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Brexit: EU27 Leaders adopt conclusions at Art. 50 meeting

The European Council (Art. 50) has adopted [conclusions](#) following its meeting held on 13 December 2019.

Among other things, the Council:

- called for the timely ratification and effective implementation of the Withdrawal Agreement;
- invited the EU Commission to submit a draft mandate for a future relationship with the UK immediately after the UK's withdrawal; and
- welcomed the reappointment of Michel Barnier for the negotiations on the future relationship.

CRR: EBA publishes final draft RTS specifying key aspects of the standardised approach to counterparty credit risk

The European Banking Authority (EBA) has published [final draft regulatory technical standards](#) (RTS) specifying the key aspects of the standardised approach to counterparty credit risk (SA-CCR).

The amendments to the revised Capital Requirements Regulation (CRR2) implement in EU legislation, amongst other things, the revised SA-CCR. The EBA developed its draft RTS based on the proposed legislative text of CRR2 and where relevant, has adapted it to the final CRR2 text.

The RTS set out the method for identifying the material risk drivers of derivative transactions on the basis of which the mapping to one or more of the risk categories is to be done. Additionally, the RTS set out the formula that institutions are to use to calculate the supervisory delta of options, when mapped to the interest rate risk category, which is compatible with negative interest rates and also introduce a method suitable for determining the direction of the position in a material risk driver.

The final draft RTS will be submitted to the EU Commission for adoption.

CRD4: EBA consult on criteria to identify staff with material impact on an institution's risk profile

The EBA has launched a [consultation](#) on its draft RTS identifying staff with a material impact on an institution's risk profile.

Under the Capital Requirements Directive (CRD4), competent authorities must ensure that institutions comply with specific provisions regarding remuneration policies and variable remuneration for categories of staff whose professional activities have a material impact on institutions' risk profile in addition to the general requirements regarding remuneration policies.

The draft RTS are intended to harmonise the criteria for the identification of staff whose professional activities have a material impact on the institutions' risk profile in order to ensure a consistent approach to the identification of staff across the EU.

The identification criteria are a combination of qualitative and appropriate quantitative criteria in addition to the criteria already identified under Article 92 (3) of CRD4.

Comments are due by 19 February 2019. The EBA hopes to submit the final draft RTS to the EU Commission without undue delay.

EMMI approved as administrator of EONIA under Benchmarks Regulation

The European Money Markets Institute (EMMI) has been granted an [authorisation](#) by the Belgian Financial Services and Markets Authority (FSMA) for the administration of EONIA under Article 34 of the EU Benchmarks Regulation (BMR).

EMMI has also published the [Benchmark Statement](#) for EONIA following its inclusion on the ESMA register on 13 December 2019.

EMMI intends to publish EONIA every TARGET day until the benchmark's discontinuation on 3 January 2022, in order to provide EONIA users with a smooth transition to the €STR.

Sustainable finance: ESAs publish reports on short-termism

The three European Supervisory Authorities (ESAs), comprising the EBA, the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), have published reports on undue short-term pressures on corporations from the financial sector.

The reports respond to a request for advice from the EU Commission relating to its action plan on sustainable finance, in particular the objective of fostering transparency and long-termism in financial and economic activity.

The [EBA report](#), focusing on the banking sector, sets out the EBA's assessment of potential short-term pressures exerted by, and on, banks, and provides policy recommendations, such as:

- maintaining a robust regulatory prudential framework as a pre-condition for long-term investments;

- integrating further sustainability considerations in directives and regulations, such as the Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR);
- continuing to enhance disclosures, by both corporations and banks, of long-term risks and opportunities, such as through amendments to the Non-Financial Reporting Directive (NFRD); and
- improving information flows and data access, such as by developing a centralised database on environmental data for the financial sector.

The [ESMA report](#), focusing on securities markets, sets out ESMA's assessment of, and recommendations relating to, topics relevant to potential short-termism, including:

- improvements in issuers' environmental, social and governance (ESG) disclosures, such as by amending the NFRD, promoting the adoption of a single set of international ESG disclosure standards, and requiring the inclusion of non-financial statements in annual financial reports; and
- improvements to institutional investor engagement, such as by reviewing the White List under the Takeover Bids Directive, considering the effectiveness of a shareholder vote on the non-financial statement in relation to sustainability risks, and monitoring the application of the Shareholder Rights Directive (SRD II).

The [EIOPA report](#), focusing on the insurance and occupational pensions sectors, broadly notes the importance of monitoring whether these sectors continue to fulfil their roles as long-term investors, and recommends, among other things:

- the development of a cross-sectoral framework in line with general European objectives to promote long-term investments; and
- the development of reliable benchmarks for long-term performance and accessibility to the public.

The reports have been sent to the Commission, which will consider whether legislative changes should be initiated.

ESAs publish joint guidance on supervisory cooperation for AML/CFT matters

The ESAs have published [joint guidelines](#) on supervisory cooperation and information exchange regarding anti-money laundering and counter terrorist financing (AML/CFT) matters. The guidelines establish a formal cooperation framework that is intended to ensure supervisors across the EU and third countries can effectively oversee cross-border groups from an AML/CFT perspective.

Amongst other things, the guidelines require that, in situations where a firm operates in more than three Member States, its supervisors must establish an AML/CFT 'college'. These colleges are intended to allow all supervisors to access comprehensive information about the firm and to agree on a common and coordinated supervisory approach. The guidelines set out the rules that govern the establishment and operation of these colleges, as well as providing principles for the exchange of information between AML/CFT supervisors and prudential supervisors (who will be invited to participate in the colleges as advisors). The guidelines also contain guidance on how supervisory

cooperation should be structured in instances where the conditions for setting up an AML/CFT college are not met.

Sustainable finance: EU Council approves final compromise text on proposed EU taxonomy criteria

The Permanent Representatives Committee (COREPER) has approved the [final compromise text](#) on the proposed EU taxonomy criteria.

The proposed EU taxonomy criteria are intended to provide investors with clarity on which economic activities are considered environmentally sustainable.

The EU criteria identify a set of environmental key objectives to be considered when evaluating how sustainable an economic activity is:

- climate change mitigation and adaptation;
- sustainable use and protection of water and marine resources;
- transition to a circular economy, including waste prevention and increasing the uptake of secondary raw materials;
- pollution prevention and control; and
- protection and restoration of biodiversity and ecosystems.

Following a legal linguistic revision, the EU Parliament and EU Council will be called on formally to adopt the proposed regulation pursuant to the early second reading agreement procedure.

Capital Markets Union: EU Council and Parliament reach provisional agreement on proposed crowdfunding framework

The EU Council Presidency and the EU Parliament have reached a preliminary agreement on the EU Commission's proposed [crowdfunding framework](#).

The proposed framework sets out common prudential, information and transparency requirements for European crowdfunding service providers (ECSPs), common authorisation and supervision rules for national competent authorities and empowers ESMA to facilitate coordination, mediate disputes and develop relevant technical standards.

Pending technical finalisation of the text, the provisional text will be submitted for endorsement to EU ambassadors, with a view to reaching an agreement in the form of a Council position at first reading. The EU Parliament and Council will then be called on to adopt the proposed regulation.

Capital Markets Union: Directive and Regulation on harmonised framework for covered bonds published in Official Journal

[Directive \(EU\) 2019/2162](#) on the issue of covered bonds and covered bond public supervision and amending the UCITS IV Directive and the Bank Recovery and Resolution Directive (BRRD) and [Regulation \(EU\) 2019/2160](#) amending the CRR as regards exposures in the form of covered bonds have been published in the Official Journal.

The Directive and Regulation will both enter into force on 7 January 2020. Member States have to transpose the Directive by 8 July 2021 and apply the transposition measures from 8 July 2022. The Regulation will apply from 8 July 2022.

EMIR: EU Commission adopts Delegated Regulation on treatment of OTC derivatives in connection with STS securitisations for hedging purposes

The EU Commission has adopted a [Delegated Regulation](#) amending Delegated Regulation (EU) 2016/2251 as regards the specification of the treatment of OTC derivatives in connection with certain simple, transparent and standardised (STS) securitisations for hedging purposes.

Article 11 of the European Market Infrastructure Regulation (EMIR) was amended by the Securitisation Regulation to ensure that, with regard to the margin requirements for non-centrally cleared OTC derivatives, derivatives associated with covered bonds and securitisations are treated in the same manner. Commission Delegated Regulation (EU) 2016/2251, which is based on Article 11 of EMIR, is being amended to reflect the changes made to Article 11 and thus include rules on the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty concluded by a securitisation special purpose entity (SSPE) in connection with a securitisation.

In accordance with the amended Article 11, such rules will take account of the impediments faced by those SSPEs in providing collateral. Because of their structure, SSPEs usually have less assets to be used for the exchange of collateral which prevents these entities from exchanging collateral in a way that fully complies with Delegated Regulation (EU) 2016/2251.

The new delegated regulation amends Delegated Regulation (EU) 2016/2251 to exempt SSPEs in connection with a STS securitisation, under a specific set of conditions, from the requirement to post and collect initial margins and from posting variation margins.

The delegated regulation will now be forwarded to the EU Council and the Parliament for scrutiny.

CRR: EU Commission adopts Delegated Regulation regarding alternative standardised approach for market risk

The EU Commission has adopted a [Delegated Regulation](#) amending the 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 contains the elements necessary to make the reporting requirement operational (i.e. it clarifies how institutions need to carry out the calculations the results of which need to be reported), will represent the second step in the implementation process. It covers the sensitivities-based method (SBM) of the alternative standardised approach; the default risk charge and the residual risk add-on are outside its scope.

The Regulation will enter into force on the twentieth day following its publication in the Official Journal and will apply six months from that.

EU Commission consults on regulatory framework for cryptoassets and digital operational resilience

The EU Commission has launched two consultations on digitalisation in the financial sector. The [first consultation](#) is on the suitability of the existing regulatory framework for cryptoassets. It seeks views from stakeholders on:

- whether and how to classify cryptoassets;
- whether there is a need to establish an EU regulatory framework for cryptoassets that currently fall outside the scope of EU financial services legislation;
- issues relating to the regulation of those cryptoassets that currently fall within the scope of EU legislation, such as the Prospectus Regulation, MiFID2 and the Central Securities Depositories Regulation (CSDR); and
- regulatory barriers to the use of distributed ledger technology in financial services.

The [second consultation](#) is on the development of a potential EU cross-sectoral digital operation resilience framework in the area of financial services. The EU Commission is seeking views in particular on:

- how to strengthen the digital operational resilience of the financial sector, in particular with regard to the aspects related to information and communications technology (ICT) and security risk;
- the main features of its proposed enhanced legal framework; and
- the potential impact of the proposed framework.

The responses to these consultations will inform the EU Commission's preparation of potential initiatives under the new digital finance strategy for the EU. Comments are due by 12 March 2020.

EU Commission Expert Group reports on regulatory obstacles to financial innovation

The EU Commission's Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG) has published its [recommendations](#) on creating an accommodative framework for fintech in the EU.

The group's 30 recommendations are grouped into four categories covering:

- the need to adapt regulation to respond to new and changed risks caused by the use of innovative technologies such as AI and distributed ledger technology (DLT), and take up any emerging opportunities with respect to RegTech or SupTech;

- the need to remove regulatory fragmentation and ensure a level playing field between incumbents and new market entrants, both fintech startups and bigtech firms, across the EU;
- the necessity to reconcile the regulation of personal and non-personal data with the opportunities offered by fintech; and
- the need to consider the potential impacts of fintech from the perspective of financial inclusion and the ethical use of data.

ESMA issues statement on pending applications for benchmark administrators

ESMA has published a [statement](#) on pending authorisation and registration applications by EU-based administrators under the Benchmarks Regulation.

The Benchmarks Regulation includes transitional arrangements for existing EU and third country benchmark administrators, allowing these administrators to apply for authorisation by 1 January 2020, which was recently extended for critical and third country benchmarks for a further two years.

ESMA has published a list of the applications for authorisation and registration by EU administrators for which, as of 1 January 2020, the decision by the relevant competent authority is still pending. For each pending application, ESMA has published the:

- full name of the applicant;
- legal entity identifier of the applicant;
- country of the applicant;
- relevant authority of the applicant; and
- date of application.

Under Article 51 of the Benchmarks Regulation, EU supervised entities can continue to use existing benchmarks in the list unless and until such authorisation or registration is refused.

SRB extends procedure for prior permission to reduce eligible liabilities instruments

The Single Resolution Board (SRB) has published a [press release](#) on its decision to extend its procedure to assess applications to reduce eligible liabilities instruments under Article 78a of the CRR.

The permission regime, as set out in the [addendum](#) to its policy on minimum requirement for own funds and eligible liabilities (MREL) published on 25 June 2019, will remain in place until draft RTS specifying the process for prior permissions, including the time limits and information requirements, come into force.

Basel Committee launches consolidated framework

The BCBS has published the [consolidated version](#) of the Basel framework, bringing together all of the Committee's global standards for the regulation and supervision of banks into a new section of the BCBS website.

The publication reorganises existing requirements into a new format rather than introducing new requirements or amending existing standards.

In April 2019 the Committee published a draft version of the consolidation. In the course of preparing the consolidation the Committee became aware of changes that needed to be made to the framework because of inconsistencies between Basel requirements and ambiguities that needed to be addressed through minor policy changes and issued a consultation on its proposed changes to the framework.

The published framework sets out the changes the Committee agreed to make relative to the draft version of the framework and includes new FAQs added since the April 2019 draft.

ISDA consults on benchmark fallback adjustments for derivatives referencing EUR LIBOR and EURIBOR

The International Swaps and Derivatives Association (ISDA) has launched a supplemental [consultation](#) on spread and term adjustments, including final parameters, for fallbacks in derivatives referencing EUR LIBOR and EURIBOR, as well as other less widely used IBORs.

This follows consultations launched in July 2018, May 2019 and September 2019.

ISDA is seeking further input on the approach for addressing the adjustments, including the final parameters of those adjustments, that will apply to €STR if the fallbacks for EUR LIBOR or EURIBOR are triggered. As with the IBORs covered in the July 2018 consultation and the May 2019 consultation, these adjustments are needed because of the differences between the relevant IBORs and the risk-free rates (RFRs).

Based on the feedback received to this consultation, ISDA will determine whether to implement the same adjustments in fallbacks for EUR LIBOR and EURIBOR as the adjustments that are being implemented in fallbacks for GBP LIBOR, CHF LIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR, BBSW, USD LIBOR, CDOR and HIBOR.

In conjunction with the consultation, the Brattle Group has provided a workbook to help market participants understand the implications of the different options and variations for the historical mean/median approach to the spread adjustment.

Comments are due by 21 January 2020.

IOSCO publishes recommendations for framework assessing leverage in investment funds

The International Organization of Securities Commissions (IOSCO) has published its [final report](#) on recommendations for a framework assessing leverage in investment funds.

IOSCO's two step leverage framework is designed to capture significant leverage-related risks of a fund or group of funds in order to give regulators the tools to assess these risks for financial stability purposes.

The two step framework consists of:

- Step 1, which offers regulators a means of determining what funds are more likely to pose risks to the financial system and identifying a subset of these funds for further risk-based analysis; and

- Step 2, which sets out the risk-based analysis that can be employed by regulators.

IOSCO plans to publish from 2021 an annual report reflecting leverage trends within the asset management industry, initially at a global level but with the intention of expanding to include more jurisdictions in subsequent reports.

IOSCO consults on measures to reduce conflicts of interest in debt capital raising

IOSCO has published for consultation a [report](#) proposing guidance aimed at helping its members address potential conflicts of interest and associated conduct risks that may arise from the use of intermediaries in the debt capital raising process.

The report identifies key stages of debt capital raising where the role of intermediaries might give rise to conflicts of interest and provides eight measures grouped into three main aspects:

- the pricing of debt securities and risk management transactions;
- the quality of information available to investors; and
- the allocations of debt securities.

The consultation also seeks feedback on the use of distributed ledger technology (DLT) in bond issuances.

The proposed guidance is the second part of a two-stage project on conflicts of interest in capital raising; in the first stage, completed in September 2018, IOSCO published a [final report](#) focused on the equity capital raising process.

Comments on the consultation are due by 16 February 2020.

FSB publishes 2020 work programme

The Financial Stability Board (FSB) has published its [2020 work programme](#) setting out its planned work and an indicative timetable of planned publications in 2020.

Key workstreams for 2020 include:

- fintech – complementing its recent report on BigTech in finance, the FSB will report on the perspective of emerging market and developing economies and on the range of practices on the use of RegTech and SupTech;
- global stablecoins – the FSB will prepare a final report, informed by a consultation, on addressing the regulatory issues of stablecoins;
- cross-border payment systems – in coordination with the Committee on Payment and Market Infrastructures (CPMI), the FSB will develop a roadmap to enhance global cross-border payments, including practical steps and indicative timeframes;
- financial benchmarks – the FSB will publish a progress report on the implementation of benchmark reforms and report to the G20 on remaining challenges to benchmark transition; and
- ongoing evaluation work – as part of its work evaluating the effects of reforms under its evaluation framework, the FSB will complete an

evaluation of too big to fail reforms for banks and launch an evaluation of the effects of money market fund reforms.

The FSB has set out an indicative timeline of publications in the annex to the work programme.

FSB publishes progress report on reforming major interest rate benchmarks

The FSB has published its annual [progress report](#) on the implementation of its recommendations to reform major interest rate benchmarks.

The report sets out the progress made on implementing the FSB recommendations from 2014, and finds that:

- there is a common view across FSB jurisdictions that the use of overnight risk-free rates should be encouraged across global interest rates markets where appropriate, and that contracts referencing IBORs should have robust fallbacks;
- there has been good progress in many derivatives and securities markets, but transition in lending markets has been slower, and needs to accelerate;
- firms undertaking their transition away from LIBOR should not delay their programmes until the emergence of possible forward-looking term versions of risk-free rates;
- the parallel efforts on transition across multiple jurisdictions and currencies are an opportunity to align conventions and other practices across currencies and products;
- transition requires significant commitment from the official sector, working alongside market participants; and
- given the degree of risk arising from the continued reliance on LIBOR, regulated firms should expect increasing scrutiny of their transition efforts as the end of 2021 approaches.

As part of its 2020 work programme, the FSB intends to conduct a survey of exposures to LIBOR and supervisory measures being taken to address benchmark transition issues, in order to improve collective understanding of LIBOR transition progress so far and to increase awareness of the importance of ensuring timely transition.

The FSB intends to publish a report on the remaining challenges to benchmark transition at a later stage.

FSB reports on vulnerabilities associated with loans and CLOs

The FSB has published a [report](#) assessing the vulnerabilities and potential financial stability implications of developments in the leveraged loans and collateralised loan obligations (CLOs) markets.

The report gives a global outlook by combining available data and analyses for individual jurisdictions from FSB members and noting areas where a lack of available data impairs the ability to provide a comprehensive assessment of the financial stability risks.

The main conclusions from the report include that:

- vulnerabilities in the leveraged loan and CLO markets have escalated since the global financial crisis. The complexity of these markets has been increased by a growth in borrowers' leverage, changes in loan documentation which have weakened creditor protection and shifts in the composition of creditors of non-banks;
- available data indicates that banks have the largest direct exposures to leveraged loans and CLOs. These exposures are concentrated among a limited number of large global banks and have a significant cross-border dimension;
- investment funds, insurance companies, pensions funds, and a number of other non-bank investors are also exposed to leveraged loan and CLO markets; and
- a comprehensive assessment of the system-wide implications of the exposures of financial institutions to leveraged loans and CLOs is challenging because of data gaps relating to direct exposures of certain non-bank investors and limited information to assess possible risks from spillovers and interconnectedness, and their systemic implications.

The FSB will consider whether there is scope to close data gaps, will continue to analyse the financial stability risks and will discuss the regulatory and supervisory implications associated with leveraged loans and CLOs.

Andrew Bailey appointed as next Bank of England Governor

The Chancellor of the Exchequer has [announced](#) that Andrew Bailey will be the next Governor of the Bank of England (BoE).

Andrew Bailey will take on the role from 16 March 2020. In order to provide for a smooth transition, the term of the current Governor, Mark Carney, has been extended to 15 March 2020.

HM Treasury intends to appoint an interim Chief Executive of the Financial Conduct Authority (FCA) ahead of Mr. Bailey's departure to manage the organisation until a permanent successor is chosen.

BoE publishes 2019 stress test results

The Financial Policy Committee (FPC) of the BoE has published the results of the 2019 annual cyclical scenario stress test (ACS) for the UK banking system in the [December 2019 Financial Stability Report](#).

The 2019 ACS broadly shows that the UK banking system should be resilient to deep simultaneous recessions in the UK and global economies. The report also sets out the FPC's assessment of:

- the resilience of the UK financial system to Brexit, including the FPC's judgement that the core of the UK financial system would be resilient to and prepared for shocks associated with a disorderly Brexit;
- risks to UK financial stability, including the trade war between the US and China and tensions in Hong Kong;
- the UK bank capital framework, including an intention to raise the level of the UK countercyclical capital buffer (CCyB) rate from 1% to 2%, to consult on proposals to reduce minimum capital requirements, and to clarify that

the BoE expects bailed in debt to be written down or converted to CET1 capital;

- UK household indebtedness, including a review of the FPC's mortgage market recommendations, which it intends to maintain;
- global vulnerabilities, including slowing global growth and growing indebtedness;
- the resilience of market-based finance, particularly in relation to the repo market and the transition away from Libor;
- vulnerabilities in open-ended funds, including principles aimed at addressing the mismatch between redemption terms and asset liquidity; and
- developments in payments, including a new approach to financial stability regulation of systemic payment chains.

A [note](#) on the effectiveness of stress-testing frameworks, which sets out the findings of the BoE's 2019 stress test qualitative review using the BCBS stress testing principles, has been published alongside the report.

FCA and BoE issue statement on joint review of open-ended funds

Following the publication of the Financial Stability Report by the FPC, the FCA and BoE have issued a [statement](#) on the report's conclusions regarding open-ended investment funds. In particular, the statement focuses on the risks posed by the liquidity mismatch of such funds.

The FCA and BoE note that the FPC has concluded that, in order to achieve a greater consistency between the liquidity of a fund's assets and its redemption terms:

- the liquidity of funds' assets should be assessed by reference to the price discount needed for a quick sale of a representative sample (or vertical slice) of those assets or the time period needed for a sale without causing a material price discount;
- redeeming investors should receive a price for their units in the fund that reflects the discount needed to sell the required portion of a fund's assets in the specified redemption notice period; and
- the redemption notice period should reflect the time needed to sell the required portion of a fund's assets without discounts beyond those captured in the price received by redeeming investors.

The FPC will now consider how these principles can be implemented effectively and expects to publish its findings in 2020. The FCA then intends to use the FPC's conclusions to inform the development of rules for open-ended funds and notes that they could also be used by UK regulators in international work, such as that with the FSB and IOSCO.

BoE Working Group consults on credit adjustment spread methodologies for fallbacks in cash products referencing GBP LIBOR

The Working Group on Sterling Risk-Free Rates has launched a [consultation](#) on credit adjustment spread methodologies for fallbacks in cash products referencing GBP LIBOR.

The consultation is designed to facilitate consideration by end users in the cash markets (including the loan and debt capital markets) of an appropriate credit spread adjustment to account for differences between LIBOR and SONIA. It sets out four potential methodologies to calculate this spread, to be included in cash market fallback language.

The Working Group is inviting cash market participants to consider the appropriateness of the methodologies for credit adjustment spreads in the cash markets, in terms of:

- fallbacks that operate on the cessation of LIBOR; and
- fallbacks that operate before the cessation of LIBOR and are triggered as a consequence of a regulatory announcement of the non-representativeness of LIBOR.

The Working Group also recommends cash market participants be mindful of the ISDA consultations on adjustments required to RFRs in the derivatives market, noting the benefits of deciding that the credit adjustment spread methodology identified for the derivatives market is also appropriate for the cash markets.

Comments are due by 6 February 2020.

Sustainable finance: BoE consults on proposed stress testing on climate-related financial risks

The BoE has published a [discussion paper](#) on its proposals for stress testing the financial stability implications of climate change as part of its 2021 Biennial Exploratory Scenario (BES) exercise.

The 2021 BES framework aims to stress test the resilience of business models of the largest UK banks, insurers and building societies in relation to physical and transition risks arising from climate change.

The discussion paper, which sets out the BoE's proposal for the 2021 BES framework, includes five sections:

- key features on participation, the nature of the scenarios, the two parts of the exercise, the modelling horizon, treatment of balance sheets and the reporting frequency;
- scenario narratives;
- scenario specification;
- modelling approaches; and
- firms' submissions.

The BoE intends to publish the final BES framework in the second half of 2020 followed by the results of the exercise in 2021.

Comments on the consultation are due by 18 March 2020.

Payment systems: BoE publishes materials on ISO 20022 migration

The BoE has published materials on the introduction of ISO 20022 across the UK's payment systems.

The materials relate to the BoE's plans to replace SWIFT MT messaging with ISO 20022 messaging for CHAPS and other forms of communication with Real-Time Gross Settlement (RTGS) in 2022, and comprise:

- a [joint statement](#) by the BoE and Pay.UK setting out progress and priorities for the delivery of ISO 20022;
- [information for CHAPS Direct Participants](#) (DPs); and
- [information for RTGS account holders](#).

FCA consults on open finance

The FCA has launched a [call for input](#) on the opportunities and risks presented by 'open finance'.

Open finance builds on the principles of open banking, the sharing of data which provides new ways for customers and businesses to make the most of their money. Open finance refers to the extension of open banking-like data sharing and third-party access to a wider range of financial sectors and products.

The aim of the call for input is to launch a discussion on:

- the opportunities and risks arising from open finance;
- what is needed to ensure it develops in the best interests of consumers; and
- what role the FCA should play.

The FCA has set up an [advisory group](#) on open finance which, in conjunction with the call for input, has published advice to the FCA on open finance and:

- data rights;
- cohesions and interoperability; and
- incentives.

Comments are due by 17 March 2020. The FCA intends to publish a feedback statement in summer 2020.

PRA publishes policy statement on liquidity reporting threshold

The Prudential Regulation Authority (PRA) has published a [policy statement](#) on the PRA110 reporting frequency threshold (PS26/19).

The policy statement:

- amends the reporting part of the PRA rulebook to introduce a further threshold of total assets of GBP 5 billion or above for PRA110 reporting frequency; and
- updates the [supervisory statement](#) on the PRA's approach to supervising liquidity and funding risks (SS24/15) to align it with the new threshold.

The policy implementation date is 1 May 2020.

Amendments to AMF General Regulation on new regime for digital assets service providers published

The PACTE Law (Action Plan for Business Growth and Transformation), which was published in the Official Journal on 23 May, introduced a new legal framework for digital assets services providers (DASPs) and initial coin offerings (ICOs) under French law.

A [Ministerial Order](#) has now been published which amends the General Regulation of the AMF (Autorité des marchés financiers) to introduce a new Title on digital assets service providers in Book VII of the General Regulation. These provisions specify the registration and licensing conditions as well as the organisational and business conduct rules applicable to DASPs. They also detail the specific rules to be complied with for each service provided by licensed DASPs.

BaFin extends rules on post-trade transparency

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has [extended](#) its rules on post-trade transparency for one year until 1 January 2021. These rules permit data on transactions in financial instruments to be made available to the public later than required under the Markets in Financial Instruments Regulation (MiFIR).

The current rules apply until 1 January 2020. BaFin has extended their application from 2 January 2020 and for this purpose issued three general administrative acts (Allgemeinverfügungen) to allow, respectively, deferred publication of (i) transactions in non-equity instruments on trading venues operated by an investment services firm, (ii) OTC transactions in non-equity instruments carried out by investment services firms and (iii) transactions in equity instruments on trading venues operated by an investment services firm.

A separate authorisation for deferred publication of OTC transactions in equity instruments is not envisaged as these are covered by the approval for trading venues under MiFIR. Trading venues subject to BaFin's supervision must obtain its approval before making use of any authorisation of deferred trade publication.

BaFin consults on draft circular on online report of appointments of senior managers and members of supervisory bodies

BaFin has published a [draft circular](#) on the use of a common online portal with the European Central Bank for [consultation](#).

The portal is intended to offer an online submission option for reports on the appointment of senior managers and members of administrative or supervisory bodies from a date in 2020 that is yet to be determined. Significant institutions, financial holding companies and mixed financial holding companies that are subject to ECB supervision under section 1 para 5 no 1 of the Banking Act (Kreditwesengesetz) will then no longer be required to additionally submit a hardcopy report under the Reports Regulation (Anzeigenverordnung).

Comments on the draft circular are due by 16 January 2020.

CSSF signs fintech cooperation agreement with Dubai International Financial Centre

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [press release](#) regarding the signature of a cooperation agreement on fintech with the Dubai Financial Services Authority (DFSA) of the Dubai International Financial Centre in the context of the development of its relationship with international regulators.

The cooperation agreement provides a framework for cooperation and referrals between the two authorities and sets out a mechanism which will enable the authorities to refer innovative businesses between their respective innovation functions and provide them with regulatory support.

The cooperation agreement further allows both authorities to exchange information about innovations in financial services in their respective markets in order to share knowledge and experience.

The new agreement with the DFSA follows the signature by the CSSF of memoranda of understanding on fintech with its Australian and Abu Dhabi counterparts in 2018.

CSSF issues press release on 2019 financial information published by issuers subject to Transparency Law

The CSSF has issued a [press release](#) on the 2019 financial information published by issuers subject to the law of 11 January 2008 on transparency requirements for issuers (as amended) (Transparency Law).

In the context of its mission under Article 22(1) of the Transparency Law to monitor compliance by issuers with international financial standards, the CSSF has identified the financial reporting topics which should be considered by issuers and auditors when preparing and auditing the IFRS financial reports for the 2019 year-end.

The press release sets out the CSSF's 2020 enforcement campaign governing priorities, which are mainly based on the European common enforcement priorities (ECEP) for the 2019 financial reports identified by ESMA and the European national accounting enforcers, including the CSSF.

Finally, the press release draws the attention of issuers on EU regulated markets to the obligation to prepare their annual financial reports in the European Single Electronic Format (ESEF) as of 1 January 2020 and clarifies certain transitional provisions.

CSSF issues communiqué on new templates for IT outsourcing notifications and authorisation requests

The CSSF has issued a [communiqué](#) regarding new and modified templates in relation to authorisation requests and notifications for IT outsourcing.

The communiqué informs supervised institutions of the release of a new form to be used in the case of an authorisation request for IT outsourcing of 'critical or important functions' – within the meaning of the EBA guidelines on outsourcing arrangements (EBA/GL/2019/02) – under circular CSSF 12/552 for credit institutions and investment firms or under circular CSSF 17/656 for electronic money institutions, payment institutions and other professionals of the financial sector other than investment firms.

Furthermore, the CSSF has drawn the attention of supervised institutions to the fact that Form A is to be used in the case of cloud computing outsourcing for a prior notification to be transmitted to the competent authority where a cloud computing infrastructure will be used for a material activity and provided by an institution authorised under Articles 29-3 (primary IT systems operators of the financial sector) and 29-4 (secondary IT systems and communication networks operators of the financial sector) of the law of 5 April 1993 on the financial sector (as amended).

The FAQs on the assessment of IT outsourcing materiality have also been updated.

Polish Financial Supervision Authority sets out position on dividend policy

The Polish Financial Supervision Authority has [published](#) its position on the assumptions for the dividend policy of commercial banks, cooperative banks and association leader banks and insurance and reinsurance companies in 2020.

Federal Council adopts new Ordinance under Financial Market Supervision Act

The Federal Council has [adopted](#) a new implementing Ordinance under the Financial Market Supervision Act (FINMASA). The Ordinance fleshes out the tasks of the Swiss Financial Market Supervisory Authority (FINMA) at the international level and in terms of regulation, regulatory principles and the cooperation and exchange of information between FINMA and the Federal Department of Finance (FDF). The Ordinance will enter into force on 1 February 2020.

The Ordinance specifies FINMA's powers at the international level and in terms of regulation, and clarifies how they relate to the powers of the Federal Council and the FDF. It also set out how regulatory principles are to be applied and how the aspects of proportionality, differentiation and international standards are to be taken into consideration in regulatory activities.

FINMA's independence will not be affected and its current regulatory instruments will remain unchanged.

HKEX concludes consultation on strengthening ESG rules and publishes ESG disclosure review findings

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of the Hong Kong Exchanges and Clearing Limited (HKEX), has published the [conclusions](#) to its May 2019 consultation on reviewing the ESG reporting guide and related listing rules. The SEHK will implement the consultation proposals, with modifications, reflecting the comments received.

The key changes to the ESG guide and related listing rules include:

- introducing mandatory disclosure requirements;
- requiring disclosure of significant climate-related issues which have impacted and may impact the issuer;
- amending the 'environmental' key performance indicators (KPIs) to require disclosure of relevant targets;

- upgrading the disclosure obligation of all 'social' KPIs to 'comply or explain'; and
- shortening the deadline for publication of ESG reports to within five months after the financial year-end.

The listing rule amendments and the ESG guide will be effective for financial years commencing on or after 1 July 2020.

The SEHK has also published a [report](#) setting out the key findings and recommendations of its latest review of listed issuers' ESG disclosures. The review is intended to provide insight and guidance to issuers on the possible improvement areas on which to focus in their approach to assessing ESG-related risks, and when preparing ESG reports.

The SEHK has encouraged issuers to take into account the recommendations set out in the report in preparing their ESG reporting under the new requirements set out in the consultation conclusions.

HKMA issues circular on managing money laundering and terrorism financing risks associated with virtual assets and virtual asset service providers

The Hong Kong Monetary Authority (HKMA) has issued circulars to [authorised institutions](#) and [stored value facility licensees](#) on managing money laundering and terrorism financing (ML/TF) risks associated with virtual assets (VAs) and virtual asset service providers (VASPs).

The circulars refer to the recent updates by the Financial Action Task Force (FATF) to its 'Recommendation 15', which clarify the businesses and activities that the FATF requirements apply to in the case of VAs and VASPs, as well as the FATF's June 2019 guidance titled 'Guidance for a Risk-Based Approach – Virtual Assets and Virtual Asset Service Providers', which is intended to help private sector entities wishing to engage in VA activities to understand and comply with their anti-money laundering and countering financing of terrorism obligations.

The HKMA has advised authorised institutions and stored value facility licensees that they should keep abreast of international and local developments to maintain an up-to-date understanding of risks, and apply a risk-based approach that supports responsible financial innovation as well as effective ML/TF risk management. Amongst other things, authorised institutions and stored value facility licensees are advised of the following:

- where authorised institutions and stored value facility licensees establish and maintain business relationships with VASPs, they should follow a risk-based approach and conduct appropriate risk assessments to differentiate the risks of individual VASPs; and
- before authorised institutions and stored value facility licensees offer any new products relating to VAs, they should undertake ML/TF risk assessments and take appropriate measures to manage and mitigate the identified risks in accordance with applicable legal and regulatory requirements.

HKMA issues circular on local implementation timeline for market risk capital requirements

Following its [circular dated 17 January 2019](#) regarding the revised market risk standards issued by the BCBS on 14 January 2019, the HKMA has issued a [circular](#) to inform all locally incorporated authorised institutions that the revised standards are scheduled to be implemented by national supervisors by 1 January 2022 (effective date). According to the latest BCBS timetable, banks will be required to calculate their market risk based on the revised standards from the effective date.

To address the concerns of the industry regarding the challenges arising from different implementation timelines across major jurisdictions, the HKMA has indicated that it will closely monitor the progress in these jurisdictions and finalise Hong Kong's timeline when there is more clarity on the implementation status internationally. In the meantime, as a transitional arrangement, locally incorporated authorised institutions will be required to implement the revised market risk framework in Hong Kong for reporting purposes only by 1 January 2022.

The HKMA has indicated that it will conduct a local quantitative impact study on locally incorporated authorised institutions in early 2020 to assess the impact of the new standards for Hong Kong.

SFC releases survey findings on environmental, social and governance factors and climate risks in asset management

The Securities and Futures Commission (SFC) has published a [report](#) setting out the key findings of its survey on integrating ESG factors and climate risks in asset management, as well as discussing the way forward. The survey forms part of the SFC's strategic framework for green finance, published in September 2018.

From March to September 2019, the SFC conducted an industry-wide survey to understand how and to what extent licensed asset management firms and leading institutional asset owners consider ESG risks, particularly those relating to climate change.

The survey found that there is significant interest amongst asset management firms to step up their ESG efforts and management of environmental and climate risks. To help firms move forward and more closely align its regulatory regime with global standards, the SFC, in the near term, intends to:

- set expectations of asset management firms in areas such as governance and oversight, investment management, risk management and disclosure, focusing on environmental risks with an emphasis on climate change;
- provide practical guidance, best practices and training in collaboration with the industry and relevant stakeholders to enhance the capacity of asset management firms to meet its expectations; and
- establish an industry group to exchange views with experts in environmental and climate risks, as well as sustainable finance.

SFC issues circular on streamlined requirements for eligible exchange traded funds adopting master-feeder structure

The SFC has issued a [circular](#) on streamlined requirements for eligible exchange traded funds (ETFs) adopting a master-feeder structure.

Currently, index tracking ETFs adopting a master-feeder structure are permitted under the Code on Unit Trusts and Mutual Funds provided that both the feeder ETF and the master ETF are authorised by the SFC. The SFC has recently received a number of requests to allow more flexibility in the master-feeder ETF structure so that an SFC-authorised feeder ETF may invest its assets in an overseas-listed master ETF without SFC authorisation.

In response to these requests, and with a view to balancing the needs for investor protection and market development, the SFC has announced that it is prepared to consider authorising an index tracking feeder ETF that invests in an overseas-listed master ETF without its authorisation on a case-by-case basis, having regard to the following principles:

- that there are satisfactory safeguards and measures in place to address investor protection concerns; and
- that there are demonstrable benefits to the Hong Kong market, taking into account factors such as the size and significance of the master ETF, its track record and whether its underlying index is widely accepted.

The SFC has also updated its set of frequently asked questions (FAQs) relating to publicly offered investment product by adding the following new questions:

- Question 40 under the FAQs on [advertising materials of collective investment schemes authorised under the Product Codes](#) – the question provides clarification on whether the marketing materials of the SFC-authorised feeder ETF are allowed to contain information of the master ETF; and
- Question 19 under the FAQs on [exchange traded funds and listed funds](#) – the question provides guidance with regard to the procedure which the management company of the feeder ETF will be required to follow to inform Hong Kong investors of material changes to, or events that have a significant adverse impact on, the master ETF.

SFC concludes consultation on margin requirements for non-centrally cleared OTC derivatives

The SFC has published the [conclusions](#) to its June 2018 public consultation on proposals to impose margin requirements for non-centrally cleared over-the-counter (OTC) derivative transactions.

In light of the feedback received, the SFC will adopt the proposals with some amendments and clarifications. A licensed corporation which is a contracting party to a non-centrally cleared OTC derivative transaction entered into with an authorised institution, a licensed corporation or another defined entity will be required to exchange margin with the counterparty if the notional amount of their outstanding non-centrally cleared OTC derivatives exceeds specified thresholds.

The SFC has indicated that amendments to the Code of Conduct for Persons Licensed by or Registered with the SFC to effect the changes will be gazetted in due course. Moreover, the initial margin requirements will be phased in starting from 1 September 2020, which is also the date the variation margin requirements will take effect.

FSC revises guidelines on financial consumer protection

The Financial Services Commission (FSC) has [announced](#) a revision to the guidelines on financial consumer protection in order to continue to encourage financial institutions to take more responsibility in consumer protection prior to the enactment of the Financial Consumer Protection Act by the National Assembly.

The revised guidelines contain measures to enhance the consumer protection function of financial institutions. In particular, the key measures under the revised guidelines are intended to:

- encourage chief executives of financial companies to lead consumer protection efforts;
- grant more independence and authority for chief consumer officers to oversee issues concerning consumer protection;
- provide useful information to consumers and strengthen consumer rights; and
- provide incentives for financial companies to increase their efforts on consumer protection by introducing a certificate system.

The revised guidelines will be effective from 1 January 2020.

SEC approves swaps related final rules

The Securities and Exchange Commission (SEC) has voted to finalize a [rule](#) regarding risk mitigation involving uncleared security-based swaps. The rule was adopted pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The rule requires the application of risk mitigation techniques to portfolios of uncleared security-based swaps, and establishes requirements for registered security-based swap dealers and major security-based swap participants to:

- periodically reconcile outstanding security-based swaps with counterparties;
- engage in certain forms of portfolio compression exercises, as appropriate; and
- execute written trading relationship documentation with each of their counterparties prior to, or contemporaneously with, executing a security-based swap transaction.

The SEC has also adopted amendments to its existing [cross-border rule](#) to provide a means to request substituted compliance with respect to the portfolio reconciliation, compression, and trading relationship documentation requirements. In addition, the SEC has amended its recently-adopted recordkeeping, reporting, and notification rules to incorporate records relating to the new risk mitigation requirements.

CFTC issues no-action letters providing relief to market participants transitioning away from LIBOR

The Commodity Futures Trading Commission (CFTC) has announced that three of its divisions have issued no-action letters intended to provide relief to swap dealers and other market participants in relation to the industry-wide initiative to transition from swaps that reference LIBOR and other interbank offered rates to swaps that reference alternative benchmarks.

The letters detail conditions under which counterparties will qualify for relief in connection with amending swaps to update provisions referencing LIBOR, or other interbank offered rates, to replacement rates. The relief provided by each division is as follows:

- the [Division of Swap Dealer and Intermediary Oversight CFTC Letter](#) 19-26 provides relief to swap dealers from registration de minimis requirements, uncleared swap margin rules, business conduct requirements, confirmation, documentation, and reconciliation requirements, and certain other eligibility requirements;
- the [Division of Market Oversight CFTC Letter](#) 19-27 provides time-limited relief from the trade execution requirement; and
- the [Division of Clearing and Risk CFTC Letter](#) 19-28 provides time-limited relief from the swap clearing requirement and related exceptions and exemptions.

RECENT CLIFFORD CHANCE BRIEFINGS

European Green Deal – Resetting the EU climate change and environmental agenda

The European Commission has published a bold package of climate change and environmental policies with ambitious aims including climate neutrality by 2050, a zero pollution environment, and a halt to biodiversity loss.

The 'European Green Deal' communication contains a wide range of sector-specific and economy-wide measures to be put in place over the next two years.

This briefing paper considers some of the key measures proposed.

<https://www.cliffordchance.com/briefings/2019/12/eu-green-deal---resetting-the-environmental-and-climate-change-a.html>

Angolan foreign exchange regulations

The Angolan economy is heavily dependent on income generated by its oil and gas sector and, whilst the country is rebuilding its economy after years of civil war, it has limited (albeit growing) local production. The economy is therefore primarily US dollar based and the fluctuation in oil prices has significant consequences on the country's foreign currency reserves.

This briefing paper describes some aspects of the Angolan exchange regulations that may be relevant for companies that invest in Angola or are conducting business with Angolan parties.

<https://www.cliffordchance.com/briefings/2019/12/angolan-foreign-exchange-regulations.html>

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