INTERNATIONAL REGULATORY UPDATE 30 SEPTEMBER – 04 OCTOBER 2019

- **Technical Expert Group on Sustainable Finance publishes final report on climate benchmarks**
- **EMIR: ESMA consults on commercial terms for providing client clearing services**
- **EMIR: ESMA updates Q&As**
- **ESMA publishes annual work programme for 2020**
- **ESMA consults on MAR review**
- **MiFIR: ESMA launches call for evidence on product intervention measures for CfDs and binary options**
- **MiFID2/MiFIR: ESMA updates Q&As on market structures, transparency and investor protection topics**
- **MiFID2/MiFIR: ESMA publishes opinion on frequent batch auctions and the double volume cap mechanism**
- **CSDR: ESMA publishes updated Q&As**
- **EBA publishes 2020 work programme**
- **EBA publishes reports on Basel III monitoring and liquidity measures**
- **CRR: ECB publishes consolidated guide to internal models**
- **EMMI publishes EONIA under reformed methodology**
- **ESAs Joint Committee outlines work programme for 2020**
- **ESAs publish opinion on money laundering and terrorist financing risks**
- **Basel Committee reports on Basel III monitoring exercise**
- **FCA publishes policy statement on illiquid assets and open-ended funds**
- **FCA consults on changes to Knowledge Base**
- **PRA publishes statement of policy on settlement of enforcement action**
- **PRA consults on asset encumbrance prudential risk management**
- **BaFin publishes circular on IT requirements for capital management companies**

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- **BaFin publishes guidance note regarding external bail-in implementation**
- **CSSF sets 31 October 2019 deadline for completion of online PRIIPs statement by all Luxembourg Part II UCIs, SIFs and SICARs**
- **Polish Financial Supervision Authority issues communiqué regarding CJEU judgment on FX-indexed loans**
- **Polish Council of Ministers adopts capital market development strategy**
- **ASIC releases report on director and officer oversight of non-financial risk**
- **FRC guidelines for exercising power to impose pecuniary penalty gazetted**
- **FSA sets out approach to compliance risk management and reports on trends and issues in compliance risk management**
- **FSC proposes measures to boost venture capital investment**
- **Federal bank regulatory agencies update management interlock rules**
- **Recent Clifford Chance briefings: new European Commission, Russia's merger control regime, and more. Follow this link to the briefings section**

Technical Expert Group on Sustainable Finance publishes final report on climate benchmarks

The Technical Expert Group on Sustainable Finance (TEG), a stakeholder group designed to assist the EU Commission in developing elements of green finance policy, has published its final report and recommendations on the methodology of EU climate benchmarks.

This follows the agreement by the EU Parliament and Member States to amend the EU Benchmarks Regulation to introduce EU climate transition benchmarks and EU Paris-aligned benchmarks, and to require environmental, social and governance (ESG) disclosures for all benchmarks (excluding interest rate and currency benchmarks).

In its final report, the TEG recommends a set of minimum technical requirements for the methodology of EU climate benchmarks. It is hoped these would help investors who wish to adopt climate-conscious investment strategies make informed decisions, and would also address the risks of greenwashing, which is the practice of financial products being marketed as 'green' or 'sustainable' when they do not meet basic environmental standards. The final report also recommends a set of ESG disclosure requirements for benchmark administrators, including the disclosure on the alignment with the Paris agreement.

The report will inform the preparation of delegated acts by the EU Commission under the low-carbon benchmarks and positive-carbon-impact benchmarks regulation, agreed by the EU Parliament and Council in February 2019. The delegated acts will be subject to a consultation and are expected to be adopted in early 2020.

EMIR: ESMA consults on commercial terms for providing client clearing services

The European Securities and Markets Authority (ESMA) has issued a consultation on draft technical advice to the EU Commission concerning how to specify the conditions under which the commercial terms in relation to providing clearing services are considered to be fair, reasonable, non-discriminatory and transparent (FRANDT) under the European Market Infrastructure Regulation (EMIR).

During the implementation of EMIR's clearing obligation, several counterparties experienced issues around access to clearing. In response, the Regulation amending EMIR as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (EMIR REFIT) has introduced measures to address it, including the FRANDT requirements.

The consultation paper sets out the requirements for FRANDT commercial terms, based on the four criteria listed under Article 4(3a) of EMIR:

- fairness and transparency;
- unbiased and rational contractual arrangements;
- to facilitate clearing services and prices to be fair and non-discriminatory; and
- risk control criteria.

Comments to the consultation close 2 December 2019. ESMA expects to publish a final report and submit its technical advice in Q1 2020.

EMIR: ESMA updates Q&As

ESMA has issued an update of its questions and answers (Q&A) document on the implementation of EMIR.

Updates to the Q&As include:

- a new Q&A on the procedure for financial counterparties (FC) and non-financial counterparties (NFC) to notify that they exceed or no longer exceed clearing thresholds;
- an amended Q&A on responsibility for the status of counterparties;
- an amended Q&A on the status of entities not established in the EU;
- an amended Q&A on reporting transactions within the same legal entity;
- an amended Q&A on position level reporting; and
- a new Q&A on the reporting of reference rates not included in Regulation (EU) 2017/105.

ESMA publishes annual work programme for 2020

ESMA has published its annual work programme for 2020, setting out its priorities and areas of focus for the coming year.

The work programme sets out the planned implementation of ESMA's new mandates relating to the European Supervisory Agencies (ESAs) review,

EMIR 2.2, cross-border funds distribution, the investment firms framework (IFR) and sustainable finance, and its priorities in its supervisory convergence, risk assessment, single rulebook and direct supervision workstreams. In addition ESMA intends to continue to respond to the risks and challenges posed by Brexit which could potentially have an impact on its other priorities.

ESMA consults on MAR review

ESMA has published a consultation paper on the provisions of the Market Abuse Regulation (MAR) as requested by the EU Commission.

Among other issues, the consultation addresses:

- the possible inclusion of spot FX contracts within the scope of MAR;
- the definition and delayed disclosure of inside information in different cases;
- the appropriateness of the trading prohibition and insider lists for persons discharging managerial responsibilities (PDMRs);
- a possible cross-market order book surveillance framework;
- cum/ex and multiple withholding tax reclaim schemes; and
- cross-border enforcement of sanctions.

Comments on the consultation are due by 29 November 2019. ESMA intends to submit a final report to the Commission based on the consultation responses by spring 2020.

MiFIR: ESMA launches call for evidence on product intervention measures for CfDs and binary options

ESMA has issued a call for evidence on the effect of temporary product intervention measures for binary options and contracts for difference (CfDs).

Using powers granted under MiFIR, ESMA temporarily prohibited the marketing, distribution and sale of binary options to retail clients and imposed a set of restrictions in relation to CFDs marketed, distributed or sold to retail clients. These temporary product intervention measures, which began to apply from July 2018 for binary options and August 2018 for CfDs, expired in July 2019.

The EU Commission has asked ESMA to report on its experience with the new product intervention powers, including the practical effects of the measures. To complement information already collected as part of the renewal process of the temporary measures, ESMA is inviting feedback on the effects of the measures from market participants, consumers and trade associations.

Comments to the call for evidence close 4 November 2019. ESMA will consider the responses when drafting its response to the Commission.

MiFID2/MiFIR: ESMA updates Q&As on market structures, transparency and investor protection topics

ESMA has updated its MiFID2 and MiFIR Q&A documents on market structure topics and transparency topics, both dated 2 October 2019, and on investor protection and intermediaries topics dated 3 October 2019.

The market structures Q&A has been amended to clarify how to interpret the application of the tick size regime to periodic auctions.

The transparency topics Q&A has been updated to clarify that for exchange traded funds (ETFs) there is only one average daily turnover band (ADT) for choosing the highest threshold to calculate the average value of transactions (AVT).

The investor protection and intermediaries topics Q&A updates answers on best execution in relation to disclosure of reports to the public and on how the term 'ongoing relationship' should be understood.

MiFID2/MiFIR: ESMA publishes opinion on frequent batch auctions and the double volume cap mechanism

ESMA has published an opinion on frequent batch auctions (FBAs) and the double volume cap mechanism (DVCM).

The opinion is aimed at providing further clarification on the application of the pre-trade transparency requirements by, and the price determination process of, FBA systems. Among other things, the opinion sets out ESMA's views that FBA systems share the characteristics of periodic auctions as described in RTS 1, and the pre-trade transparency requirements as specified in Annex 1 of RTS 1 should apply as soon as a potential match has been identified, i.e. the trading venue should make public the indicative price and volume.

Regarding the price determination process, ESMA considers that non-price forming FBA systems should, in principle, operate under a waiver from pre-trade transparency, and sets out three functionalities which would result in non-price forming FBA systems. However, it notes that one of the functionalities, i.e. the use of price band limitations referring to the European Best Bid and Offer (EBBO) or the Primary Best Bid and Offer (PBBO), does not meet the waiver conditions.

ESMA intends to continue monitoring developments in the market, and will issue further guidance if necessary.

CSDR: ESMA publishes updated Q&As

ESMA has published updated Q&As on the implementation of the Central Securities Depositories Regulation (CSDR).

The document has been updated to include a new Q&A clarifying the scope of the cash penalties regime, specifying that the exemption applicable to insolvent participants only applies to settlement fails caused by that participant or to those relating to the liquidation of its position.

EBA publishes 2020 work programme

The European Banking Authority (EBA) has published its work programme for 2020, which outlines the focus of its activities for the coming year.

In 2020, the EBA intends to focus on:

- supporting the development and implementation of the risk reduction package in the EU;
- providing efficient methodologies and tools for supervisory convergence and stress testing;

- continuing work on an integrated EU data hub and streamlined reporting framework;
- prioritising anti-money laundering initiatives;
- contributing to the sound development of financial innovation and sustainability;
- promoting an operational framework for resolution;
- ensuring effective cooperation with third countries; and
- improving a culture of good governance in financial institutions.

EBA publishes reports on Basel III monitoring and liquidity measures

The EBA has published its 2019 Basel III monitoring report and 2019 report on liquidity coverage requirements under the Capital Requirements Regulation (CRR).

The Basel III monitoring report, based on data as of 30 June 2018, assesses the impact of the final Basel III reforms. Run in parallel with the exercise carried out at a global level by the Basel Committee on Banking Supervision (BCBS), the data shows that:

- European banks' minimum Tier 1 capital requirement would increase by 19.3% at the full implementation date (2027);
- the impact of the risk-based reforms is 20.4%, of which the leading factors are the output floor (5.4%) and operational risk (4.7%); and
- to comply with the new framework, EU banks would need EUR 26 billion of total capital, of which EUR 24.9 billion of Tier 1 capital.

The report on liquidity measures broadly shows that EU banks have continued to improve their liquid coverage ratio (LCR), averaging 149%. There was an aggregate gross shortfall of EUR 15.7 billion, as a result of four banks monetising their liquidity buffers during times of stress. In addition, an analysis of potential currency mismatches in LCR levels suggests that banks tend to hold significantly lower liquidity buffers in some currencies (particularly the US dollar and GBP).

CRR: ECB publishes consolidated guide to internal models

The European Central Bank (ECB) has published a consolidated guide to the use of internal models for credit risk, counterparty credit risk and market risk.

The CRR requires the ECB to grant permission to use internal models where the CRR's requirements are met by the institutions concerned. Based on the current applicable EU and national law, the guide is intended to provide transparency on how the ECB understands and applies the laws when assessing whether institutions meet the CRR requirements.

The guide is also intended as a document for the internal use of the different supervisory teams, with the aim of ensuring a common and consistent approach to matters related to internal models. When applying the relevant regulatory framework in specific cases, the ECB will take into due consideration the particular circumstances of the institution concerned.

EMMI publishes EONIA under reformed methodology

The European Money Markets Institute (EMMI) has published EONIA under a reformed determination methodology and has adopted a governance framework relating to the provision of EONIA.

As of 1 October 2019, EONIA's methodology is directly tracking the €STR, the euro short-term rate of the ECB. Under the reformed determination methodology EONIA is calculated as the €STR plus a spread of 8.5 basis points and is available every TARGET day on T+1, at or shortly after 9.15 Brussels time. EMMI intends to publish EONIA until 3 January 2022, when the benchmark will be discontinued.

EMMI has also adopted a governance framework establishing the requirements and principles related to the provision of EONIA under the reformed determination methodology, including:

- a code of conduct, setting out the governance, control and accountability frameworks for the provision of EONIA; and
- the benchmark determination methodology for the calculation of EONIA under both regular and contingency circumstances.

In addition, as the administrator of EONIA, EMMI has applied for authorisation from the Belgian Financial Services and Markets Authority (FSMA) under Article 34 of the EU Benchmarks Regulation.

ESAs Joint Committee outlines work programme for 2020

The Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) has published its 2020 work programme.

In 2020, under the EBA's chairmanship, the Joint Committee of the three ESAs intends to continue its work in the areas of cross-sectoral risk analysis, consumer protection, financial conglomerates, securitisation as well as accounting and auditing. Areas of particular focus of its work include:

- finalising proposals to amend the PRIIPs KID RTS, as well as continuing to provide guidance for the PRIIPs Regulation;
- developing technical standards for sustainability related disclosures;
- monitoring and analysing financial technology innovations;
- further developing and finalising its work on specific reporting formats for financial conglomerates; and
- addressing cross-sectoral mandates and questions (Q&As) stemming from the Securitisation Regulation.

ESAs publish opinion on money laundering and terrorist financing risks

The ESAs have published their second joint opinion on the risks of money laundering and terrorist financing affecting the EU's financial sector.

The ESAs are concerned about weaknesses in the control frameworks put in place by financial institutions in sectors with high volumes of transactions, particularly for transaction monitoring and suspicious transactions reporting. The ESAs have also found that the development of adequate business-wide

and customer risk assessments is an area that would benefit from more guidance from competent authorities.

In addition to divergences in the national transposition of the Fourth Anti-Money Laundering Directive (AMLD4), as identified in the first joint opinion published in 2017, this opinion identifies divergences between certain provisions in the AMLD4 and other EU legal acts, particularly those related to authorisations, fitness and propriety and assessments of qualifying holdings. Some of these concerns have already been addressed through recent revisions in legal frameworks like the Capital Requirements Directive (CRDV).

The ESAs acknowledge that the use of new technologies may offer opportunities to better fight financial crime, however the increasing use of new technologies by credit and financial institutions may give rise to money laundering and terrorist financing risks if vulnerabilities are not understood and mitigated. The spread of virtual currencies is also an area of growing concern for the ESAs, as they often give rise to heightened money laundering and terrorist financing risks due to the absence of a common regulatory regime and the anonymity associated with them.

Basel Committee reports on Basel III monitoring exercise

The BCBS has published the results of its latest review of the implications of the Basel III standards for banks. The report is based on data as at 31 December 2018 for 181 banks, of which 105 were Group 1 banks, defined as internationally active banks with Tier 1 capital of more than EUR 3 billion and 76 were Group 2 banks, defined as those with Tier 1 capital of less than EUR 3 billion or which are not internationally active.

The final Basel III minimum capital requirements are expected to be implemented by 1 January 2022 and fully phased in by 1 January 2027. The report finds that:

- on a fully phased-in basis, the capital shortfalls at the end-December 2018 reporting date were EUR 23.5 billion for Group 1 banks at the target level, almost 75% smaller than in the end-2015 cumulative exercise (this is due mainly to higher levels of eligible capital); and
- the Tier 1 minimum required capital (MRC) would increase by 3.0% for Group 1 banks following full phasing-in (as compared to 5.3% increase at end-June 2018, largely driven by the higher market risk impact prior to the application of the recalibrated 2019 standard); and

The monitoring reports also collect data on Basel III's liquidity requirements. Group 1 banks' average liquidity coverage ratio (LCR) increased by 1.0% to 136.0%, while the average net stable funding ratio (NSFR) increased for Group 2 banks (to 120%) and remained stable at 116% for Group 1 banks. All but two banks in the sample reported an LCR that met or exceeded the final 100% minimum requirement. All banks reported an NSFR at or above 90%.

FCA publishes policy statement on illiquid assets and open-ended funds

The Financial Conduct Authority (FCA) has published PS19/24 summarising the feedback to its October 2018 consultation on illiquid assets and open-ended funds (CP18/27) and setting out the final rules and guidelines that will be introduced.

CP18/27 proposed measures that aimed to reduce the risk of poor outcomes to retail investors in open-ended funds, specifically non-UCITS retail schemes (NURSs) that invest in illiquid assets, and ensure investors are better informed about the liquidity risks of these funds.

The FCA's new rules will apply to NURSs but not to other types of fund, such as UCITS, which are already subject to restrictions relating to illiquid assets. The new rules require that investors are provided with clear and prominent information on liquidity risks, and the circumstances in which access to their funds may be restricted. The rules also aim to reduce the potential for some investors to gain at the expense of others and to reduce the likelihood of runs on funds.

The new rules also include:

- a new category of 'funds investing in inherently illiquid assets' (FIIA). Such funds will be subject to additional requirements including increased disclosure of how liquidity is managed and standard risk warning in financial promotions; and
- a requirement that NURSs investing in inherently illiquid assets must suspend dealing where the independent valuer determines there is material uncertainty regarding the value of more than 20% of the fund's assets.

The FCA's new rules will come into effect on 30 September 2020.

FCA consults on changes to Knowledge Base

The FCA has launched a guidance consultation (GC19/4) on proposed changes to the Knowledge Base, its repository of non-handbook commentary that has the status of formal FCA guidance.

The FCA is proposing the following changes:

- the amendment of an existing technical note on master-feeder structures; and
- a new technical note that describes the FCA's approach to class testing changes to an investment management agreement where there are unquantifiable benefits.

Comments to the consultation close 14 November 2019.

PRA publishes statement of policy on settlement of enforcement action

The Prudential Regulation Authority (PRA) has published a policy statement (PS23/19) setting out its updated statement of policy on the settlement of enforcement action. In April 2019, the PRA consulted on proposed amendments to its policy which were intended to simplify the settlement discount scheme and improve the clarity and transparency of the settlement procedure. The PRA received no responses to its consultation and has therefore published its final statement as consulted upon.

The updated policy takes effect from 4 October 2019, except for in cases where the PRA concluded 'Stage 1' settlement discussions with the subject prior to 4 October 2019, without reaching a settlement, in which case the scheme as set out in the March 2019 statement of policy will continue to apply.

PRA consults on asset encumbrance prudential risk management

The PRA has published a consultation paper (CP24/19) setting out its proposed expectations of firms when managing the key prudential risks associated with asset encumbrance in the contexts of managing liquidity and funding risks, recovery planning, and resolution. The proposed expectations relate both to firms' internal monitoring and management of these risks, and to the information that firms are expected to provide to the PRA through their periodic regulatory submissions, e.g. Internal Liquidity Adequacy Assessment Process (ILAAP) documents and recovery plans.

The PRA will keep its proposed approach and policy under review to assess whether any adjustments are required, including in light of the planned introduction of the Net Stable Funding Ratio (NSFR) standard.

Comments are due by 17 January 2020.

BaFin publishes circular on IT requirements for capital management companies

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

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

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

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

BaFin publishes guidance note regarding external bail-in implementation

BaFin has published a guidance note regarding the external bail-in implementation.

The guidance note further specifies the aspects of the external bail-in implementation detailed in the BaFin Circular on Minimum Requirements for the Implementation of a Bail-In (Rundschreiben zu den Mindestanforderungen zur Umsetzbarkeit eines Bail-in (MaBail-in)) and describes the actors involved in the implementation of a bail-in through financial market infrastructures, their responsibilities, communications channels and procedures, and time schedules. It is based on a base case scenario and will be expanded in future to include further levels of complexity.

The guidance note is addressed to all institutions in Germany for which the resolution strategy provides for the use of bail-in.

CSSF sets 31 October 2019 deadline for completion of online PRIIPs statement by all Luxembourg Part II UCIs, SIFs and SICARs

As communicated in its press release 19/28 of 1 July 2019, the Luxembourg supervisory authority of the financial sector (CSSF) requires all Luxembourg regulated investments funds under its supervision other than UCITS funds, i.e. all Part II UCIs, SIFs and SICARs, to complete an online PRIIPs statement by 31 October 2019 at the latest in order to analyse the impact of Regulation (EU) 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs KID Regulation) on Luxembourg regulated investment funds.

As Luxembourg Part II UCIs, SIFs and SICARs are likely to qualify as PRIIPs, they need in principle to have in place a key information document for packaged retail and insurance-based investment products (PRIIPs KID) in the case where their units or shares are advised on, offered or sold, to retail investors (within the meaning of MiFID) in Luxembourg or in other EU Member States. Such 'retail' Part II UCIs, SIFs and SICARs may, however, be exempted from the obligation to have a PRIIPs KID until 31 December 2021 if they issue a key investor information document within the meaning of the UCITS Directive (UCITS-like KIID) subject to certain conditions, whilst neither a PRIIPs KID nor a UCITS-like KIID is required for Part II UCIs, SIFs and SICARs that are restricted only to professional investors (within the meaning of MiFID).

The CSSF has indicated that the online PRIIPs statement replaces the previously published 'self-assessment confirmation on the exclusive professional investor status under the PRIIPs KID Regulation' which is no longer available and can no longer be used. It has also clarified that the online PRIIPs statement is mandatory and must thus be completed by all Luxembourg Part II UCIs, SIFs and SICARs (no possible exemption), including for the avoidance of doubt Part II UCIs, SIFs and SICARs that:

- have already provided the CSSF with the previous self-assessment confirmation on the exclusive professional investor status, or have already included a reference in their offering/constitutive documents to the fact that their units or shares are solely advised, offered or sold, to professional investors and that, as a consequence, no PRIIPs KID shall be issued, or have taken none of these two actions and limit the offering of their units or shares to professional investors only;
- are offered to retail investors and already have a PRIIPs KID or UCITS-like KIID in place, or are offered to retail investors and are not yet marketed.

Polish Financial Supervision Authority issues communiqué regarding CJEU judgment on FX-indexed loans

The Polish Financial Supervision Authority (KNF) has published a communiqué relating to the ruling issued on 3 October 2019 by the Court of Justice of the European Union (CJEU) concerning FX-indexed loans. In the communiqué, the KNF states that the banking sector in Poland is well capitalised and safe. The KNF indicates, among other things, examples of the actions taken by it to strengthen the resilience of the banking sector to potential risks related to foreign currency loans. The KNF notes that despite

the fact that in its opinion the banking sector in Poland is well prepared for the potential effects of the CJUE's ruling, it is monitoring and analysing on an ongoing basis the situation relating to a potential change of the ruling practice of common courts and the information policy of banks listed on the Warsaw Stock Exchange.

Polish Council of Ministers adopts capital market development strategy

The capital market development strategy has been adopted by the Polish Council of Ministers.

The strategy identifies the most important barriers to the development of the capital market in Poland (primarily long-term) and proposes specific solutions to them.

The aim of the strategy is, among other things:

- to increase access to financing for Polish enterprises, in particular from the small and medium-sized enterprises sector, which generates approx. three quarters of Poland's GDP;
- to increase the scale of the raising of capital by enterprises on the capital market;
- to increase the liquidity of the market;
- to increase the efficiency of intermediate institutions;
- to increase the participation the share of savings in the economy; and
- more efficient administrative procedures.

ASIC releases report on director and officer oversight of non-financial risk

The Australian Securities and Investments Commission (ASIC) has released a report which sets out its observations on director and officer oversight of non-financial risk in order to enhance good corporate governance in the financial services sector.

The report highlights shortcomings in the corporate governance practices of many large financial services firms listed on the Australian Securities Exchange (ASX), including in relation to the oversight and management of non-financial risk. ASIC has urged boards of all large listed companies to read the report and review their governance practices and accountability structures with reference to its findings, particularly that:

- management was often operating outside of board-approved risk appetites for non-financial risks, particularly compliance risk – boards need to actively position themselves to hold management accountable to operate within their stated appetites;
- monitoring of risk against appetite often did not enable effective communication of the company's risk position – boards need to take ownership of the form and content of information they are receiving to better inform themselves of the management of material risks;
- material information about non-financial risk was often buried in dense, voluminous board packs and it was difficult to identify the key non-financial risk issues in information presented to the board – boards should require

reporting from management that has a clear hierarchy and prioritisation of non-financial risks; and

- companies generally sought to use board risk committees (BRCs) to achieve desired outcomes, but their effectiveness could be improved – BRCs should meet more regularly, devote enough time and be actively engaged to oversee material risks in a timely and effective manner.

FRC guidelines for exercising power to impose pecuniary penalty gazetted

The Financial Reporting Council (FRC) has gazetted a notice to announce that it has published its guidelines for exercising power to impose a pecuniary penalty.

The guidelines are intended to indicate the manner in which the FRC, when considering the imposition of sanctions on regulated persons (i.e. public interest entity (PIE) auditors and registered responsible persons of a registered PIE auditor), will exercise its powers to impose a pecuniary penalty on a PIE auditor, or a registered responsible person of a registered PIE auditor.

The FRC guidelines are effective from 1 October 2019.

Consequently, the Securities and Futures Commission (SFC) has updated its set of frequently asked questions (FAQs) on exchange traded funds and listed funds by:

- updating answer to Question 14 – the question provides examples of information relating to FDIs which is expected to be disclosed in relation to the passive ETF own website or other acceptable channels on an ongoing basis to investors;
- adding a new Question 17 – the new question provides clarification with regard to the steps that a listed overseas collective investment scheme (CIS) should take if it wishes to obtain an statement of no objection (SNO) from the SFC for lodging a recognition application of its overseas auditor with the Financial Reporting Council; and
- adding a new Question 18 – the new question provides clarification on whether a listed overseas CIS can approach the SFC for an SNO prior to submitting its fund authorisation application to the SFC.

FSA sets out approach to compliance risk management and reports on trends and issues in compliance risk management

The Financial Services Agency of Japan (FSA) has published a summary of its discussion paper entitled 'JFSA's Approach to Compliance Risk Management'. The discussion paper is in line with the basic concepts presented in the paper, 'JFSA's supervisory approaches – replacing checklists with engagement', published in June 2018. These include, in particular, expanding the scope of the FSA's supervisory approaches from a backward-looking, element-by-element compliance check, into substantive, forward-looking and holistic analysis and judgment.

The discussion paper is primarily intended to facilitate dialogues between financial institutions and the FSA to enhance their compliance risk

management. Amongst other things, it sets out the FSA's approach to compliance risk management, which includes:

- engaging in constructive dialogues with the management of financial institutions to evaluate actions taken by the management;
- conducting risk-based monitoring, focusing on significant issues; and
- taking into due consideration the burden on financial institutions, reflecting their size, complexity and risk profiles.

FSC proposes measures to boost venture capital investment

The Financial Services Commission (FSC) has announced measures to boost venture capital investment in innovative business. The proposed measures introduce the business development company (BDC) and are intended to diversify fundraising channels with exclusive private offerings for professional investors and small-scale public offerings.

In particular, the proposed measures include the following:

- introduction of a BDC, a collective investment vehicle that raises funds from investors to be listed on the Korea Exchange (KRX) and then invest in unlisted companies; and
- diversification of fundraising channels.

The FSC has indicated that it will announce finalised measures in October 2019 and submit a proposal to amend the Financial Services Investment and Capital Markets Act (FSCMA) to the National Assembly in the fourth quarter of 2019.

Federal bank regulatory agencies update management interlock rules

The Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency have issued a final rule updating management interlock rules. The updates provide relief for community banks that have USD 10 billion or less in total assets. Previous management interlock rules had prohibited management officials working at a depository institution or holding company with more than USD 2.5 billion in total assets from simultaneously working at an unaffiliated depository organization with more than USD 1.5 billion in total assets. The new final rule increases both thresholds to USD 10 billion in total assets.

In order to limit the potential risk of anticompetitive conduct at larger institutions, management officials will generally be prohibited from serving with multiple depository organizations that are above the new thresholds.

The final rule will take effect upon publication in the Federal Register.

RECENT CLIFFORD CHANCE BRIEFINGS

The new European Commission – confirmation procedure and candidates

The incoming President of the European Commission, Ursula von der Leyen, has unveiled the team of European Commissioners who will drive the EU's agenda for the next five years. Ms von der Leyen, the former German

defence minister, says that it will be a 'geopolitical Commission', signalling an intention to position Europe as a heavyweight on the world stage.

This briefing paper assesses the priorities for the new von der Leyen Commission.

https://www.cliffordchance.com/briefings/2019/09/the_new_europeancommissionconfirmatio.html

Mandatory declaration and registration of beneficial owners in a newly created register

On 13 October 2019, the Central Register of Beneficial Owners will be created. This is when the relevant legislation will come into force. From that date, almost all companies and partnerships entered in the Polish National Court Register will be required to file with the register details of (and keep updated) their beneficial owners. The provisions are part of the Act on Combating Money-Laundering and the Financing of Terrorism, which implements the amended Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

This briefing paper discusses the legislation and register.

https://www.cliffordchance.com/briefings/2019/09/mandatory_declarationandregistrationo.html

Clifford Chance Comment: Merger control – getting the deal cleared in Russia

Russia's merger control regime does not differ substantially from its analogues in Western Europe and North America. Overall it is investor-friendly, and the risk of not obtaining clearance is rarely cited as the reason for not pursuing a transaction. The Russian merger control regime does, however, have its own specifics, awareness of which can be essential to get a transaction cleared smoothly and on time in Russia.

This briefing paper discusses the Russian merger control regime.

https://www.cliffordchance.com/briefings/2019/09/merger_control_gettingthedealclearedinrussia.html

The DIFC Data Protection Law – proposed amendments

In June 2019, the Dubai International Financial Centre (DIFC) issued a public consultation on its proposed new Data Protection Law. The proposed law will replace the 2007 DIFC data protection law (as amended) and aligns the DIFC's regulatory framework more closely with international data protection developments, including the General Data Protection Regulation (GDPR).

Some key changes include requirements for processing data outside the DIFC, stricter consent requirements, impact on data transfers, requirements for a Data Protection Officer and Data Protection Impact Assessments and more rights for data subjects.

This briefing paper notes some of the salient features of the proposed law that will affect the data processing operations of companies operating in the DIFC.

https://www.cliffordchance.com/briefings/2019/09/the_difc_data_protectionlaw-proposedamendments.html

Interim measures in aid of arbitration – arrangement between Mainland China and Hong Kong to take effect on 1 October 2019

The arrangement concerning mutual assistance in court-ordered interim measures in aid of arbitral proceedings by the courts of the Mainland and of the Hong Kong special administrative region is seen as particularly important for arbitrations involving Mainland Chinese parties or assets, as it makes Hong Kong the first (and only to date) seat of arbitration outside Mainland China where the parties can access the PRC court system in pursuit of interim measures in aid of offshore arbitration.

This briefing paper discusses the arrangement.

https://www.cliffordchance.com/briefings/2019/09/interim_measuresinaidofarbitration.html

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