

## INTERNATIONAL REGULATORY UPDATE 06 – 10 JANUARY 2020

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### Croatian EU Council Presidency sets out programme

The Croatian Presidency of the EU Council has published its [programme](#) for 1 January to 30 June 2020, setting out its priorities for the Council and its configurations over the next six months.

For the Economic and Financial Affairs Council (ECOFIN), the Presidency intends to:

- continue work aimed at strengthening the Economic and Monetary Union, with a focus on the further deepening of the Banking Union, such as by continuing discussions on the establishment of the European Deposit Insurance Scheme (EDIS) and by continuing work on non-performing loans;
- carry out the remaining measures provided for in the initial and revised Action Plan on Building a Capital Markets Union (CMU);

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- continue discussions on priorities and further steps to be taken in the area of direct and indirect taxation, including on using taxation measures to tackle activities and products that contribute to climate change; and
- strengthen the capacities of customs administration on EU external borders.

## **ESMA announces key priorities for 2020-22**

The European Securities and Markets Authority (ESMA) has set out its future objectives and strategy for 2020-22. ESMA's [strategic orientation](#) reflects its expanded responsibilities and powers following the European Supervisory Authorities (ESAs) review, and Regulation (EU) 2019/2019 amending Regulation (EU) 648/2012 as regards the procedures and authorities involved for the authorisation of central counterparties (CCPs) and requirements for the recognition of third-country CCPs (EMIR 2.2), which increases its focus on supervisory convergence, strengthens its role in building the CMU and gives it more direct supervision responsibilities.

ESMA priorities include:

- creating a large retail investor base to develop the CMU;
- promoting sustainable finance and long-term oriented capital markets;
- ensuring the consistent implementation of the EU Single Rulebook; and
- capitalising on digitalisation as an opportunity for market participants and regulators.

ESMA has also published an updated [organigramme](#) that sets out the changes made to its structure to accommodate its new responsibilities.

## **SFTR: ESMA publishes final report and guidelines on reporting**

ESMA has published a [final report](#) and [guidelines](#) on reporting under the Securities Financing Transactions Regulation (SFTR), [amended SFTR validation rules](#), and a [statement](#) on legal entity identifiers (LEIs) under the SFTR reporting regime.

ESMA's final report sets out the feedback received to its May 2019 consultation on key elements of ESMA guidelines on reporting under the SFTR and discusses market transactions that do not fall under the definition of a securities financing transaction (SFT).

ESMA's guidelines on reporting under Articles 4 and 12 of the SFTR aim to clarify a number of provisions of the SFTR and to provide practical guidance on the implementation of some of those provisions. Specifically the guidelines provide clarity relating to:

- the reporting start date when it falls on a non-working day;
- the number of reportable SFTs;
- the population of reporting fields for different types of SFTs;
- the approach used to link SFT collateral with SFT loans;
- the population of reporting fields for margin data;
- the population of reporting fields for reuse, reinvestment and funding sources data;

- the generation of feedback by trade repositories (TRs) and its subsequent management by counterparties, namely in the case of rejection of reported data and reconciliation breaks; and
- the provision of access to data to authorities by TRs.

ESMA's LEI statement clarifies its expectations with regard to the reporting of LEI for issuers of securities used in SFTS and sets out its expectations of supervisory actions by competent authorities in relation to reporting of LEIs of third-country issuers.

### **BoE and FCA publish data collection proposals and digital regulatory reporting viability assessment report**

The Bank of England (BoE) and Financial Conduct Authority (FCA) have published a [discussion paper](#) on data collection and an updated [data strategy](#) respectively. The BoE, FCA and seven regulated firms have also jointly published a [viability assessment](#) report on the second phase of the digital regulatory reporting (DRR) pilot.

The BoE's discussion paper, 'Transforming data collection for the UK financial sector', is intended to start a dialogue with regulated firms and solution vendors aimed at reforming data collection over a five to ten year period. It builds on the Future of Finance report published in June 2019, as well as the FCA's approach to DRR, and sets out an initial range of potential reforms relating to common data inputs, reporting instructions, and architecture and governance.

Responses to the discussion paper are due by 7 April 2020. A webinar on the discussion paper is being held on 29 January 2020. The BoE has also published a nomination form for participation in industry working groups and other forms of stakeholder engagement, which closes on 6 March 2020.

The FCA's data strategy sets out a five-year work programme aimed at applying technology and advanced analytics to improve the FCA's efficiency and effectiveness, such as an intention to replace Gabriel with a new data collection system.

The DRR viability assessment report provides an overview of the work and findings of the second pilot phase carried out between February and October 2019. Following the report, the BoE and FCA have committed to:

- explore joint work on common data standards;
- commission a joint review of the legal implications of writing reporting instructions as code;
- commission a joint independent review of some technical solutions relating to the DRR pilot; and
- collaborate closely while engaging with industry and planning future phases.

### **CSSF issues circular on AML/CTF matters clarifying identification and verification of identity of ultimate beneficial owner**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [circular \(19/732\)](#) providing clarifications on the identification and verification of the identity of the

ultimate beneficial owner in the context of preventing money laundering and terrorist financing (AML/CTF).

The circular is intended to provide guidance to all professionals subject to AML/CFT supervision by the CSSF in relation to the legal requirements applicable to the identification and verification of the identity of the ultimate beneficial owner (UBO) as well as in relation to the practical implementation of such requirements, with a view to enhancing financial transparency.

The circular refers to the relevant legal and regulatory text and FATF publications in these areas and is divided into three parts:

- Part I provides guidance in relation to the UBO identification requirements for customers that are either natural persons, legal persons or legal arrangements;
- Part II outlines the verification of identity requirements; and
- Part III sets out useful indicators to help detect potential concealment of beneficial ownership information.

The circular entered into force with immediate effect.

## **SFC provides licensing guidance for private equity firms and family offices**

The Securities and Futures Commission (SFC) has issued two circulars to provide guidance on the licensing obligations of [private equity firms](#) and [family offices](#) which conduct business in Hong Kong. The circulars have been issued in response to enquiries from industry participants and their professional advisers.

In its first circular to private equity firms seeking to be licensed, the SFC provides more information about the licensing requirements for private equity firms' general partners, investment committee members and fund marketing activities. The circular also clarifies how the SFC assesses private equity firms' discretionary investment authority and investments in securities of private companies as well as the industry experience requirement for their responsible officers.

The second circular on the licensing obligations of family offices discusses how the SFC's licensing regime applies to family offices intending to carry out asset management or other services in Hong Kong, as well as explains the potential implications for both single and multi-family offices. The circular also clarifies that licensing exemptions, or carve-outs, may be available depending on how a family office operates.

## **FSC sets out financial policy tasks for 2020**

To support the Korean Government's economic policies in 2020, the Financial Services Commission (FSC) has [announced](#) that it will pursue the following key financial policy tasks:

- increasing funding for innovation-led growth drivers to reform banks' credit evaluation system, provide more than KRW 10 trillion in facilities investment and boost venture capital investments through capital markets;
- financing new and key industries, amongst other things to support start-ups and scale-ups in high-tech and newly emerging industries;
- providing tailored support to targeted groups;

- promoting microfinance schemes and debt restructuring programs;
- improving access to financial services for ordinary consumers as well as establishing a strong foundation for consumer protection;
- promoting fairness and strengthening foundations to support the social economy; and
- ensuring stability in financial markets to maintain sound management of household debt and ensure market-centred approaches in corporate restructuring.

### **FSC revises non-face-to-face customer identification guidelines for corporations and foreigners**

The FSC has [announced](#) a revision to the guidelines on non-face-to-face customer identification, which is intended to promote online financial transactions by corporations and foreign nationals.

Non-face-to-face customer identification was first introduced to the banking sector in December 2015 for the purpose of improving consumer convenience. In January 2017, the FSC allowed corporations to open a new bank account through non-face-to-face customer identification. However, for corporations, only one representative could be identified through the non-face-to-face identification method to prevent financial crimes, such as identify theft. Under the revised guidelines:

- with respect to corporations, opening a new corporate bank account by legal representatives, such as an employee or a board member, through non-face-to-face customer identification will be permitted. Legal representatives will be required to present a power of attorney to financial companies for verification purposes; and
- with respect to foreign nationals, the alien registration card may be used to verify identity when opening a new bank account through non-face-to-face customer identification.

The revised guidelines are effective from 1 January 2020. However, the FSC has indicated that each financial institution will determine whether and when to adopt the non-face-to-face customer identification service for corporations. In January 2020, banks and the financial investment sector will be required to draw up operational guidance in that regard.

### **CFTC proposes rule on cross-border application of registration thresholds and certain requirements applicable to swap dealers and major swap participants**

The Commodity Futures Trading Commission (CFTC) has [proposed](#) a rule that addresses the cross-border application of the registration thresholds and certain requirements for swap dealers and major swap participants. In addition, it provides a precise process for requesting comparability determinations for such requirements from the CFTC. The proposed rule would also revise the CFTC's definition of 'US person' by making it more consistent with the US person definition adopted by the Securities and Exchange Commission in the context of securities-based swaps.

The full text of the proposed rule is available on the CFTC website. The deadline for submission of comments by interested persons is 60 days after the proposal is published in the Federal Register.

## **New York State Department of Financial Services issues industry letter regarding transition from LIBOR**

In anticipation of the probable cessation of LIBOR rules at the end of 2021, the New York State Department of Financial Services has issued a [letter](#) to CEOs of regulated industries announcing that each regulated institution will be required to submit a response describing the institution's plan to address its LIBOR cessation and transition risk.

The letter explains that the plan should describe:

- programs that would identify, measure, monitor and manage all financial and non-financial risks of transition;
- processes for analyzing and assessing alternative rates, and the potential associated benefits and risks of such rates both for the institution and its customers and counterparties;
- processes for communications with customers and counterparties;
- a process and plan for operational readiness, including related accounting, tax and reporting aspects of such transition; and
- the governance framework, including oversight by the board of directors, or the equivalent governing authority, of the regulated institutions.
- Responses are to be provided to the Department by 7 February 2020.

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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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