INTERNATIONAL REGULATORY UPDATE 21 – 25 OCTOBER 2019

- **CRR: EU Commission consults on amendments regarding alternative standardised approach for market risk**
- **CRR/Securitisation Regulation: EBA publishes opinion on regulatory treatment of non-performing exposure securitisations**
- **EBA publishes opinion on disclosure requirements for financial services advertised through digital marketing channels**
- **SRB launches consultation on expectations for banks**
- **PRIIPs Regulation: ESAs issue supervisory statement on KIDs for bonds**
- **ESMA and Australian Securities and Investments Commission sign MoU on benchmarks**
- **G7 reports on impact of global stablecoins**
- **ISDA reports on results of benchmark fallbacks consultation on pre-cessation issues**
- **Working Group on Sterling Risk-Free Reference Rates writes to regulators on IBOR transition**
- **Brexit: UK requests Article 50 period extension**
- **Brexit: EU (Withdrawal Agreement) Bill published**
- **Brexit: SIs under the EU (Withdrawal) Act for 21 – 25 October 2019**
- **Brexit: FCA confirms RTS for strong customer authentication and secure open communication standards**
- **FCA publishes feedback statement on stewardship regulatory framework**
- **BMF publishes first national money laundering and terrorist financing risk assessment**
- **CSSF issues circular regarding survey of amount of covered deposits held as of 30 September 2019**
- **China facilitates transfer of CIBM bonds and cash across different market access regimes by foreign institutional investors**
- **China further regulates structured deposits issued by commercial banks**
- **HKMA issues circular on reform of interest rate benchmarks**

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- **HKMA issues revised supervisory policy manual on risk management of e-banking**
- **Scope of filing requirements in respect of foreign direct investment in Japan under Foreign Exchange and Foreign Trade Act expanded**
- **FSC strengthens regulation of violations of short selling rules**
- **MAS publishes new markets forms**
- **CFTC approves proposed rules concerning swaps**
- **Recent Clifford Chance briefings: Securitisation Transparency RTS, new Brexit deal, and more. Follow this link to the briefings section**.

CRR: EU Commission consults on amendments regarding alternative standardised approach for market risk

The EU Commission is consulting on the text of a proposed delegated act amending the Capital Requirements Regulation (CRR) with regard to the alternative standardised approach for market risk.

Following a review of the trading book by the Basel Committee on Banking Supervision (BCBS) which significantly changed the approaches to be used by banks for the calculation of capital requirements for market risk, a new framework for market risk was published in January 2016. To adjust the calibrations of these approaches the BCBS carried out a second review which was finalised in January 2019.

As part of an agreed three-step approach to implement the new market risk framework, the EU adopted the banking package in May 2019, which introduced a reporting requirement based on this framework through CRR. As the changes to the standardised approach could not be incorporated in the banking package before its adoption, the Commission was empowered to introduce them by means of a delegated act. The adoption of this delegated act, which will contain the elements necessary to make the reporting requirement operational, will represent the second step in the implementation process.

The alternative standardised approach consists of the sensitivities-based method (SBM), the default risk charge and the residual risk add-on. Only the SBM is within scope of the delegated act.

Comments to the consultation close 11 November 2019. In order to allow institutions to have sufficient time to implement the changes to the alternative standardised approach for market risk, the Commission recommends that the application of the delegated act be deferred.

CRR/Securitisation Regulation: EBA publishes opinion on regulatory treatment of non-performing exposure securitisations

The European Banking Authority (EBA) has published an opinion on the regulatory treatment of securitisations of non-performing exposures (NPE) which recommends amendments to the CRR and the Securitisation Regulation.

The EBA notes that securitisations can play an instrumental role in reducing NPE stocks in credit institutions' balance sheets but such a role may be hindered by certain provisions in the EU law securitisation framework.

The EBA recommends that the EU Commission consider targeted amendments to the CRR and Securitisation Regulation. The amendments would be intended to remove certain constraints on credit institutions using securitisation technology to dispose of NPE holdings, namely:

- very high capital requirements on investor credit institutions under the CRR; and
- compliance challenges as regards certain risk retention and due diligence requirements under the Securitisation Regulation.

EBA publishes opinion on disclosure requirements for financial services advertised through digital marketing channels

The EBA has published an opinion addressed to the EU Commission on the potential issues posed by the increasing use of digital marketing channels for financial services. The opinion is intended to assist the Commission in its current review of the effectiveness of the Distance Marketing of Financial Services Directive (2002/65/EC), which sets out requirements for the marketing of services that are bought at a distance.

In its opinion the EBA provides some general principles relating to the scope and consistency of disclosure rules, the timing of disclosure, the presentation format and the accessibility of information. It also sets out specific recommendations with regard to advertisements, pre-contractual information, rights of withdrawal, complaints handling and post-sale information. These include amending the Directive to require that providers:

- make clear the promotional nature of any advertising of retail banking products through digital means;
- provide sufficient pre-contractual information to allow consumers to assess whether the product is appropriate for their needs and financial situation;
- set up a dedicated space within their digital banking services to make consumers aware of, and easily able to exercise, their right of withdrawal and right to complain; and
- ensure that consumers pay attention to important post-sale communications made through digital channels.

SRB launches consultation on expectations for banks

The Single Resolution Board (SRB) has launched a consultation on its 'Expectations for Banks' document.

Views are sought on the 2019 document, which sets out general, non-exhaustive expectations the SRB will apply to banks in the resolution planning phase, including:

- best practices on key aspects of resolvability; and
- the capabilities banks should demonstrate to show they are resolvable.

The document's structure mirrors the seven dimensions used in the SRB resolvability assessment, namely:

- governance;
- loss absorption and recapitalisation capacity;
- liquidity and funding in resolution;
- operational continuity and access to FMIs;
- information systems and data requirements;
- communication; and
- separability and restructuring.

Feedback is invited via an online survey until 4 December 2019.

PRIIPs Regulation: ESAs issue supervisory statement on KIDs for bonds

The European Supervisory Authorities (ESAs) have published a supervisory statement that seeks to mitigate the risk of divergent application by national competent authorities (NCAs) of the Regulation for Packaged Retail and Insurance-based Products (PRIIPs Regulation) as regards the type of bonds which require a key information document (KID).

The ESAs believe that uncertainty over the application of the PRIIPs Regulation has lead to negative consequences for the functioning of bond markets and access to these markets by retail investors. The statement aims to achieve a consistent level of regulation and national supervision to promote a level playing field and the protection of retail investors.

The annex to the statement sets out guidance on the practical application of the provisions determining the scope of the PRIIPs Regulation to different types of common bond features. The statement recommends that NCAs apply the guidance set out in the annex when supervising compliance with the requirements in Chapter 1 of the PRIIPs Regulation.

In order to fully address the risk of divergent applications by NCAs, the ESAs recommend that the EU co-legislators introduce amendments during the upcoming review of the regulation that specify more precisely which financial instruments fall within the scope of the regulation. The ESA's also recommend amendments that reflect more expressly the stated intention of the regulation to address packaged or wrapped products rather than assets which are held directly in order to avoid any legal uncertainty.

ESMA and Australian Securities and Investments Commission sign MoU on benchmarks

The European Securities and Markets Authority (ESMA) and the Australian Securities and Investments Commission (ASIC) have signed a Memorandum of Understanding (MoU) setting out cooperation arrangements in respect of Australian benchmarks.

On 29 July 2019 the EU Commission recognised Australia's legal and supervisory framework applicable to the administrators of certain financial benchmarks as equivalent to the corresponding requirements under the EU Benchmarks Regulation (BMR), and recognised that those requirements are subject to effective supervision and enforcement. This decision allows benchmarks declared significant by ASIC (BBSW, S&P/ASX200, Bond Futures Settlement Price, CPI, and Cash Rate) to be used in the EU by EU-supervised entities.

The MoU sets out cooperation arrangements to complement the EU's equivalence decision, as well as to ensure effective information exchange and supervisory coordination. Under it, both authorities agree to provide each other with the fullest cooperation permissible under their laws and regulations in relation to all relevant information and supervisory activities regarding the covered benchmarks.

G7 reports on impact of global stablecoins

The G7 working group on stablecoins has published, through the Committee on Payments and Market Infrastructures (CPMI), a report on the impact of global stablecoins (GSCs). The report sets out some key risks posed by GSCs, as well as the working group's recommendations to private sector stablecoin developers and public authorities for the mitigation of those risks.

The G7 note that stablecoins can cause legal, regulatory and oversight challenges related to legal certainty, illicit finance, the safety, efficiency and integrity of the market and payment systems, cyber security and operational resilience, data privacy, consumer protection and tax compliance. GSCs, in particular, can negatively impact monetary policy and sovereignty, financial stability and fair competition.

The working group therefore recommends that private sector entities seeking to design stablecoin arrangements:

- adequately address the associated issues before launching their stablecoin projects;
- ensure their arrangements adhere to the necessary standards and comply with the laws and regulations of the various jurisdictions in which they will operate;
- attain legal clarity on various issues, including the nature of the claim of all participants within the arrangement; and
- fully specify a governance structure and the investment rules of the stability mechanism and ensure that they are understood by all participants.

The working group also makes the following recommendations for public authorities:

- to coordinate to support innovation in payments while ensuing a globally consistent response to mitigating risk;
- to ensure that regulations adhere to the existing principles and standards on the supervision and regulation of payment arrangements, including cryptoassets, issued by international organisations and standard-setting bodies;
- to apply a technology-neutral, functions-based regulatory approach to stablecoins;
- to be mindful of, and seek to address, any regulatory gaps; and
- not to rely on the work of private sector entities but to continue their own efforts to improve the efficiency and lower the cost of the current payments system, using new technology where appropriate.

ISDA reports on results of benchmark fallbacks consultation on pre-cessation issues

The International Swaps and Derivatives Association (ISDA) has published a report summarising responses to a consultation on pre-cessation issues for LIBOR and certain other interbank offered rates (IBORs).

The consultation, which was launched in May 2019, sought comment on how derivatives contracts should address a regulatory announcement that LIBOR or certain other IBORs categorised as critical benchmarks under the EU Benchmarks Regulation are no longer representative of an underlying market.

The responses to the consultation indicate that a majority of market participants would generally not want to continue referencing a covered IBOR in existing or new derivatives contracts following a statement from a supervisor that it is no longer representative of the underlying market. However, the consultation did not reveal a consensus on how to respond to such a statement in the context of fallbacks for derivatives contracts.

Respondents were split between:

- those who supported the inclusion of a pre-cessation trigger based on representativeness within fallbacks for derivatives contracts but with the flexibility to include or exclude certain trades and/or counterparties (22.5%);
- those who supported a trigger but without flexibility or optionality (27%);
- those who supported a trigger but didn’t express a preference on flexibility (14.6%); and
- those who opposed any implementation of a pre-cessation trigger (28.1%).

ISDA intends to continue to work towards finding a solution for how to address a non-representative covered IBOR in derivatives documentation and how to implement a pre-cessation trigger for fallbacks in this scenario.

Working Group on Sterling Risk-Free Reference Rates writes to regulators on IBOR transition

The Working Group on Sterling Risk-Free Reference Rates has written to domestic and international authorities regarding regulatory barriers to transition away from LIBOR.

The Working Group has written to the Prudential Regulation Authority (PRA), Financial Conduct Authority (FCA), EU Commission and the BCBS. The letters request that the addressees consider the issues raised and regulatory barriers which may impede the ability of market participants to transition from LIBOR and to take action as necessary. The Working Group hopes that such action will help reduce risks to the safety and soundness of markets from continued reliance on a benchmark that is expected to cease at the end of 2021.

Brexit: UK requests Article 50 period extension

The UK Government has published a letter to the EU Council requesting an extension of the Article 50 period until 11.00pm on 31 January 2020, in accordance with the EU (Withdrawal) (No. 2) Act 2019 (also known as the Benn Act).

The UK Government was required to request an extension following the vote in the House of Commons on 19 October to approve an amendment to the Benn Act withholding Parliament's approval of the Withdrawal Agreement unless and until implementing legislation is passed.

The UK Government has also published:

- a letter from the Prime Minister to President Donald Tusk, which, among other things, notes the UK Government's intention to press ahead with ratification of the Withdrawal Agreement;
- an explainer on changes made to the Protocol on Ireland and Northern Ireland and the Political Declaration; and
- the position of the UK Government on the terminability of the Protocol.

Brexit: EU (Withdrawal Agreement) Bill published

The UK Government has introduced the EU (Withdrawal Agreement) Bill to Parliament, which seeks to implement in domestic law the Withdrawal Agreement agreed between the UK and the EU on 17 October 2019.

Among other things, the Bill sets out:

- an extendable implementation period during which EU law continues to apply to the UK under the terms set out in the Withdrawal Agreement, which will last until 31 December 2020 or for up to a further two years;
- amendments to the EU (Withdrawal) Act 2018 so that EU law continues to apply during the implementation period and converts to retained EU law when that period ends;
- that the Withdrawal Agreement and provisions of EU law applied by the Agreement are to have the same legal effects in UK domestic law as attached to EU law in Member States;
- a technical basis for the winding down of processes and arrangements at the end of the implementation period;
- a requirement for Parliamentary approval of objectives in future UK-EU relationship negotiations;
- implementation of parts of the Withdrawal Agreement relating to citizens' rights, the financial settlement, the Protocol on Ireland/Northern Ireland and workers' rights; and
- implementation of the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement.

Brexit: SIs under the EU (Withdrawal) Act for 21 – 25 October 2019

Four new statutory instruments (SIs) relating to financial services were made under the EU (Withdrawal) Act 2018 last week.

The SIs, made with the aim of ensuring a functioning financial services regulatory regime once the UK leaves the EU, seek to correct drafting errors and make technical and consequential amendments relating to, among other things, the Article 50 extension.

The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019 (SI 2019/1390) include amendments relating to:

- special defences for, and the territorial scope of, insider dealing derived from the Market Abuse Regulation (MAR);
- HM Treasury's power to grant the European System of Central Banks (ESCB) exemption from certain MiFIR requirements to EEA central banks by way of ministerial direction;
- the operation of the share trading obligation in the UK to clarify that it is limited to trades on UK systemic internalisers; and
- the ability of EU Money Market Funds (MMFs) to be able to continue to use the MMF designation once they leave the temporary marketing permissions regime (TMPR) and subsequently obtain UK recognition.

The Statutory Auditors, Third Country Auditors and International Accounting Standards (Amendment) (EU Exit) Regulations 2019 (SI 2019/1392) commence the insertion of powers into the Companies Act 2006 to allow for the setting out of the framework for determining the equivalence of third countries and the adequacy of their competent authorities in later regulations.

The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361) remove the reciprocal arrangement under the Electronic Commerce Directive (ECD) that permitted EEA information society service (ISS) providers with home state authorisation to operate in the UK without being regulated in the UK.

The Cross-Border Distribution of Funds, Proxy Advisors, Prospectus and Gibraltar (Amendment) (EU Exit) Regulations 2019 (SI 2019/1370) seek to ensure exemptions from the requirement to produce a prospectus under the EU Prospectus Regulation continue to operate in the UK after exit. The SI also revokes the Cross-Border Distribution of Funds (CBDF) Regulation, and maintains the UCITS funds exemption from the requirement to produce a key investor document (KID) until 31 December 2021.

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

Brexit: FCA confirms RTS for strong customer authentication and secure open communication standards

The FCA has published a policy statement (PS19/26) confirming the regulatory technical standards (RTS) for strong customer authentication and common and secure open standards of communication, which will apply in the UK, in the event of a no-deal exit by the UK from the EU. The FCA notes that the RTS are substantially the same as EU technical standards designed to make electronic payments safer and more secure.

The statement follows the FCA's December 2018 consultation paper (CP18/44) on making RTS for strong customer authentication and common and secure open standards of communication. In the consultation paper, the FCA proposed to make these standards substantially the same as EU RTS after a no-deal exit. PS19/26 summarises the feedback the FCA received on its consultation and publishes the UK regulatory technical standards, together with Handbook changes, which the FCA will make in the event of a no-deal exit.

FCA publishes feedback statement on stewardship regulatory framework

The FCA has published a feedback statement (FS19/7) entitled 'Building a regulatory framework for effective stewardship'. In the statement the FCA agrees that it should not impose further stewardship-related requirements on life insurers and asset managers, and that it should let firms first adapt to new rules on shareholder engagement implementing the revised Shareholder Rights Directive (SRD2) and other related measures.

The statement sets out the FCA's intentions, in particular to:

- examine how asset owners set and communicate their stewardship objectives and take actions to promote arrangements between asset owners, asset managers and service providers that support these objectives;
- help to address regulatory, informational and structural barriers to effective stewardship practices, including by consulting on rule changes to enhance issuers' climate change disclosures;
- consider further the role of firms' culture, governance and leadership in both the management of climate risks and the exercise of stewardship; and
- pursue a number of actions to promote better disclosure of firms' stewardship practices and outcomes.

The statement responds to feedback received to a discussion paper (DP19/1) of the same title, published jointly with the Financial Reporting Council (FRC) in January 2019. The FCA intends to continue its engagement with the FRC and its successor on the balance between the regulatory baseline for effective stewardship and promoting higher standards through the UK Stewardship Code 2020.

The FRC published the 2020 code on 24 October 2019.

BMF publishes first national money laundering and terrorist financing risk assessment

The German Federal Ministry of Finance (Bundeministerium der Finanzen, BMF) has published the first national money laundering and terrorist financing risk assessment (NRA).

The NRA is a core element of the risk-based approach of the Financial Action Task Force (FATF) and the Fourth Anti-Money Laundering Directive. It analyses the strengths and weaknesses in combating money laundering and terrorist financing in Germany and contributes to further increasing national risk awareness.

The NRA provides the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) and the obliged entities, i.e. in particular companies supervised by BaFin, with important information on country-, product- and sector-specific risks for their own assessments. The NRA thereby constructs a bridge between the supra-national risk assessment of the EU Commission (SNRA), which looks at the European single market, and the institution-specific risk assessment of the obliged entities.

CSSF issues circular regarding survey of amount of covered deposits held as of 30 September 2019

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued a circular (CSSF-CPDI 19/18) regarding its survey on the amount of covered deposits held as of 30 September 2019.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions), and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The circular further draws members' attention to the changes to Circular CSSF-CPDI 19/17, notably regarding the reporting of deposits whose holders are different from the final beneficiaries (ayants droit) of the deposits (i.e.: omnibus, fiduciary or trust accounts, together referred to as 'omnibus accounts'). The apportionment of these aforementioned deposits and the number of rights thereof is no longer to be made according to the legal status (natural/legal person) of the final beneficiaries (ayants droit), but rather according to the legal status of the holder of such accounts.

The circular also refers to the provisions of CSSF-CPDI circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus and fiduciary accounts. Final beneficiaries (ayants droit) shall be covered by the guarantee provided that they have been identified or are identifiable before the guarantee is triggered. Final beneficiaries are deemed identifiable if the holder of the account has informed the FGDL member institution who holds the deposits, that he acts on behalf of third parties, that he has communicated the number of final beneficiaries and the amount owed to each of them and that he is able to provide the institution who holds the deposits or the CPDI with the identity of the final beneficiaries upon request of the CPDI in case of the institution's failure.

In addition, FGDL members are requested to provide the data at the level of their legal entity, comprising branches located within other Member States, by 22 November 2019 at the latest. In order to transmit this data, institutions are requested to complete the table attached to the circular, also available on the CSSF website. The file containing the data shall be duly completed in all cases, shall respect the special surveys naming convention, as defined by CSSF Circular 08/344, and shall be submitted over secured channels (E-File/SOFiE).

A member of the authorised management, i.e. the member in charge of the FGDL membership, must review and approve the file prior to its transmission to the CSSF.

China facilitates transfer of CIBM bonds and cash across different market access regimes by foreign institutional investors

The People's Bank of China (PBoC) and State Administration of Foreign Exchange (SAFE) have issued a circular dated 30 September 2019 on

CLIFFORD CHANCE

matters relating to further facilitating investment by foreign institutional investors in the China Interbank Bond Market (CIBM), allowing the transfer of CIBM bonds and cash of a single foreign institutional investor between its accounts opened under (a) the regime of Qualified Foreign Institutional Investors (QFII)/ Renminbi Qualified Foreign Institutional Investors (RQFII) and (b) the CIBM direct access regime.

The circular indicates that where a foreign institutional investor invests in the CIBM through both the QFII/RQFII regime as well as the CIBM direct access regime, that investor only needs to make a single filing with the Shanghai Head Office of PBoC.

The circular follows SAFE’s announcement in September 2019 that it would remove the investment quota restrictions for QFIIs/RQFIIs and will come into force as of 15 November 2019.

In addition, implementing rules on non-trade transfer of bonds will be issued by the bond depository institutions; operational issues in relation to cash transfer and FX derivatives positions have been and will be further clarified by PBOC and SAFE in the form of Q&As from time to time.

China further regulates structured deposits issued by commercial banks

The China Banking and Insurance Regulatory Commission has issued a circular and accompanying Q&A to further clarify the regulatory framework for the structured deposit business of commercial banks. Amongst other things, the circular sets out the following:

- dual regulation – structured deposits need to be (i) booked on balance sheet as a deposit (and subject to deposit reserve and deposit insurance requirements) and (ii) issued by banks under a general derivatives licence (and require the investor to have a real underlying trade underpinning the structured deposit). A commercial bank should manage the derivatives leg of the relevant structured deposit as part of its derivatives business;
- risk capital – sufficient risk capital relating to counterparty credit, market and operations risk must be charged, and the market risk capital of non-hedging derivatives may not exceed 3% of the tier-one capital of the relevant bank;
- cooling-off period – a cooling-off period of no shorter than 24 hours needs to be provided under the offering document or client documentation which should also specify investors’ rights within the cooling-off period;
- information disclosure – the issuing bank needs to publish an issuance / termination report within 5 days upon creation / maturity of a structured deposit, provide a product statement to investors at least once a month, and notify them of material events that may have a material impact on investors or the earnings of the product within 2 days of their occurrence; and
- transitional period – the circular sets out a 12-month transitional period from the date of its implementation (18 October 2019), during which a commercial bank may continue issuing its existing products subject to progressive decrease of outstanding volume. As to existing products issued before the expiration of the transitional period, the bank should liquidate such products after their maturity or settlement.

HKMA issues circular on reform of interest rate benchmarks

The Hong Kong Monetary Authority (HKMA) has issued a circular to update authorised institutions on the latest developments relating to the reform of interest rate benchmarks and the next steps that it plans to take to monitor the progress of authorised institutions in preparing for the transition from IBORs to alternative reference rates (ARRs).

The HKMA expects authorised institutions to keep abreast of both international and local developments in benchmark reform as set out in the circular and take them into account in preparation for the transition.

To monitor developments, the HKMA intends to start conducting a regular survey shortly to collect information on authorised institutions' exposures referencing IBORs and the progress of their preparatory work for the transition. The HKMA will take follow up actions having regard to the survey results of individual institutions.

HKMA issues revised supervisory policy manual on risk management of e-banking

The HKMA has issued a revised version of its supervisory policy manual (SPM) module on risk management of e-banking.

The revised SPM module, issued in the form of a guidance note, is intended to:

- strengthen risk management controls for e-banking amid evolving cyber threats and fraud risks;
- provide more principle-based guidance and greater flexibility to enable the industry to cope with the challenges brought about by technological advancement and changing customer expectations;
- introduce suitable changes in preparation for the introduction of virtual banking; and
- clarify certain existing requirements, particularly those relating to new digital banking services.

The HKMA expects authorised institutions to identify any material gaps in their existing risk management controls against the revised module and the associated guidance. Authorised institutions have been advised to implement appropriate measures to achieve compliance with the new or revised requirements set out in the module no later than twelve months after its issuance, unless there are other controls in place which can effectively manage the relevant risks.

Scope of filing requirements in respect of foreign direct investment in Japan under Foreign Exchange and Foreign Trade Act expanded

On 26 October 2019, the scope of foreign direct investment in specified industries in Japan that is subject to filing requirements under the Foreign Exchange and Foreign Trade Act (FEFTA) was expanded.

Subordinated legislation under the FEFTA has been revised and came into effect on 26 October 2019.

Through this amendment, the scope of activities that fall under 'foreign direct investment' was expanded, which could trigger filing requirements under the FEFTA. The amendment added the following cases to the definition of foreign direct investment in Japan:

- acquisition by a foreign investor of 10% or more of the voting rights in a listed company;
- acceptance of proxy enabling a foreign investor to exercise 10% or more of the total voting rights in a listed company with respect to proposals that may substantially control the management of the company or have a significant impact on the management of the company;
- acceptance of proxy enabling a foreign investor to exercise the voting rights in a non-listed company held by persons other than the foreign investor with respect to proposals that may substantially control the management of the company or have a significant impact on the management of the company; and
- obtaining consent from another foreign investor regarding the joint exercise of voting rights after the acquisition of voting rights in a listed company where the voting rights owned by such foreign investors are in aggregate 10% or more of the total voting rights.

If an investment in Japan qualifies as a foreign direct investment in specified industries under the FEFTA, subject to other requirements, certain filings (including filings to be made prior to investment) with the Ministry of Economy, Trade and Industry (METI) and the Ministry of Finance (MOF) through the Bank of Japan are required.

The government is planning to tighten the regulations under the FEFTA on foreign investments in sensitive industries. The government intends to submit a bill amending the FEFTA in this regard and it is expected that the Diet (the Japanese legislative body) will pass the bill by the end of 2019.

FSC strengthens regulation of violations of short selling rules

The Financial Services Commission (FSC) has introduced a revised measure to strengthen the regulation of violations of short selling rules. As a follow-up measure to improve the stock trading system, the proposed revision to the operational rules on capital market investigations establishes a new standard to impose penalties for illegal short selling activities.

Currently, illegal short sellers are fined KRW 60 million multiplied by a differential penalty ratio depending on the gravity of the consequence and the intent of such violations. The proposed revision raises the current imposition ratio by 5 to 15 percentage points.

The government has also established a regulatory basis to impose an additional penalty of up to 50% if the violation is found to have been involved in unfair transactions.

The revision will take effect in the first quarter of 2020.

MAS publishes new markets forms

The Monetary Authority of Singapore (MAS) has published the following forms under the Securities and Futures Act:

- Form 1A – Application for Approval as an Approved Exchange or Recognition as a Singapore-Incorporated Recognised Market Operator; and
- Form 1B – Application for Recognition as a Foreign Recognised Market Operator.

Forms 1A and 1B replace the previous markets forms, namely 'Form 1 – Application for Approval as an Approved Exchange or Recognition as a Recognised Market Operator', 'Form 2 – Information on Chief Executive Officer and Directors', and 'Form 3 – Information on Shareholders and Subsidiaries'.

CFTC approves proposed rules concerning swaps

The Commodity Futures Trading Commission (CFTC) has issued a release concerning its 16 October 2019 open meeting at which it approved proposed amendments to regulations concerning margin requirements for uncleared swaps for swap dealers (SDs) and major swap participants (MSPs) for which there is no prudential regulator.

The CFTC voted unanimously to approve a proposed amendment to Regulation 23.161 – Compliance Schedule Extension. The proposed amendment would extend the compliance schedule to 1 September 2021, for entities with smaller average daily aggregate notional amounts of swaps and certain other financial products.

The CFTC also approved proposed amendments to the Margin Rules for Uncleared Swaps – 23.151 and 23.157. The proposed amendments would add the European Stability Mechanism (ESM) to the list of entities that are expressly excluded from the definition of financial end user and correct an erroneous cross-reference in the CFTC's regulations.

Each proposed rule has a 60-day comment period following publication in the Federal Register.

RECENT CLIFFORD CHANCE BRIEFINGS

Commission adopts Securitisation Transparency RTS

Since 1 January 2019, the EU Securitisation Regulation has applied, but without technical standards specifying the content of many of the transparency rules it imposes.

On 16 October, the European Commission published technical standards to fill this gap, starting the final countdown to the day market participants will be obliged to comply with extremely prescriptive – and potentially quite challenging – disclosure requirements on EU securitisation transactions. This briefing paper discusses the adopted technical standards.

https://www.cliffordchance.com/briefings/2019/10/commission-adopts-securitisation-transparency-rts.html

Market access and the Brexit legacy

Financial institutions are focusing on market access in preparation for Brexit, but with the rise of deglobalisation, there is also a broader global trend towards limiting cross-border market access and tightening barriers.

This briefing paper looks at the issues around navigating market access, the impact of Brexit and the challenges ahead.

https://www.cliffordchance.com/briefings/2019/10/market-access-and-the-brexit-legacy.html

Globalisation and Financial Regulation – Challenges and Trends

Since the financial crisis of 2008, there has been a major shift away from internationally agreed standards and principles, as regulators and policy makers have focused on national legislative and regulatory solutions to crisis management. This has coincided with the rise of populist and nationalist political movements across a growing number of countries, further eroding international solutions. However, despite this move towards deglobalisation, the growth of the global digital economy will require international cooperation.

In this report, Clifford Chance experts discuss competing forces towards and against globalisation, focusing on five areas that are driving or challenging global approaches in financial regulation, including national approaches to crisis management and the implementation of global regulatory standards, changing approaches to market access, China's search for global capital and emerging approaches to the regulation of fintech and cryptoassets.

https://www.cliffordchance.com/briefings/2019/10/globalisation-and-financial-regulation--challenges-and-trends.html

Clifford Chance guide to financial regulation in Africa

Clifford Chance are proud to launch the guide to financial regulation in Africa. This guide provides an overview of financial regulations applicable at the end of 2019 in the twenty largest African jurisdictions by GDP and brings together the collective knowledge and experience of Clifford Chance and its law firm relationships across the African continent.

African jurisdictions vary in their financial regulatory legislation and treatment of financial services activity, but the region's drive for improved regulatory systems and the establishment of more effective regulatory frameworks has been on the rise in the past two decades. At the same time, we see increased focus on investing capital into and financing activity for Africa.

In our outlook for the future of global financial regulation, it is our hope that this guide will assist you in understanding the local laws and regulations that apply in the African jurisdictions covered.

https://www.cliffordchance.com/briefings/2019/10/guide-to-financial-regulation-in-africa.html

A new deal – what has changed and what happens next?

A new withdrawal agreement and political declaration have been agreed in principle between the EU and the UK, with limited – but important – changes to the previous deal. For the EU, this now means putting the deal to the

European Parliament. For the UK Prime Minister, this means securing the backing of a Parliament in which he lacks a majority.

This briefing paper sets out what has changed in the withdrawal agreement and political declaration and the next steps.

https://www.cliffordchance.com/briefings/2019/10/a-new-deal---what-has-changed-and-what-happens-next-.html

New pensions regulator powers announced

The Pension Schemes Bill 2019 covers a wide range of changes, but of key interest is likely to be the criminal offence of conduct risking accrued scheme benefits which carries with it a maximum custodial sentence of up to 7 years.

This briefing paper discusses the rather surprising wording of the offence which goes beyond the criminal sanction that has previously been trailed by the Government, and notes some of the key concerns with the draft legislation.

https://www.cliffordchance.com/briefings/2019/10/new-pensions-regulator-powers-announced.html

From shareholders to stakeholders section 172 statement – telling your story

For financial years starting on or after 1 January 2019, all large companies must include a statement in their strategic report describing how the directors have had regard to the matters set out in s.172(1)(a)-(f) Companies Act 2006 (duty to promote the success of the company) during the financial year under review (a 'section 172 statement').

For premium listed companies, there is a further overlay to this statutory requirement. Provision 5 of the UK Corporate Governance Code 2018 states that the board should understand the views of the company's other key stakeholders and describe in the annual report how their interests and the matters set out in s.172 Companies Act 2006 have been considered in board discussions and decision-making.

This briefing paper contains practical guidance on what key disclosures companies should consider making in their section 172 statement.

https://www.cliffordchance.com/briefings/2019/10/from-shareholders-to-stakeholders-section-172-statement--telling.html

Time for Japan to take a tougher stance on foreign bribery

In June 2019, the Organisation for Economic Cooperation and Development (OECD) working group on bribery in international transactions criticised Japan's efforts to combat bribery of foreign public officials. In short, the OECD 'remains concerned' that Japan is not doing enough to crack down on foreign bribery. The OECD identified a 'major loophole' and 'legislative defects' in Japan's unfair competition prevention law, calling on Japan to take 'urgent' action. Japan will be in the spotlight for the 2020 Olympics and this report may be just the encouragement it needs to take a tougher stance on foreign bribery.

This briefing paper discusses the report.

https://www.cliffordchance.com/briefings/2019/10/time-for-japan-to-take-a-tougher-stance-on-foreign-bribery.html

FINRA proposes amendments to its 'new issue' rules with key implications for foreign fund managers and investors

In July 2019, the United States Financial Industry Regulatory Authority issued proposed amendments to FINRA Rules 5130 and 5131 (the 'new issue rules') that, if adopted, would provide much needed clarity for certain fund managers and investors that participate in initial public offerings of equity securities ('new issues'). The proposed amendments seek to promote capital formation by, among other things, making it easier for certain investors to participate in new issues, and reducing the regulatory burdens associated with compliance with the new issue rules. While the proposed amendments would benefit fund managers and investors generally, they contain provisions of particular importance to non-US fund managers and investors.

This briefing paper discusses the proposed amendments.

https://www.cliffordchance.com/briefings/2019/10/finra-proposes-amendments-to-its--new-issue--rules-with-key-impl.html

The US imposes sanctions in response to Turkey's incursion into Syria

The US has issued an Executive Order (EO) authorizing the imposition of sanctions in response to the Turkish offensive in northern Syria. While so far the US has only designated two Turkish ministries and three ministers as sanctions targets, the EO could be used to target the Government of Turkey more broadly and to target persons transacting in certain sectors of the Turkish economy.

This briefing paper discusses the new sanctions.

https://www.cliffordchance.com/briefings/2019/10/the-us-imposes-sanctions-in-response-to-turkey-s-incursion-into-.html

California Consumer Privacy Act takes shape – amendments and draft regulations provide some clarity but questions remain

On 11 October 2019, the California Attorney General issued long-awaited draft regulations for the California Consumer Privacy Act (CCPA), the landmark state law that will dramatically increase the standard of data privacy and cybersecurity protections required of companies that do business in California. In addition to providing guidance on many elements of the CCPA, the regulations also impose several new, unexpected requirements on businesses. And despite the additional guidance, questions remain, including what impact several amendments signed by Governor Newsom just a day after the draft regulations were issued will have on businesses that do business in California.

This briefing paper discusses the draft regulations.

https://www.cliffordchance.com/briefings/2019/10/california-consumer-privacy-act-takes-shape--amendments-and-draf.html

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