CFTC reviews the 30.10 petition.

RECENT CLIFFORD CHANCE BRIEFINGS

The European Commission report on loan syndication and its impact on competition

The European Commission has published a report that it commissioned to study EU loan syndication and its impact on competition in credit markets. While the report does not contain the recommendations or conclusions of the Commission itself, it should inform the Commission's policy and enforcement in this area.

The report indicates areas of antitrust risk and suggests certain critical safeguards that banks should observe to ensure that competition is maintained in the loan syndication process.

This briefing paper discusses the report.

https://www.cliffordchance.com/briefings/2019/04/the_european_commissionreportonloa.html

The use of English law in Italian financial transactions after Brexit

Since the Brexit referendum of June 2016, clients have on several occasions queried whether after the United Kingdom's withdrawal from the European Union judgments of the English courts will continue to be recognised and enforced in Italy, and whether the choice of English law and English jurisdiction will remain viable options for Italian financial transactions.

While the short answer to all three of these questions is 'yes', Brexit will bring about certain changes and this briefing paper discusses some of these.

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

Cryptocurrency exchange liable for technical glitch

The Singapore International Commercial Court (SICC) handed down judgment in its first cryptocurrency litigation on 14 March 2019. The decision gives important guidance on the interpretation of an online platform's terms and conditions, the relationship between a cryptocurrency exchange and its users, and the application of common law doctrines to new technologies.

This briefing paper sets out some of the issues considered in, and the lessons to be learned from, the SICC's decision.

https://www.cliffordchance.com/briefings/2019/04/cryptocurrency_exchangeliablefortechnica.html

SEC adopts amendments to further modernize and simplify disclosure requirements

In March 2019, the US Securities and Exchange Commission (SEC) adopted a set of rule and form amendments to modernize and simplify certain of its disclosure requirements. Except with respect to two exceptions, these amendments will become effective on 2 May 2019.

This briefing paper describes these amendments as they apply to registrants and provides guidance with respect to compliance.

https://www.cliffordchance.com/briefings/2019/04/sec_adopts_amendmentstofurthermodernizean.html

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