INTERNATIONAL REGULATORY UPDATE 24 – 28 JUNE 2019

- **Sustainable finance: ESMA launches survey on short-termism in financial markets**
- **EU Council agrees negotiating position on proposed crowdfunding framework**
- **Directive on preventive restructuring frameworks published in Official Journal**
- **Delegated Regulations to support prospectus rules reform published in Official Journal**
- **SRB publishes CRR2 update to MREL policy**
- **EBA publishes draft 2020 EU-wide stress test methodology and templates**
- **FSB publishes progress report on G20 financial regulatory reforms**
- **Basel Committee revises leverage ratio treatment of client cleared derivatives and disclosure requirements**
- **UK and US regulators issue joint statement on opportunistic strategies in credit derivatives markets**
- **SRD2: FCA consults on new responsibilities over proxy advisors**
- **Bank of England consults on risk management approach to collateral referencing LIBOR for use in Sterling Monetary Framework**
- **Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 laid before Parliament**
- **BMF publishes draft law on introduction of special provisions for recovery and resolution of CCPs**
- **BaFin publishes general decree regarding general prior approval to reduce eligible liabilities instruments**
- **Payment Accounts Directive: Bank of Italy publishes amendments to transparency regulations**
- **Polish Financial Supervision Authority issues communiqué on binary options**
- **CNMV issues communication on future adaptation of guidelines on application of definitions regarding commodity derivatives**
- **CNMV issues communication on marketing futures FX rolling spot contracts, negotiated in MEFF, between retail investors**

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

To request a subscription to our Alerter: Finance Industry service, please email Online Services.

If you would like to know more about the subjects covered in this publication or our services, please contact:

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

- **ASIC consults on new product intervention power use**
- **ASIC approves updated Banking Code of Practice**
- **APRA consults on proposed approach to product responsibility under Banking Executive Accountability Regime**
- **APRA finalises updated guidance on information security**
- **Banking (Exposure Limits) Code gazetted**
- **Revised liquidity rules under Banking Ordinance gazetted**
- **SFC concludes consultation on annual update to list of financial services providers under OTC derivatives clearing regime**
- **SEC adopts capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants and amends capital and segregation requirements for broker-dealers**
- **CFTC to clarify cross-border regulatory commitments**
- **Recent Clifford Chance briefings: Facebook's Libra, EU directive on restructuring frameworks, and more. Follow this link to the briefings section**

Sustainable finance: ESMA launches survey on short-termism in financial markets

The European Securities and Markets Authority (ESMA) has published a questionnaire which aims to gather evidence on potential short-term pressures on corporations stemming from the financial sector. The survey forms part of ESMA's work on sustainable finance and relates to the EU Commission's Action Plan on 'Financing Sustainable Growth'. ESMA aims to identify areas in which existing rules may contribute to mitigating undue short-termism and areas where the rules may exacerbate short-term pressures.

ESMA will report to the EU Commission based on its findings by December 2019, in line with the Commission's request to each of the three European Supervisory Authorities (ESAs). The report will present evidence and possibly advice on potential undue short-termism. The Commission will consider ways to follow up on the report's findings, which may include policy actions.

The questionnaire is published alongside an explanatory note, which provides instructions, background information and definitions. Responses to the questionnaire are due by 29 July 2019.

EU Council agrees negotiating position on proposed crowdfunding framework

The Committee of Permanent Representatives (Coreper) has endorsed the EU Council's negotiating position on the EU Commission's proposed crowdfunding framework.

The proposed framework consists of a regulation on European crowdfunding service providers (ECSPs), which 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, and a directive to amend MiFID2,

so that it would not apply to persons authorised as ECSPs under the proposed regulation.

The EU Parliament adopted its first reading position on 27 March 2019. Both co-legislators are now in a position to start trilogue negotiations.

Directive on preventive restructuring frameworks published in Official Journal

Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 has been published in the Official Journal.

The directive will enter into force on 16 July 2019 and Member States must transpose the Directive into their national laws by 17 July 2021, with possible extensions of up to one year.

Delegated Regulations to support prospectus rules reform published in Official Journal

The following two Delegated Regulations to support the reform of the prospectus requirements as set out in the Capital Markets Union action plan have been published in the Official Journal:

- Commission Delegated Regulation (EU) 2019/979 supplementing Regulation (EU) 2017/1129 with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301; and
- Commission Delegated Regulation (EU) 2019/980 supplementing Regulation (EU) 2017/1129 as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004.

The two Delegated Regulations will enter into force on 11 July 2019 and will apply from 21 July 2019.

SRB publishes CRR2 update to MREL policy

The Single Resolution Board (SRB) has published an addendum to its policy on minimum requirement for own funds and eligible liabilities (MREL) to reflect regulatory changes made by Regulation (EU) 2019/876 (CRR2).

The addendum covers:

- total loss-absorbing capacity (TLAC) requirements for global-systemically important institutions (G-SIIs);
- the interplay between TLAC requirements and SRB MREL decisions; and
- the obligation on all institutions to request SRB approval for early repayment of eligible liability instruments, as well as operational guidance on the permissions process.

The SRB intends to publish its MREL policy 2020, which will form the basis for MREL setting under BRRD2 and SRMR2, by the beginning of next year, and to communicate these future MREL decisions to banks in early 2021.

EBA publishes draft 2020 EU-wide stress test methodology and templates

The European Banking Authority (EBA) has published a draft methodological note, templates and template guidance for the 2020 EU-wide stress test.

Covering all risk areas and building on the methodology for the 2018 exercise, the note contains explicit questions for banks in order to receive their input. A preliminary list of participating institutions, which excludes UK banks under the assumption that the UK will leave the EU by 31 October 2019, is annexed to the note.

The EBA intends to publish the final methodology at the end of the year and to launch the stress test in January 2020, with results to follow by the end of July 2020.

FSB publishes progress report on G20 financial regulatory reforms

The Financial Stability Board (FSB) has published a letter and progress report on the implementation of G20 financial regulatory reforms ahead of the G20 Osaka Summit held on 28-29 June 2019.

The letter sets out the FSB's past and on-going work to enhance global financial stability and further the G20's goals, including:

- addressing emerging vulnerabilities, such as monitoring the risk posed by collateralised loan obligations (CLOs), developing a new surveillance framework and enhancing private sector participation and transparency through risk disclosures;
- understanding financial innovation, such as decentralised technology (specifically crypto-assets), to harness benefits and contain risks, and enhancing cyber resilience;
- evaluating the implementation and effects of reforms, including a new project examining whether systemic and moral hazard risks associated with systemically important banks are reducing;
- promoting an integrated financial system, noting, among other things, that the continuing decline in correspondent banking relationships remains a concern; and
- strengthening outreach to non-member countries and improving communication and transparency with external stakeholders.

The letter ends with a request for G20 Leaders' continued support both to complete the implementation of agreed reforms and to cooperate to identify and address new vulnerabilities.

The report submitted alongside the letter sets out progress in the following four priority areas:

- Regulatory adoption of core Basel III elements;
- Implementation of resolution regimes;

- Derivatives market reforms; and
- Reform of non-bank financial intermediation (NBFI) regulation.

It also contains tables setting out implementation by FSB jurisdictions and changes in implementation status since the 2018 G20 Summit. The FSB intends to deliver a fuller progress report to the G20 in October 2019.

Basel Committee revises leverage ratio treatment of client cleared derivatives and disclosure requirements

The Basel Committee on Banking Supervision (BCBS) has released a revised treatment of client cleared derivatives for purposes of the leverage ratio. The BCBS has also issued a revision to the leverage ratio disclosure requirements with the aim of reducing excessive volatility in banks' exposures around key reference dates.

The BCBS has set out a targeted revision of the leverage ratio measurement of client cleared derivatives to align it with the standardised approach to measuring counterparty credit risk exposures (SA-CCR). This treatment permits both cash and non-cash forms of segregated initial margin and cash and non-cash variation margin received from a client to offset the replacement cost and potential future exposure for client cleared derivatives only.

This limited revision seeks to balance the robustness of the leverage ratio as a non-risk-based safeguard against unsustainable sources of leverage with the policy objective set by the G20 Leaders to promote central clearing of standardised derivative contracts.

The BCBS has also set out additional requirements for banks to disclose their leverage ratios based on quarter-end and on daily average values of securities financing transactions, with the expectation that a comparison of the two sets of values will allow market participants to better assess banks' actual leverage throughout the reporting period.

The BCBS has finalised this disclosure requirement to address concerns regarding potential regulatory arbitrage by banks in the form of 'window-dressing', whereby temporary reductions of transaction volumes around reference dates result in the reporting and public disclosure of artificially elevated leverage ratios. The BCBS intends to continue to monitor potential window-dressing behaviour on the part of banks.

Both revisions will be applicable to the version of the leverage ratio standard that will come into effect on 1 January 2022.

UK and US regulators issue joint statement on opportunistic strategies in credit derivatives markets

The Chairmen of the Financial Conduct Authority (FCA), US Commodity Futures Trading Commission (CFTC) and US Securities and Exchange Commission (SEC) have issued a joint statement on opportunistic strategies in the credit derivatives markets.

The statement notes that the pursuit of opportunistic strategies in the credit derivatives markets, including but not limited to manufactured credit events, may adversely affect the integrity, confidence and reputation of the credit derivatives markets and markets more generally, raising issues under securities and derivatives conduct laws as well as public policy concerns.

The statement announces that the three agencies will work together to address these concerns and foster transparency, accountability, integrity, good conduct and investor protection in these markets while not precluding other appropriate actions by their respective agencies or authority.

SRD2: FCA consults on new responsibilities over proxy advisors

The FCA has launched a public consultation (CP19/21) on changes to the Decision Procedure and Penalties manual (DEPP) and Enforcement Guide (EG). The changes relate to the FCA's new responsibilities over proxy advisors under the Proxy Advisor (Shareholder's Rights) Regulations 2019, which implement the part of the revised Shareholders Rights Directive (SRD2) relating to proxy advisors. Amongst other things, SRD2 sets out new transparency obligations on proxy advisors.

The UK regulations are intended to encourage greater transparency in the way in which proxy advisors carry out their work and provide services. Under the regulations, proxy advisors must:

- disclose whether and how they apply a code of conduct;
- disclose information on their research capabilities and how they produce their advice and voting recommendations; and
- identify and disclose any actual or potential conflicts of interests or business relationships that may influence the preparation of their research.

The FCA is consulting on proposed decision making procedures to:

- remove an advisor from the public list of proxy advisors if they stop providing services but have not given notice to be removed from the list; and
- investigate and discipline proxy advisors that must meet the 2019 regulations but are not authorised by the FCA or the Prudential Regulation Authority under the Financial Services and Markets Act 2000 (FSMA).

Comments on the consultation are due by 26 July 2019.

Bank of England consults on risk management approach to collateral referencing LIBOR for use in Sterling Monetary Framework

The Bank of England (BoE) has launched a consultation on its approach to the risk management of collateral referencing LIBOR for use in the Sterling Monetary Framework (SMF).

The consultation paper sets out a number of risk management approaches currently under consideration by the BoE to ensure that it remains well placed to provide liquidity insurance in support of financial stability. The paper outlines:

- a brief background to both the LIBOR transition process and the BoE's collateral framework;
- potential implications for the BoE's balance sheet from LIBOR transition; and
- possible risk management approaches currently under consideration.

The BoE is particularly interested in feedback from firms that are signed up (or expect to sign up) to the SMF, and from any other interested parties.

Comments are due by 27 September 2019.

Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 laid before Parliament

HM Treasury has laid the Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 (SI 2019/1043) before Parliament.

The new regulations make amendments to the Financial Services and Markets Act 2000 (FSMA), the Financial Services Act 2012, the Data Protection Act 2018, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 in order to implement the provisions of Regulation (EU) No 2017/1129 of 30 June 2017 (EU Prospectus Regulation).

Among other things, the new regulations designate the FCA as the competent authority in the UK responsible for carrying on the duties of the competent authority under the EU Prospectus Regulation.

The regulations come into force on 21 July 2019.

BMF publishes draft law on introduction of special provisions for recovery and resolution of CCPs

The German Federal Ministry of Finance (BMF) has published a draft law on the introduction of special provisions for the recovery and resolution of central counterparties (CCPs). The draft law is intended to introduce supplementary provisions into the Recovery and Resolution Act (Gesetz zur Sanierung und Abwicklung von Instituten und Finanzgruppen – SAG). The BMF believes that the increasing importance of CCPs requires the creation of a specific framework for the recovery and resolution of CCPs, as existing arrangements for credit institutions do not sufficiently reflect the business model of CCPs.

In order to guarantee the functionality of the CCP, the draft law therefore provides for measures to overcome financial emergencies and to maintain the critical functions of a failing or threatened CCP. The new rules to be introduced to the SAG cover both central counterparties that have been authorised as CCR credit institutions and institutions that have been exclusively authorised as CCPs within the meaning of section 1 paragraph 31 of the German Banking Act (KWG). The aim of these measures is to ensure financial stability and to minimise the cost to taxpayers of any default of a CCP. For this reason, the resolution authorities must also be given powers to enable them to react appropriately to a possible resolution of a CCP and to deal in a coordinated manner with a CCP in distress.

The BMF accepted written comments until 28 June 2019.

BaFin publishes general decree regarding general prior approval to reduce eligible liabilities instruments

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has published a general decree (Allgemeinverfügung) regarding the general approval to reduce eligible liabilities instruments. This general administrative act came into force on 27 June 2019.

In line with the Capital Requirements Regulation (CRR), as amended by Regulation 2019/876 (CRR2), as of 27 June 2019, institutions must obtain prior approval from the resolution authority if they intend to terminate, redeem, repay or repurchase eligible liabilities instruments prior to their contractual maturity. Under certain circumstances, the resolution authority may grant prior general approval for such measures. BaFin, as the national resolution authority, is making use of this option by means of the general decree within the scope of its competence and in respect of institutions that have not yet received a ruling on the minimum requirement for own funds and eligible liabilities (MREL).

The general decree is addressed exclusively to institutions in respect of which BaFin is the competent resolution authority. Institutions that fall within the competence of the Single Resolution Board (SRB) are not affected by the general decree.

Payment Accounts Directive: Bank of Italy publishes amendments to transparency regulations

The Bank of Italy has amended its Regulation on transparency to fully implement the Payment Accounts Directive 2014/92/EU (PAD), as implemented, in the first place, in the Italian primary legislation (namely, Legislative Decree no. 385/1993 – Italian Banking Act), with respect to the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

The amendments shall apply from 1 January 2020.

Polish Financial Supervision Authority issues communiqué on binary options

The Polish Financial Supervision Authority has taken a decision prohibiting the placing on the market, distribution and/or sale to retail customers of binary options.

The decision comes into effect on 2 July 2019.

CNMV issues communication on future adaptation of guidelines on application of definitions regarding commodity derivatives

The Spanish National Securities Market Commission (CNMV) has notified ESMA of its intention to comply with the ESMA guidelines on the application of the definitions in paragraphs 6 and 7 of section C of Annex 1 to MiFID2.

CNMV issues communication on marketing futures FX rolling spot contracts, negotiated in MEFF, between retail investors

In March 2019, the CNMV published the amendment to the General Conditions presented by MEFF in order to incorporate futures FX rolling spot contracts.

These contracts, due to their similar characteristics to contracts for differences, are subject to the restrictions imposed by ESMA Decision (EU) 2018/796 of 22 May 2018 to temporarily restrict contracts for differences in the EU in accordance with Article 40 of MiFIR. The decision restricts the promotion, marketing, distribution and sale to retail investors of this type of

contract, establishing limitations to leverage as well as obligations of closure of positions and a protection mechanism against negative balances.

Entities who wish to market these contracts to retail investors should therefore comply with the obligations and restrictions set out in the ESMA decision.

ASIC consults on new product intervention power use

The Australian Securities and Investments Commission (ASIC) has launched a public consultation on the proposed administration of its new product intervention power, which allows ASIC to intervene and take temporary action where financial and credit products have resulted in, or are likely to result in, significant consumer detriment.

The product intervention power was enacted in April 2019 with new design and distribution obligations, and is available for ASIC to use now. The design and distribution obligations will not be applicable to industry until April 2021.

The consultation covers ASIC's proposed regulatory guidance on the product intervention power, including:

- the meaning of significant consumer detriment, including the impact the detriment has on consumers and the factors that ASIC will take into account in determining whether significant consumer detriment is likely to occur;
- the types of interventions that ASIC can make and examples of these interventions;
- limitations of the power;
- consultation with affected persons;
- how significant consumer detriment will be described at consultation;
- when a product intervention order will commence; and
- the consequences of breaching an intervention order.

ASIC has indicated that it intends to release its final regulatory guide on product intervention power in September 2019, and will launch a separate consultation on its proposed guidance on the design and distribution obligations later 2019.

Comments on the consultation are due by 7 August 2019.

ASIC approves updated Banking Code of Practice

ASIC has approved an updated version of the Australian Banking Association's (ABA's) new Banking Code of Practice.

Since ASIC approved the Code in August 2018, the ABA has applied to ASIC for approval of a number of changes to the Code. ASIC is assessing those changes in two stages. It has approved the first stage of changes and is yet to decide on the second stage of changes.

The first stage of changes, which have been approved by ASIC by issuing a legislative instrument entitled 'ASIC Corporations (Approval of Banking Code of Practice) Instrument 2019/663', includes:

- new provisions that put beyond doubt that a bank will not charge fees for services to deceased customers, where services are no longer being provided to that customer's estate;

- changes to the commitments around provision of valuations to small business customers, as well as to reflect ASIC's implementation of law reforms to credit card responsible lending, and
- minor and technical corrections throughout the Code.

ASIC has also revoked its previous approval of the August 2018 by issuing a legislative instrument entitled 'ASIC Corporations (Banking Code of Practice – Revocation of 2018 Approval) Instrument 2019/662'.

The new Code, incorporating the first stage changes, commenced on 1 July 2019.

The second stage of changes are intended to address recommendations of the Royal Commission, including improvements to the provisions dealing with accessibility to banking products and services for vulnerable customers and commitments regarding the charging of default interest on agricultural loans in the event of natural disasters, and stakeholder feedback relating to various small business protections. The ABA proposes that these changes will commence from 1 March 2020.

ASIC has indicated that it intends to decide on the proposed second stage of changes later in 2019, and its decision will follow engagement with the key stakeholders to ensure that the revised Code provides an appropriate level of commitment by banks to consumer and small business protections.

APRA consults on proposed approach to product responsibility under Banking Executive Accountability Regime

The Australian Prudential Regulation Authority (APRA) has released a consultation letter outlining its proposed approach to implementing the Royal Commission recommendation on product responsibility for authorised deposit-taking institutions (ADIs) under the Banking Executive Accountability Regime (BEAR).

'Recommendation 1.17' of the final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry recommended that APRA determine an end-to-end product responsibility for each ADI subject to the BEAR with the aim of improving customer experience and outcomes. In response, APRA has released the consultation to ADIs detailing how it intends to achieve heightened and clarified product accountability among senior executives. Specifically, APRA proposes requiring ADIs to identify and register an accountable person to hold end-to-end product responsibility for each product the ADI offers to its customers, including retail, business and institutional customers.

In particular, the consultation seeks feedback on the four key considerations relating to implementing the proposed product responsibility requirements: the scope of accountability, product coverage, the structure of the legal mechanism, and the application of joint accountability within ADIs and ADI groups. Although the requirements will directly be applicable to locally incorporated ADIs, APRA strongly encourages all ADIs to consider elements of strengthened product accountability as they relate to their accountable persons, and accountability statements and map.

APRA has indicated that it intends to release a draft schedule with the proposed product responsibility requirements for further consultation in

October 2019, and the final legislative instrument in December 2019. APRA expects to implement the new requirements by 1 July 2020.

Comments on the consultation letter are due by 23 August 2019.

APRA finalises updated guidance on information security

APRA has released updated cross-industry prudential guidance entitled 'Prudential Practice Guide 234: Information Security' (CPG 234) to all APRA-regulated entities on managing information security risks, including cyber-crime.

The updated CPG 234 replaces the existing 'CPG 234 Management of Security Risk in Information and Information Technology', and is intended 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 came into effect on 1 July 2019. It also provides guidance on addressing several common information security weaknesses that APRA has observed through its regular supervisory activities.

In addition, APRA has published a letter to industry responding to submissions received on the draft CPG 234 released for consultation in March 2019. In its response letter, APRA has re-emphasised the need to maintain appropriate oversight of all third parties that manage information security on an entity's behalf, including entities subject to existing regulatory oversight and service providers engaged by third party entities.

Banking (Exposure Limits) Code gazetted

The Hong Kong Monetary Authority (HKMA) has issued a circular to inform all authorised institutions that the Hong Kong Government has gazetted the Banking (Exposure Limits) Code. The Code has been issued under the Banking Ordinance to provide technical guidance on the interpretation of the Banking (Exposure Limits) Rules (BELR), in particular the grouping of 'linked counterparties' by the 'economically dependent' factor under Rule 41 of the BELR.

The BELR are intended to implement the 2014 Basel Committee on Banking Supervision large exposures standards and update other exposure limits to keep pace with market developments and contemporary risk management techniques, and are effective from 1 July 2019.

In line with the BELR, the Code took effect on 1 July 2019.

Revised liquidity rules under Banking Ordinance gazetted

The Hong Kong Government has gazetted the Banking (Liquidity) (Amendment) Rules 2019 to bring the regulatory regime in Hong Kong up to date and in line with international standards.

The Amendment Rules are intended primarily to expand the scope of high-quality liquid assets recognisable as 'level 2B assets' under the liquidity coverage ratio and introduce a stable funding charge of 5% for total derivative liabilities maintained by an authorised institution under the net stable funding ratio, in accordance with Basel III standards.

The Amendment Rules will be tabled before the Legislative Council at its sitting on 3 July 2019 for negative vetting, and will come into operation on 1 January 2020.

SFC concludes consultation on annual update to list of financial services providers under OTC derivatives clearing regime

The HKMA and the Securities and Futures Commission (SFC) have published the conclusions to their April 2019 joint consultation on enhancements to the over-the-counter (OTC) derivatives regulatory regime for Hong Kong concerning the proposed update to the list of Financial Services Providers (FSPs) under the clearing obligation for OTC derivative transactions.

Under the April 2019 joint consultation, the HKMA and the SFC proposed to:

- update the FSP list under the clearing obligation;
- mandate the use of unique transaction identifiers for the reporting obligation; and
- revise the list of designated jurisdictions for the masking relief of the reporting obligation.

In connection to the proposed update to the FSP list, the regulators have noted that some financial firms in the UK may lose their right to serve clients throughout the EU after Brexit. As a result, some major dealers have made arrangements for their Europe-based affiliates to become clearing members of central counterparties offering clearing services for OTC derivatives. In this regard, the regulators have included additional entities to the original proposed FSP list.

The regulators intend to gazette the FSP list in the fourth quarter of 2019 for implementation on 1 January 2020.

Further, the regulators have indicated that they intend to publish a separate consultation conclusions paper on the other two proposals in the joint consultation paper in the second half of 2019.

SEC adopts capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants and amends capital and segregation requirements for broker-dealers

The US Securities and Exchange Commission (SEC) has approved a package of rules and rule amendments under Title VII of the Dodd-Frank Act. These and other rules previously approved by the SEC are aimed at reinforcing the mitigation practices of firms that stand at the center of the security-based swap market, allowing for the protection of their counterparties and reducing risk to the market as a whole.

The rules address four key areas:

- allowing minimum capital requirements for security-based swap dealers and major security-based swap participants for which there is not a prudential regulator (nonbank SBSDs and MSBSPs), expanding the minimum net capital requirements for broker-dealers that use internal models to compute net capital (ANC broker-dealers), creating capital requirements tailored to security-based swaps and swaps for broker-

dealers that are not registered as an SBSD or MSBSP to the extent they trade these instruments;

- creating margin requirements for nonbank SBSDs and MSBSPs with respect to non-cleared security-based swaps;
- creating segregation requirements for SBSDs and stand-alone broker-dealers for cleared and non-cleared security-based swaps; and
- modifying the SEC's existing cross-border rule to provide a means to request substituted compliance with respect to the capital and margin requirements for foreign SBSDs and MSBSPs, and giving guidance discussing how the SEC will evaluate requests for substituted compliance.

CFTC to clarify cross-border regulatory commitments

The Commodity Futures Trading Commission (CFTC) has endorsed a proposed rule to amend Part 30 of CFTC regulations that manages the offer and sale of foreign futures and options to customers located in the US. The proposed amendments would codify the CFTC's authority to terminate exemptive relief issued to foreign firms.

The Part 30 exemptive program has allowed the CFTC to provide US customers with expanded access to foreign futures markets for nearly 30 years by permitting customers to deal directly with foreign brokers subject to comparable regulatory oversight.

As part of each exemptive order issued under § 30.10, the CFTC has the right, among other authority, to terminate the exemptive relief granted on its own motion. The proposed amendments would codify the process by which the CFTC may terminate exemptive relief issued under § 30.10(a).

The CFTC is seeking comments on the proposal. The comment period will end 30 days after the proposal is published in the Federal Register.

RECENT CLIFFORD CHANCE BRIEFINGS

Facebook's Libra – an exciting but challenging road ahead

Facebook has announced that it is to launch Libra, a global digital currency, backed by some of the biggest names in financial services and tech including Visa, Mastercard, Uber and Spotify. The aim is to provide instant international money transfers by blockchain for the 1.7 billion people around the world without a bank account. Libra is a 'stablecoin' and so, unlike Bitcoin, for example, will be linked to a reserve of underlying stable assets to maintain its value. However, getting a project of this global reach and magnitude off the ground gives rise to a range of regulatory, legal, practical and political challenges.

This briefing paper discusses some of these challenges.

https://www.cliffordchance.com/briefings/2019/06/facebook_s_libra-anexcitingbutchallengin.html

EU directive on restructuring frameworks – The same, but different?

On 26 June 2019 a new EU Directive on preventive restructuring frameworks on discharge of debt and disqualifications, and measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt was published under number 2019/1023. Member States must implement the Directive by 17 July 2021, with possible extensions of up to one year. The Directive looks to ensure that there are minimum restructuring measures available across Europe to enable debtors in financial distress to solve their problems at an early stage and avoid formal insolvency proceedings. The Directive is advertised as promoting mechanisms which will prevent the build-up of non-performing loans and ensure that debtors have access to restructuring tools, leading to a reduction in the risk of those loans becoming problematic. However, the jury is out as to whether the measures will in fact deliver on these laudable aims.

This briefing paper discusses the key aspects of the Directive.

https://www.cliffordchance.com/briefings/2019/06/eu_directive_on_restructuringframeworksth.html

Vienna International Arbitral Centre to be given status of permanent arbitral institution in Russia

By 8 July 2019 the Vienna International Arbitral Centre (VIAC) is to be included on the list of foreign arbitral institutions recognised in Russia as permanent arbitral institutions (PAI). VIAC will be the second foreign arbitral institution to be given the status of a PAI, following the Hong Kong International Arbitration Centre (HKIAC), which became a PAI on 25 April 2019.

This briefing paper discusses the development.

https://www.cliffordchance.com/briefings/2019/06/vienna_internationalarbitralcentretobegive0.html

CLIFFORD
CHANCE