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Brexit: EU publishes 'no deal' factsheets

The EU Commission has published new factsheets alongside a press release detailing the EU's 'no deal' contingency measures following last week's agreement to extend the Article 50 process.

In the press release, the EU Commission notes that as part of its 'no deal' preparations, it has published 90 preparedness notices, three Communications and 19 legislative proposals (only two of which, on the EU budget and visa reciprocity, are to be finalised by the EU Parliament and EU Council).

It also provides links to existing resources aimed at assisting EU citizens and businesses, and notes that current state aid rules may assist with small and medium enterprises' (SMEs') preparedness.

The five new factsheets cover the following topics in the event of 'no deal' on 12 April 2019:

- travelling between the UK and the EU;
- the rights of UK nationals living in the EU;
- the rights of EU citizens living in the UK;
- consumer rights; and
- studying and volunteering in the UK.

Brexit: Delegated Regulations exempting BoE from EMIR, MAR, MiFIR and SFTR obligations published in Official Journal

Delegated Regulations exempting the Bank of England (BoE) and public bodies charged with the management of UK public debt from requirements under four EU Regulations have been published in the Official Journal (OJ).

- Delegated Regulation (EU) 2019/460 amends the European Market Infrastructure Regulation (EMIR) with regard to the list of exempted entities;
- Delegated Regulation (EU) 2019/461 amends Delegated Regulation (EU) 2016/522 as regards the exemption of the BoE and UK Debt Management Office (DMO) from the scope of the Market Abuse Regulation (MAR);
- Delegated Regulation (EU) 2019/462 amends Delegated Regulation (EU) 2017/1799 as regards the exemption of the BoE from the pre- and post-trade transparency requirements under the Markets in Financial Instruments Regulation (MiFIR); and
- Delegated Regulation (EU) 2019/463 amends the Regulation on reporting and transparency of securities financing transactions (SFTR) with regard to the list of exempted entities.

The Regulations enter into force on 11 April 2019, and will apply on the day the EU Regulations cease to apply to and in the UK following its withdrawal from the EU.

Brexit: EU Commission issues statement on temporary equivalence decisions for UK CCPs and CSDs and extension of Article 50 process

The EU Commission has issued a statement on the equivalence decisions adopted in December 2018 in relation to UK central counterparties (CCPs) and central securities depositories (CSDs). The Commission advises that it will make technical adjustments to the equivalence decisions to reflect the extension of the Article 50 process.

These adjustments contain no substantial changes but will ensure market participants do not need to take any particular action in relation to the change of date for the withdrawal, and that there will be no disruption in the provision of clearing and settlement services.

Brexit: EU Commission adopts amendments to Delegated Regulations to facilitate novation under EMIR

The EU Commission has adopted two Delegated Regulations supplementing the European Market Infrastructure Regulation (EMIR) to facilitate novation, for a fixed period, of certain OTC derivatives contracts with a CCP established in the UK.

In December 2018 the Commission proposed amendments to three existing regulatory technical standards (RTS) on the clearing obligation under EMIR. 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.

One of the conditions for the application of the amendments adopted in December 2018 was that a decision to extend the Article 50 period had not been made, so that following the European Council's decision of 21 March 2019 to extend that period the adopted amendments will not apply. The Commission has therefore adopted two further Delegated Regulations that amend the existing RTS to address the extension of the Article 50 period:

- a draft Delegated Regulation 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; and
- a draft Delegated Regulation as regards the date at which the clearing obligation takes effect for certain types of contracts.

Both Delegated Regulations will enter into force on the day following that of their publication in the Official Journal 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.

Regulation on cross-border payments and currency conversion charges published in Official Journal

Regulation (EU) 2019/518, amending Regulation (EC) 924/2009 with regards to certain cross-border payment and currency conversion charges, has been published in the Official Journal.

The regulation amends the current cross-border payments regulation in order to:

- align charges for cross-border payments in euros for services such as credit transfers, card payments or cash withdrawals with charges for corresponding national payments of the same value in the national currency of the Member State where the payment service provider is located; and
- increase transparency requirements relating to the charge for currency conversion services.

The regulation will enter into force on 18 April 2019, with the majority of its provisions applying from 15 December 2019.

Recovery and resolution of CCPs: EU Parliament adopts position at first reading

The EU Parliament has adopted the proposed regulation on a framework for the recovery and resolution of central counterparties (CCPs) at first reading.

The EU Parliament has instructed its President to forward its position to the EU Council and the EU Commission and called upon the EU Commission to refer the proposed regulation back to Parliament again if it substantially amends or intends to substantially amend its proposal.

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EU Parliament adopts position on proposed crowdfunding framework

The EU Parliament has adopted at first reading its position on the EU Commission's proposed regulation on European crowdfunding service providers (ECSPs). The proposed regulation aims to make it easier for crowdfunding platforms to offer their services throughout Europe and to improve access to innovative forms of finance for businesses. It sets out uniform requirements for the operation, organisation, authorisation and supervision of ECSPs, as well as rules on the marketing of crowdfunding services within the EU. The EU Parliament has published its adopted text, which confirms the position of the Committee on Economic and Monetary Affairs (ECON), including extending the scope of the regulation to include crowdfunding offers up to EUR 8 million and recommending that ECSPs disclose the default rates of the projects offered on their platform every year.

Additionally, the EU Parliament adopted its position on the EU Commission's proposed directive to amend MiFID2, so that it would not apply to persons authorised as ECSPs under the regulation above.

The proposals will now be forwarded to the EU Council for adoption.

EU Parliament adopts low carbon benchmarks amendment to Benchmarks Regulation

The EU Parliament has adopted 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 also includes an extension of the transition regime for critical and third-country benchmarks until 31 December 2021. This will grant providers of critical benchmarks, such as EURIBOR and EONIA, two additional years to comply with the EU Benchmarks Regulation. It will also provide two additional years for work with non-EU regulators on how third-country benchmarks can be recognised as equivalent or otherwise endorsed for use in the EU.

The EU Parliament has instructed its President to forward its position to the EU Council and the EU Commission. The EU Council still needs to formally adopt the new rules before they can enter into force.

Non-performing loans: EU Council adopts position on proposed Directive

The EU Council has adopted its position on the proposed Directive on credit servicers, credit purchases and the recovery of collateral.

The proposed Directive forms part of the EU Commission's package of measures aimed at reducing and preventing the future accumulation of non-performing loans (NPLs) in the European banking sector.

As the Council failed to reach agreement on the part of the proposed Directive that deals with the recovery of collateral, this has been removed from its position and will be discussed further at working level.

Trilogue will commence once the EU Parliament has agreed its stance.

Green finance: EU Council publishes compromise text on sustainability-related disclosures in financial services sector

The EU Council has published the final compromise text on the EU Commission's proposed regulation on sustainability-related disclosures in the financial service sector.

The regulation introduces disclosure obligations on how institutional investors and asset managers integrate environmental, social and governance (ESG) factors in their risk processes.

The Council Presidency has invited the Permanent Representatives Committee (Coreper) to approve the final compromise text and confirm that, if the EU Parliament adopts the regulation at first reading, the Council will adopt its position.

Brexit: ESMA provides update on preparations for no-deal scenario

The European Securities and Markets Authority (ESMA) has published an update on its preparations for a no-deal Brexit scenario in view of the recent extension of the Article 50 period.

Amongst other things, ESMA has confirmed that references to 29 March 2019 in its previously published measures and statements issued in relation to a no-deal Brexit scenario should now be read as 12 April 2019.

ESMA announced on 18 February and 1 March 2019 that in the event of a no-deal Brexit, and without an extension to the Article 50 TEU period, it would recognise the three UK CCPs and the UK CSD. ESMA has indicated that it intends to amend its recognition decisions to make sure that the UK CCPs and the CSD are recognised in the event Brexit occurs on 12 April 2019.

ESMA has also indicated that following the extension of the Article 50 period it intends to work with the EU Commission and other European Supervisory Authorities (ESAs) to amend Delegated Regulations and regulatory technical standards (RTS) regarding:

- replacing UK counterparties with EU ones without triggering the clearing obligation under the European Market Infrastructure Regulation (EMIR); and
- facilitating the novation of legacy contracts to EU counterparties without triggering the application of bilateral margin requirements.

ESMA renews product intervention measures for CfDs and binary options

ESMA has decided to renew its restriction on the marketing, distribution or sale of contracts for difference (CfDs) to retail clients.

ESMA is of the view that a significant investor protection concern related to the offer of CFDs continues to exist and has agreed to renew the measure for a further three month period from 1 May 2019.

Measures renewed by ESMA's Board of Supervisors include:

- leverage limits on the opening of a position by a retail client from 30:1 to 2:1, which vary according to the volatility of the underlying:
  - 30:1 for major currency pairs;
  - 20:1 for non-major currency pairs, gold and major indices;
  - 10:1 for commodities other than gold and non-major equity indices;
  - 5:1 for individual equities and other reference values; and
  - 2:1 for cryptocurrencies
- a margin close out rule on a per account basis that will standardise the percentage of margin (at 50% of required margin) at which providers are required to close out one or more retail client's open CfDs;
- negative balance protection on a per account basis. This will provide an overall guaranteed limit on retail client losses;
- a restriction on the incentives offered to trade CfDs; and
- a standardised risk warning, including the percentage of losses on a CfD provider's retail investor accounts.

ESMA expects to adopt the renewal measure in the official languages of the EU in the coming weeks. The measure will then be published in the Official Journal and will apply for a period of three months from 1 May 2019.

ESMA has also adopted a Decision renewing its prohibition of the marketing, distribution or sale of binary options to retail clients under Article 40 of MiFID for a further three month period. The prohibition has been in effect since 2 July 2018.

The Decision has been published in the Official Journal and applies from 2 April 2019 for a period of three months.

Brexit: SIs under the EU (Withdrawal) Act for 25 - 29 March 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) Regulations 2019 (SI 2019/718).

SI 2019/718 amends the definition of 'exit day' in the 2018 Act from 29 March 2019 to 12 April 2019 or, in specified circumstances, 22 May 2019, to align UK domestic law with European Council Decision (EU) 2019/746 extending the negotiation period under Article 50(3) of the Treaty on European Union.

The following SIs were also made:

- the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/657);
- the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019 (SI 2019/673);
- the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (SI 2019/628);
- the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632);

- the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (SI 2019/710);
- the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/680);
- the Insurance Distribution (Amendment) (EU Exit) Regulations 2019 (SI 2019/663);
- the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/685);
- the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019 (SI 2019/662);
- the Mortgage Credit (Amendment) (EU Exit) Regulations 2019 (SI 2019/656);
- the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/707);
- the Payment Accounts (Amendment) (EU Exit) Regulations 2019 (SI 2019/661);
- the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 (SI 2019/681);
- the Securitisation (Amendment) (EU Exit) Regulations 2019 (SI 2019/660); and
- the Uncertificated Securities (Amendment and EU Exit) Regulations 2019 (2019 No. 679).

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

Brexit: PRA publishes direction on withdrawing TPR notification

The Prudential Regulation Authority (PRA) has published a direction on withdrawing submitted temporary permission regime (TPR) notifications.

The direction, made by the PRA under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, seeks to clarify that the withdrawal of a notification must be done in writing before exit day.

FCA publishes policy statement on recovering regulating costs of credit rating agencies, trade repositories and securitisation repositories post Brexit

The Financial Conduct Authority (FCA) has published a policy statement (PS19/10) setting out the final requirements and guidance on recovering the costs of regulation from credit rating agencies, trade repositories and securitisation repositories after the UK leaves the EU and the FCA becomes their regulatory authority in the UK.

HM Treasury has introduced regulations which will allow the FCA to use its powers under the Financial Services and Markets Act 2000 (FSMA) to recover fees from these firms. The FCA is funded entirely by the fees and levies from the firms they regulate.

PS19/10 also provides feedback to the responses received on Chapter 2 of CP18/34, published in November 2018, in which the FCA set out fees proposals for credit rating agencies and trade repositories. PS19/10 also provides feedback to the responses received to CP19/01, published in January 2019, in which the FCA set out proposals for securitisation repositories.

Brexit: BaFin sets out information regarding investment funds from the UK

The German Federal Financial Supervisory Authority (BaFin) has announced that if the UK leaves the EU without an agreement and without a transitional period, investment funds that have the UK as their home country and for which, for example, a notification was submitted to allow them to be marketed in Germany on the basis of the EU passporting regime under the UCITS Directive, can continue to be marketed in Germany if in each case a notification procedure is completed for the marketing of third-country funds under section 320, 329 or 330 of the German Investment Code (Kapitalanlagegesetzbuch – KAGB).

Such applications can be submitted to BaFin as of the date of the announcement, even though the actual date for the departure of the UK from the EU and its subsequent status are not yet known.

BaFin consults on draft regulation amending Ordinance on Supervisory Requirements for Institutions' Remuneration Systems

BaFin has launched a consultation regarding a draft regulation to amend sections 17 and 18 paragraph 2 of the Ordinance on the Supervisory Requirements for Institutions' Remuneration Systems (InstitutsVergV).

The definitions contained in sections 17 and 18 paragraph 2 InstitutsVergV have been incorporated into the German Banking Act (KWG) as part of the amendments made to the KWG pursuant to the Tax Act on Brexit (Brexit-Steuerbegleitgesetz, Brexit-StBG), which requires their deletion from the InstitutsVergV and consequential changes.

The background to this is that, by way of the amendments made to the KWG pursuant to the Brexit-StBG, risk takers in significant institutions whose annual fixed remuneration exceeds three times the income threshold for general pension insurance contributions (as defined in section 159 of the Sixth Volume of the German Code of Social Law (SGB VI)) will be treated equally with respect to dismissal protection (section 14 paragraph 2 sentence 2 of the German Employment Protection Act) as executive employees entitled to employ or dismiss employees independently.

BaFin accepted written comments via email until 27 March 2019. The reason for the short consultation period was that BaFin assumed that any comments had already been submitted in the context of the official hearing on the Brexit-StBG and the respective amendments to the KWG.

AMF publishes guide on sustainable finance by collective investment schemes

The Autorité des Marchés Financiers (AMF) has published a guide on carbon offsetting by collective investment schemes as part of its commitments regarding sustainable finance. The guide sets out best practices to be considered by asset management companies that implement techniques for offsetting the carbon footprint of their collective investment schemes. It presents the methodological issues of the carbon footprint to be taken into account, the characteristics of carbon credits used and possible cancellation techniques and information provided to the holders of the relevant CISs.

Italian Ministry of Economy and Finance consults on draft legislation to implement AMLD5

The Department of the Treasury of the Italian Ministry of Economy and Finance has launched a consultation process on a draft legislative decree intended to implement the Fifth Anti-Money Laundering Directive (EU) 2018/843 (AMLD5), which amended the Fourth Anti-Money Laundering Directive (EU) 2015/849 (AMLD4).

The draft decree provides for amendments and additions to the current domestic framework, namely Legislative Decree No. 231 of 21 November 2007, as modified by Legislative Decree No. 90 of 25 May 2017 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

The consultation ends on 20 April 2019.

Polish Financial Supervision Authority adopts amendments to Recommendation B on limiting banks' investment risk

The Polish Financial Supervision Authority (PFSA) has adopted amendments to Recommendation B on limiting banks' investment risk.

The amendments to the Recommendation are primarily intended to clarify the scope of its application, so that, amongst other things, it covers not only financial investments but also other categories of investments, to narrow the scope of the application of Recommendation B by removing from it provisions on derivatives, which are dealt with in Recommendation A, and to delete provisions on outsourcing, which are currently regulated in the Act – Banking Law.

Furthermore, the amendments to the Recommendation put the terminology used and the relationships between those terms, including investment strategy and investment policy terms, in order.

The PFSA expects banks to implement the updated Recommendation by 31 December 2019.

SAFE streamlines cross-border cash pooling programme for multinational corporations

The State Administration of Foreign Exchange (SAFE) has issued the 'Administrative Measures on the Centralised Operation of Cross-border Funds of Multinational Corporations', which replace the existing regulation issued in 2015 with the aim of further streamlining the cash pooling programme for multinational corporations (MNCs), promoting cross-border trade and investment and boosting the real economy.

The following key aspects with respect to the Administrative Measures are worth noting:

- appointment of a handling enterprise – an MNC needs to appoint a handling enterprise established in Mainland China to perform the cross-border remittance management and foreign exchange related governmental processes for and on behalf of both its own account and other member enterprises within the MNC group;
- filing requirement – prior approval from SAFE is required for the establishment of a cash pooling programme under the Administrative Measures. A successful filing is effective for one year and expires if the applicant does not implement the programme before such deadline;
- centralised management of foreign debt quotas and offshore lending quotas – the MNC may, via the handling enterprise, aggregate the foreign debt quotas and the outbound lending quotas of its onshore member enterprises, and utilise such quotas in a centralised manner. The handling enterprise should register the aggregated quotas with SAFE and borrow foreign debts and extend outbound loans on behalf of member enterprises within such aggregate quotas. One advantage of aggregation is that case-by-case filing with SAFE will no longer be required for each foreign debt or outbound loan;
- account management – the handling enterprise may open one or multiple multi-currency master accounts with a qualified PRC bank, which shall be dedicated for its pooling programme; and
- eligible participants – financial institutions (except for CBIRC-regulated finance company acting as the handling enterprise), local government financing vehicles and real estate enterprises may not participate in the cash pooling programme under the Administrative Measures either as the handling enterprise or as a member enterprise.

SFC issues statement on security token offerings

The Securities and Futures Commission (SFC) has issued a statement on the legal and regulatory requirements applicable to parties engaging in security token offerings (STOs).

The SFC notes that STOs typically refer to specific offerings which are structured to have features of traditional securities offerings, and involve security tokens which are digital representations of ownership of assets (e.g., gold or real estate) or economic rights (e.g., a share of profits or revenue) utilising blockchain technology. Security tokens are normally offered to professional investors only. In Hong Kong, security tokens are likely to be 'securities' under the Securities and Futures Ordinance (SFO) and so subject to the securities laws of Hong Kong.

Where security tokens are 'securities', unless an applicable exemption applies, any person who markets and distributes security tokens (whether in Hong Kong or targeting Hong Kong investors) is required to be licensed or registered for 'Type 1' regulated activity (dealing in securities) under the SFO.

The SFC requires intermediaries that market and distribute security tokens to ensure compliance with all existing legal and regulatory requirements. In particular, they are advised to comply with 'paragraph 5.2' of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of

Conduct) as supplemented by the frequently asked questions (FAQs) on compliance with suitability obligations by licensed or registered persons and the FAQs on triggering of suitability obligations. Under the guidelines on online distribution and advisory platforms and 'paragraph 5.5' of the Code of Conduct, security tokens would be regarded as 'complex products' and therefore additional investor protection measures also apply.

The SFC further expects intermediaries to observe requirements which are similar to those set out in the circular to intermediaries on the distribution of virtual asset funds dated 1 November 2018.

SFC issues circular to licensed corporations on revised financial return

The SFC has published a revised form for the submission of financial returns by licensed corporations under section 56 of the Securities and Futures (Financial Resources) Rules with effect from 1 May 2019.

The revisions have been made to reflect changes effected by the Securities and Futures (Financial Resources) (Amendment) Rules 2018, which will come into effect on 1 April 2019.

The SFC has also published a gazette notice, which specifies, amongst other things, that the revised form will supersede all previous versions with effect from 1 May 2019.

MAS issues updated guidelines on licensing, registration and conduct of business for fund management companies and related FAQs

The Monetary Authority of Singapore (MAS) has published updated guidelines on licensing, registration and conduct of business for fund management companies and frequently asked questions on the licensing and registration of fund management companies.

Amongst other things, the guidelines make the following clarifications in relation to venture capital fund managers (VCFM):

- under the VCFM regime, a VCFM may only manage funds that invest at least 80% of committed capital (excluding fees and expenses) in specified products that are directly issued by an unlisted business venture that has been incorporated for no more than ten years at the time of initial investment (qualifying investments). The updated guidelines provide that any follow-on investment in such qualifying investments will remain as qualifying, even if the portfolio company has been incorporated for more than ten years at the point of follow-on investment;
- a VCFM's funds can only make investments (non-qualifying or otherwise) in unlisted assets. The funds cannot invest in listed securities or initial public offerings. However, this does not preclude a VCFM's funds from holding listed securities in portfolio companies, provided that the funds had acquired these securities prior to their listing. In such cases, VCFMs are not expected to reclassify such investments from qualifying to non-qualifying when they become listed; and
- allowing 20% of committed capital to be invested in non-qualifying investments provides VCFMs with more flexibility with respect to their investments. Notwithstanding this, to ensure that the objective of the

VCFM regime, i.e. to facilitate the funding of early stage start-up businesses by increasing their access to equity funding, is met, the MAS expects VCFMs to focus primarily on venture capital investing, and the bulk of drawn capital from funds being managed by a VCFM should be applied towards venture capital investments, i.e. investments in securities that are directly issued by unlisted business ventures that have been incorporated for less than 10 years.

APRA proposes to modernise prudential standard on credit risk management

The Australian Prudential Regulation Authority (APRA) has released a discussion paper proposing changes to its prudential standard entitled 'APS 220: Credit Risk Management' (APS 220), which requires authorised deposit-taking institutions (ADIs) to control credit risk by adopting prudent credit risk management policies and procedures. APRA's plan to modernise the standard was prompted by its recent supervisory focus on credit standards, and reflects contemporary credit risk management practices.

The discussion paper outlines APRA's proposals in the following areas:

- credit risk management – the revised APS 220 broadens its coverage to include credit standards and the ongoing monitoring and management of an ADI's credit portfolio in more detail. It also incorporates enhanced board oversight of credit risk and the need for ADIs to maintain prudent credit risk practices over the entire credit life-cycle;
- credit standards – the revised APS 220 incorporates outcomes from APRA's recent supervisory focus on credit standards and addresses 'recommendation 1.12' from the Royal Commission's final report in relation to the valuation of land taken as collateral by ADIs; and
- asset classification and provisioning – the revised APS 220 provides a more consistent classification of credit exposures by aligning recent accounting standard changes on loan provisioning requirements, as well as other guidance on credit related matters of the Basel Committee on Banking Supervision.

APRA is also proposing to rename APS 220 as 'Prudential Standard APS 220 Credit Risk Management' to better describe the purpose of the revised standard.

The proposed reforms are due to be implemented from 1 July 2020, while an accompanying prudential practice guide and revised reporting standards will be released for consultation later in 2019.

In a related development, APRA has released a letter to industry expressing concerns relating to ADIs' increasing exposure to funding agreements with third party lenders, including peer to peer lenders.

APRA consults on updated guidance for managing information security risks

APRA has launched a public consultation on the proposed cross-industry 'Prudential Practice Guide 234: Information Security' (CPG 234), which will replace the existing 'CPG 234 Management of Security Risk in Information and Information Technology'.

The updated CPG 234 has been developed to assist boards, senior management, risk management and information security specialists (both management and operational) of APRA-regulated entities to implement the requirements of the APRA's new cross-industry prudential standard on information security, CPS 234, which comes into effect from 1 July 2019. It also provides guidance on addressing several common information security weaknesses that APRA has observed through its regular supervisory activities.

Further, updated CPG 234 outlines how entities can maintain information security capabilities commensurate with the size and complexity of their business and the sensitivity of the data they possess, and explains how entities can optimise their resilience when aspects of their information security are managed by third parties.

Comments on the consultation are due by 17 May 2019.

US regulators adopt margin rule changes to allow for transfers of legacy swaps in the event of a no-deal Brexit

The Commodity Futures Trading Commission (CFTC) has adopted an interim final rule that will permit certain uncleared derivatives swaps to be easily transferred out of the UK in the event of a no-deal Brexit without triggering new margin requirements. In connection with this rulemaking, CFTC Chairman Christopher Giancarlo stated that the CFTC was providing regulatory certainty regarding the transfer of uncleared legacy swaps to facilitate global swaps market participants' needs in the event that the UK withdraws from the EU without a negotiated withdrawal agreement. The interim final rule will become effective immediately upon its publication in the Federal Register.

In addition, the US Federal Reserve and four other US prudential regulators adopted an equivalent interim final rule effective 19 March 2019 applicable to certain other legacy swaps.

These interim final rules permit OTC swaps entered into before applicable regulatory margin requirements took effect to be transferred in the event of a no-deal Brexit from a UK entity to an EU or US affiliate without losing their legacy status. Legacy swap transfers would only qualify for such relief if they are undertaken in connection with a no-deal Brexit. These interim final rules do not create an opportunity for the parties to renegotiate the economic terms of legacy swaps.

RECENT CLIFFORD CHANCE BRIEFINGS

Italy provides for post-Brexit temporary regime

The Italian Council of Ministers has approved a new law decree creating an 18-month temporary regime for UK firms engaging in regulated business in Italy and Italian firms engaging in regulated business in the UK. The temporary regime will become effective, if there is a no-deal Brexit, on the day the UK leaves the EU. The new regime aims to mitigate the main 'cliff-edge' impacts and disruption that could have ensued under Italian law following the sudden loss of the EU passport rights in a no-deal Brexit.

This briefing paper discusses the temporary regime.

CLIFFORD CHANCE

https://www.cliffordchance.com/briefings/2019/03/italy_provides_forpost-brexittemporaryregime.html

China's New Foreign Investment Law – What Does This Mean for Foreign Investors in China?

On 15 March 2019, the National People's Congress, China's legislature, promulgated the long-awaited Foreign Investment Law (FIL) which will come into force on 1 January 2020. The new law will bring China's foreign investment regime into a new era by replacing and repealing the Sino-Foreign Equity Joint Venture Law, Sino-Foreign Cooperative Joint Venture Law and Foreign Enterprise Law, the existing laws regulating foreign invested entities in China which have been in force for decades, with a single unified law as of 1 January 2020. Foreign investors will welcome the rules laid down in the new law for the promotion and protection of foreign investment in China, but some uncertainties remain.

This briefing paper discusses the new law.

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

Looking ahead to whistleblower protections in 2019 – is your financial institution prepared for anticipated changes to whistleblower protections?

This briefing paper considers the challenges in developing a global policy that will keep you from running afoul of whistleblower protections, focusing on developments and anticipated changes in the United States, United Kingdom, and the European Union.

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