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INTERNATIONAL REGULATORY UPDATE 20 – 24 JANUARY 2020

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- **ARRC consults on spread adjustment methodologies for cash products referencing USD LIBOR**
- **Recent Clifford Chance briefings: AI risk, audit reforms, and more. Follow this link to the briefings section**

Brexit: UK and EU progress Withdrawal Agreement ratification

Both the UK and EU have progressed their respective ratification of the Withdrawal Agreement.

In the UK, the European Union (Withdrawal Agreement) Act 2020 (WAA) received Royal Assent and become an Act of Parliament on 23 January 2020. Among other things, the WAA implements the Withdrawal Agreement into UK law to enable UK Government ratification and amends the European Union (Withdrawal) Act 2018 to enable the application of most EU law during the transition period (which is due to end on 31 December 2020).

On the same day, the EU Parliament's Constitutional Affairs Committee recommended the EU Parliament approve the Agreement during its plenary on 29 January 2020. Once the EU Parliament gives its consent, the EU Council will adopt a decision on the conclusion of the Agreement on behalf of the EU.

European Council President Charles Michel and EU Commission President Ursula von der Leyen signed the Agreement for the EU on 24 January 2020.

The EU Commission has published Q&As on the UK's withdrawal from the EU on 31 January 2020.

EBA consults on future of stress test framework

The European Banking Authority (EBA) is consulting on future changes to the EU-wide stress test framework.

Most of the features of the EBA's stress test have remained unchanged since its establishment in 2011. In 2018 the European Court of Auditors (ECA) audited the 2018 stress test and provided recommendations for a redesign of the framework, focusing on the EBA's resources, the division of roles, the quality assurance of results, methodology, scenario design and the communication of findings.

The EBA's proposal consists of two components:

- the supervisory leg, which would be based on a common EU methodology in line with the current constrained bottom-up approach but with the possibility for competent authorities to adjust or replace banks' estimates based on top-down models or other benchmarking tools; and
- the bank leg, which would be less prescriptive than the current framework and would give banks more discretion in calculating their projections.

Comments are due by 30 April 2020. The 2020 stress test will be conducted according to the current framework and its results will be published in July 2020.

PSD2: EBA amends fraud reporting guidelines

The EBA has published an amendment to its 2018 guidelines on fraud reporting under the revised Payment Services Directive (PSD2). The changes reflect amendments to the reporting templates under the guidelines following recent clarifications by the EU Commission on the application of strong customer authentication (SCA) to certain types of transactions.

The amendment introduces two new data fields for reporting transactions where SCA is not applied for reasons other than an exemption to SCA under the Commission Delegated Regulation (EU) 2018/389 and aims to ensure that these transactions are reported in a consistent and correct manner across the EU/EEA.

Some editorial changes to the guidelines were also introduced which are intended to provide greater clarity.

A consolidated version of the updated guidelines has been published alongside the amending guidelines.

The amendments will apply to the reporting of payment transactions initiated and executed from 1 July 2020.

SSM: ECB consults on materiality threshold for defaulted exposures for less significant institutions

The European Central Bank (ECB) has published a consultation on a draft guideline defining the materiality threshold for credit obligations past due for less significant institutions (LSIs).

The aim of the draft guideline, addressed to national competent authorities (NCAs), is to set a single materiality threshold for all LSIs within the Single Supervisory Mechanism (SSM), both for retail and non-retail exposures, irrespective of the method used for the calculation of capital requirements.

The materiality threshold has been designed to align with the definition given for significant institutions (SIs), comprising:

- an absolute component, expressed as a specific maximum amount for the sum of all amounts past due owed by an obligor; and
- a relative component, expressed as a percentage reflecting the amount of the credit obligation past due in relation to the total amount of all on-balance sheet exposures to that obligor for the credit institution, the parent undertaking or any of its subsidiaries.

A default shall be deemed to have occurred when both of the limits are exceeded for more than 90 consecutive days.

The consultation closes on 17 February 2020.

Central bank group forms to assess potential cases for central bank digital currencies

A new central bank group comprising the central banks of Canada, England, Japan, Sweden and Switzerland, along with the ECB and the Bank for International Settlements (BIS) has been formed, with the purpose of sharing experiences as the banks consider developing central bank digital currencies (CBDCs) in their home jurisdictions. In particular the group will:

- assess CBDC use-cases;

- consider economic, functional and technical design choices; and
- share information on emerging technologies.

The group will be co-chaired by Benoît Cœuré, Head of the BIS Innovation Hub, and Jon Cunliffe, Deputy Governor of the Bank of England and Chair of the BIS Committee on Payments and Market Infrastructures.

GFIN reports on cross-border testing pilot

The Global Financial Innovation Network (GFIN), a group of international organisations seeking to provide a more efficient way for innovative firms and regulators to interact across the world, has published a report setting out the lessons learned from its cross-border testing pilot (formerly referred to as the 'global sandbox').

In February 2019, GFIN invited businesses interested in testing their innovative financial products, services or business models across more than one jurisdiction to apply to take part in its pilot. Of the 44 applicants, GFIN selected eight firms to move onto the next stage. However, after working with these firms to develop testing plans for the pilot, GFIN concluded it could not take any of them forward to the next stage of the pilot at that time. The firms' businesses were deemed to be still in development and not sufficiently ready to test; some were unable to develop a testing plan that satisfied their jurisdiction's criteria and others (particularly the regtech firms) were unable to establish the required partnerships.

Despite these difficulties, GFIN has agreed there is still merit in investigating and developing a cross-border testing mechanism. It has therefore reflected on how to improve cross-border testing and set out its proposed next steps. Alongside the report it has launched a dedicated GFIN website to store all the information related to the network and cross-border testing, and a regulatory compendium which sets out which types of activity the GFIN regulators can support. Future initiatives include the development of a single application form with common questions so that firms do not have to submit applications to the regulator of each jurisdiction in which they are interested in conducting a test. GFIN also intends to open applications for a new cohort of businesses interested in participating in the pilot in the first half of 2020.

FSB publishes 2019 monitoring report on non-bank financial intermediation

The Financial Stability Board (FSB) has published its ninth global monitoring report on non-bank financial intermediation (NBFI), covering data up to end-2018 from 28 jurisdictions, representing over 80% of global GDP.

The report is composed of two parts: the first part compares the size and trends of financial sectors in aggregate and across jurisdictions, and the second part focuses on the parts of NBFI that may pose bank-like financial stability risks and/or regulatory arbitrage. NBFI financial entities are included in this 'narrow measure' if they perform one of the FSB's five economic functions.

The main observations of the report include that:

- total global financial assets grew 1.4% in 2018, driven largely by banks, whose assets increased by 2.8% over this period;

- the narrow measure of NBFI grew by 1.7% to USD 50.9 trillion, significantly slower than the 2012-17 average annual growth rate of 8.5%; and
- interconnectedness between banks and other financial intermediaries (OFIs) through credit and funding relationships has remained largely unchanged since 2016 after declining from its 2009 levels.

FCA writes Dear CEO letters to asset managers and alternative investment firms setting out supervisory priorities

The Financial Conduct Authority (FCA) has published Dear CEO letters it has sent to asset managers and to alternative investment firms asking them to consider how they manage the key risks of harm their firms pose to their customers or the markets they operate in. In its letters, the FCA discusses the work it is doing to review firms' compliance with its key priorities.

The supervisory priorities for asset managers are:

- liquidity management;
- firms' governance;
- Asset Management Market Study (AMMS) remedies;
- product governance;
- LIBOR transition;
- operational resilience; and
- EU withdrawal.

The supervisory priorities for alternative investment firms are:

- investment exposure to inappropriate products of levels of investment;
- client money and custody asset controls;
- market abuse controls
- market integrity and disruption;
- anti-money laundering and anti-bribery and corruption; and
- EU withdrawal.

PRA publishes policy statement on updates to Pillar 2 capital framework

The Prudential Regulation Authority (PRA) has published a policy statement (PS2/20) setting out final policy and feedback to responses following its consultation on proposed amendments to the Pillar 2 capital framework (CP5/19).

In CP5/19, the PRA proposed amending its statement of policy (SoP), 'The PRA's methodologies for setting Pillar 2 capital' and two supervisory statements, 'The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation Process (SREP)' (SS31/15) and 'Implementing CRD IV: Capital buffers' (SS6/14) to:

- ensure the framework reflected recent developments and refinements to the setting of the PRA buffer, such as those instigated by changes to the

Bank of England's stress testing hurdle rate and the way micro and macroprudential buffers interact;

- clarify the PRA's approach to assessing weaknesses in risk management and governance;
- set out the process for updating the benchmarks used to calculate Pillar 2A requirements for credit risk; and
- correct minor drafting errors.

Respondents to the consultation requested further clarification on setting the PRA buffer for the hurdle rate in stress, buffer interactions and usability. The PRA has therefore made minor amendments to the SoP to provide further clarity in this area.

The changes implemented by the policy statement took effect from 23 January 2020.

BaFin publishes interpretative guidance on section 64y KWG

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has published guidance on the interpretation of section 64y of the German Banking Act (Kreditwesengesetz, KWG).

On 1 January 2020, the act implementing the Fifth Anti-Money Laundering Directive (Directive (EU) 2018/843) came into force. As a result, the new transitional provision of section 64y KWG applies to all companies undertaking crypto-custody business within the meaning of the new section 1 para. 1a sentence 2 no. 6 KWG.

According to BaFin, the following companies are subject to section 64y KWG and, accordingly, permission to provide crypto custody services is deemed to be provisionally granted for such companies provided that they file a complete application by 30 November 2020:

- companies without a KWG licence and tied agents who provide crypto-custody services;
- companies that provide banking business or financial services relating to crypto assets that were not previously subject to licence requirements;
- companies with a KWG licence who already provide crypto-custody services; and
- foreign companies who already provide crypto-custody business cross-border in Germany.

However, for companies with a KWG licence for banking and financial services who do not currently provide crypto-custody services but who intend to do so, section 64y KWG does not apply and such company must apply for a respective licence.

BaFin sets out supervisory priorities for 2020

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has published its supervisory priorities for the year 2020.

BaFin has defined four areas of focus which are of great importance for all business areas:

- digitalisation, IT and cyber risks;
- integrity of the financial system and combating financial crime;
- sustainable business models; and
- sustainable finance.

In addition, the resolution, banking supervision, insurance supervision and securities supervision divisions have defined the respective priorities for their activities in 2020.

BaFin is setting priorities in its activities in order to deploy its resources effectively and efficiently in terms of risk-oriented supervision. For this purpose, BaFin identifies, evaluates and prioritises all relevant supervisory issues. It also covers aspects that are of particular regulatory or strategic importance.

CSSF issues press release on virtual assets and virtual asset service providers

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a press release on virtual assets and virtual asset service providers.

The purpose of the press release is to highlight the adoption of recent FATF documents in the area of virtual assets and virtual asset service providers (VASPs) as well as the Luxembourg bills of law nos. 7467 and 7512 currently going through the legislative procedure. Both bills are intended to introduce certain amendments to the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorism financing (AML Law) in relation to virtual assets and VASPs.

In particular, bill no. 7467, which will implement Directive 2018/843/EU (AMLD 5) in the Luxembourg legal framework and align it with further FATF requirements, proposes to, among other things, extend the scope of the AML Law so as to include VASPs. These are defined as entities conducting one or more of the following activities or operations in the name of a customer or on their own behalf:

- exchange between virtual assets and fiat currencies, including the exchange between virtual currencies and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets;
- safekeeping or administration of virtual assets or instruments enabling control over virtual assets, including custodian wallet services; and
- participation in and provision of financial services related to an issuer's offer or to the sale of virtual assets.

Bill no. 7512 will introduce a new framework for AML/CTF supervision of VASPs active in Luxembourg.

Consequently, the CSSF has urged concerned entities to start preparations for compliance with the new framework as soon as possible.

AFM and DNB consult on enforcement policy

The Netherlands Authority for the Financial Markets (AFM) and the Dutch Central Bank (DNB) have published a draft enforcement policy for public consultation. The policy, which will replace the financial regulators' 2008 policy document, sets out how AFM and DNB deploy their legal powers and various enforcement instruments.

In the policy AFM and DNB address, among other things:

- the principles underlying the use of enforcement instruments;
- the criteria for the use of specific enforcement instruments; and
- the publication of imposed administrative sanctions.

As to the principles underlying the use of enforcement instruments, the policy mentions, among other things, that enforcement is always tailored to a specific situation as this follows from the principle of a balanced consideration of interests. Other principles include proportionality and equality. As to the criteria for the use of certain specific enforcement instruments, the policy mentions that these include the severity and duration of the breach, the degree of culpability and the offender's compliance attitude. Finally, the policy discusses the principle of full publication of imposed administrative sanctions. AFM and DNB invite all interested parties to submit their response to the consultation by 2 March 2020.

HKMA consults on rules relating to contractual stays on termination rights in financial contracts for authorised institutions

The Hong Kong Monetary Authority (HKMA) has launched a public consultation on proposals for making rules relating to contractual stays on termination rights in financial contracts for authorised institutions under the Financial Institutions (Resolution) Ordinance.

The consultation is intended to set out detailed proposals for the stay rules the HKMA intends to make, which will require the entities subject to the rules to adopt appropriate provisions in certain financial contracts, to the effect that the parties to the contracts agree to be bound by a temporary stay that may be imposed by the HKMA under the Ordinance.

The proposals have been designed to be aligned with the relevant principles set by the Financial Stability Board. Subject to the outcome of the public consultation, it is the intention of the HKMA to introduce the rules as subsidiary legislation under the Ordinance into the Legislative Council for negative vetting in the 2020/2021 legislative session.

Comments on the consultation are due by 22 March 2020.

SFC highlights importance of risk management

The Securities and Futures Commission (SFC) has published the latest issue of its SFC Compliance Bulletin: Intermediaries. The latest issue emphasises the importance of sound risk management for brokers and fund managers during times of market volatility, as well as highlighting liquidity and credit risks associated with exposures to illiquid assets along with precautionary responses and good risk management practices.

The bulletin also includes case studies illustrating risks that may arise in transactions with related parties and in relation to other complex financing arrangements, and stresses the need for licensed firms' holding companies and controllers to manage risks prudently at group level.

Further, the bulletin warns investors to be cautious when investing in high-risk investment products as well as to be wary of investing in funds with a high concentration of hard-to-sell assets or those with long or extendable redemption dates.

Japan FSA releases draft ordinances to implement new regulation of initial coin offerings and securities token offerings

The Japan Financial Services Agency (FSA) has released draft ordinances to implement the new regulation of initial coin offerings (ICOs) and securities token offerings (STOs) under the amendment to the Financial Instruments and Exchange Act of Japan (FIEA). This is intended to bring clarity as to how fundraising using this emerging asset class is regulated in Japan.

As discussed in our June 2019 briefing paper, the amendment to the FIEA introduced a new definition of 'token securities' (denshi kiroku iten kenri). When interests in collective investment schemes raised by way of an ICO for investment business purposes are transferable through an electronic information processing system (i.e. when they are represented in the form of tokens), such interests will fall within the definition of 'token securities'. The scope of token securities is made clear in the draft ordinances. If there is a technical restriction that makes persons other than qualified institutional investors (QIIs) or certain experienced investors unable to acquire the interests, then the interests do not qualify as 'token securities' and they can therefore be offered and sold without restrictions pursuant to the new ICO/STO regulations. However, such fundraising would be subject to another regulation under the amended Payment Services Act of Japan.

FSC announces commencement of large shareholding reporting rules

The Financial Services Commission (FSC) has announced the commencement of the revised large shareholding reporting requirements under the '5% rule' with effect from 1 February 2020.

The FSC's announcement follows the approval of a regulatory reform proposal to revise the Enforcement Decree of the Financial Investment Services and Capital Markets Act at a Cabinet meeting on 21 January 2020.

The amendments are intended to better support the exercise of shareholder rights by institutional investors. Specifically, the revised rules clarify the scope of shareholder activities 'to exercise influence over the management' and apply differential reporting requirements according to the shareholding purpose.

Korean government prepares to launch Asia Region Funds Passport in May 2020

The FSC has announced that the Korean government has revised the enforcement decree of the Financial Investment Services and Capital Markets

Act and other relevant rules for the implementation of the Asia Region Funds Passport (ARFP).

The ARFP is a multilateral investment promotion initiative between the five member economies (Korea, Australia, New Zealand, Japan and Thailand) and intended to promote cross-selling of publicly offered local funds in each other's economies through a standardised and streamlined registration process. The members signed a memorandum of cooperation (MOC) in April 2016, and have worked on domestic legislative changes to reflect the details of the MOC for the implementation of the ARFP.

Amongst other things, the key revised provisions include the following:

- registration for local funds – under this provision, publicly offered local funds in Korea that meet the requirements relating to management and fund qualification can apply to be registered as passport funds to be offered in overseas markets;
- registration for foreign passport fund – under this provision, foreign passport funds, by submitting a registration statement, will be available for sale in Korea through a streamlined process. However, if an infringement of the MOC is found to have occurred by another member country, or Korean funds face unfair sales restrictions overseas, the government may withdraw the privilege. Moreover, foreign passport funds sold in Korea will be subject to the same rules, regulations and investor protection measures as the local publicly offered funds; and
- regulation for investor protection – under this provision, all passport funds will be subject to compliance audits regardless of the size of the fund. The fund managers will also be required to report to both the home and host countries relevant information regarding funds, such as cancellation, delayed payments, violation of laws, etc.

The FSC has indicated that the ARFP will be launched on 27 May 2020 after a 40-day period of promulgation and screening of regulations.

ACRA issues practice direction to clarify scope of public interest entity in relation to financial institutions

The Accounting and Corporate Regulatory Authority (ACRA) has issued its Practice Direction No. 1 of 2020, which is intended to clarify the scope of public interest entity (PIE) in relation to financial institutions (FIs) for purposes of the Code of Professional Conduct and Ethics for Public Accountants and Accounting Entities (ACRA Code) included as the Fourth Schedule to the Accountants (Public Accountants) Rules.

In 2018, changes were made to the ACRA Code provisions on the Long Association of Personnel with an Audit or Assurance Client (Revised LA provisions) to enhance the effectiveness of the auditor rotation requirements and the restrictions of activities during the cooling-off period. The Revised LA provisions apply to firms auditing PIEs, including relevant FIs.

Based on consultation with the Monetary Authority of Singapore (MAS) on the scope of entities within the definition of FIs in the ACRA Code, the ACRA has clarified that the following entities do not fall within the definition, and therefore, higher independence standards including the Revised LA provisions will not be applicable for firms auditing these entities:

- money changers;

- representative offices (banking and insurance);
- all persons exempt from holding a capital market services licence to carry on business in advising on corporate finance under the Securities and Futures (Licensing and Conduct of Business) Regulations;
- all persons exempt from holding a financial adviser's licence under the Financial Advisers Regulations; and
- all persons exempt from holding a trust business licence in respect of the carrying on of trust business under the Trust Companies Act.

MAS announces expansion and renaming of Asian Bond Grant scheme to Global-Asia Bond Grant scheme

The MAS has announced that the Asian Bond Grant scheme launched on 1 January 2017 to develop Singapore's bond market by supporting bond issuances by Asian issuers in Singapore has been extended for a period of 5 years from 1 January 2020, and renamed the Global-Asia Bond Grant (G-ABG) scheme following the expansion of its scope to cover all issuers with an Asian nexus, which include issuers (i) with global headquarters in Asia (ASEAN, China, India, South Korea, Japan, Australia and New Zealand); (ii) with business operations or projects in Asia; or (iii) who are issuing in any Asian local currency. Issuers can highlight other factors that demonstrate an Asian nexus. The G-ABG scheme also includes the addition of a new funding tier for jumbo-sized bond issuances.

Under the G-ABG scheme, eligible expenses will be 50% co-funded. Caps on the co-funding will be determined according to whether the qualifying issuance is rated by a credit rating agency and the size of the issuance. The co-funding will be applicable on a one-time basis for each of the jumbo-sized and non jumbo-sized issuance tiers and on such eligible expenses incurred by the issuer. In the case of an SGD-denominated issuance, credit rating fees will be funded at a level of 100%.

Further, under the G-ABG scheme, the non-redeemable tenure of qualifying bond issuances has been reduced to at least one year.

ARRC consults on spread adjustment methodologies for cash products referencing USD LIBOR

The US Alternative Reference Rates Committee (ARRC) has launched a consultation on spread adjustment methodologies for cash products referencing US dollar (USD) LIBOR.

The Secured Overnight Financing Rate (SOFR) is the ARRC's recommended alternative to USD LIBOR. The proposed spread adjustments are intended for use in USD LIBOR contracts that have incorporated the ARRC's recommended hardwired fallback language, or for legacy USD LIBOR contracts where a spread-adjusted SOFR can be selected as a fallback.

The ARRC proposes a static spread adjustment that would be implemented at a specific time on or before USD LIBOR's cessation and would make the spread-adjusted version of the SOFR comparable to USD LIBOR. In doing so, the spread adjustment would minimise the expected change in the value of contracts as a result of shifting from USD LIBOR to SOFR.

The finalised methodologies would be applied to each USD LIBOR tenor separately at the time of a trigger event. This means that the final

recommended spread adjustments for each USD LIBOR tenor may differ, though the underlying methodology for calculating them would be the same.

Additionally, the consultation specifically seeks feedback on:

- methods for calculating the long-run level of the spreads;
- the time period of data used to estimate the long-run level; and
- the speed at which the spread adjustment should be expected to adjust from the last value of USD LIBOR to a long-run level.

Comments are due 6 March 2020.

RECENT CLIFFORD CHANCE BRIEFINGS

Artificial intelligence risk – what does 2020 hold?

Artificial intelligence (AI) creates huge opportunities for businesses globally across all sectors. However, the use of AI also brings the potential for significant legal, ethical and reputational exposure. Recently we have seen global regulators grappling with these risks, with the announcement of a vast number of legal developments, including the publication of legislation and ethical guidelines. Civil courts have been active too, with several recent judgments addressing liability for AI.

This briefing discusses some of the emerging global themes and highlighting recent international developments. It also explores what 2020 is likely to mean for the global regulatory outlook and the steps businesses should be taking now to minimise the risks arising from their use of AI.

https://www.cliffordchance.com/briefings/2020/01/artificial-intelligence-risk--what-does-2020-hold-.html

Widescale audit reforms proposed by Brydon

The long-awaited report on the Brydon Review, commissioned in December 2018 in response to the perceived widening of the 'audit expectations gap' following certain high profile corporate failures, was published in December 2019.

The report makes recommendations for wholesale changes to the audit process and audit product for listed companies which are intended to provide greater assurance and to give shareholders and other stakeholders a greater say in audit, introduce additional reporting requirements for directors and pave the way for a new standalone audit profession.

This briefing discusses the report.

https://www.cliffordchance.com/briefings/2020/01/widescale-audit-reforms-proposed-by-brydon.html

Your 2020 AGM update and beyond

This coming AGM season will inevitably be dominated by the need for premium listed companies to report against their compliance (or explain any non-compliance) with the updated 2018 UK Corporate Governance Code, coupled with the new statutory requirement to publish a section 172 statement. One further area where we are also seeing an increasing number of queries is the additional new statutory requirement for 'large' unlisted UK-

incorporated companies to publish a statement of their corporate governance arrangements in their directors' reports. Many premium listed companies with subsidiary companies that are affected by this requirement are currently deliberating whether to report against the application of the Wates Principles or adopt a different approach. Thankfully, against this backdrop of regulatory change, most companies' AGM notices are not expected to require any substantive change.

This briefing discusses the above developments and other changes affecting the coming AGM season and the preparation of the annual financial report. The briefing paper also looks ahead to other governance and narrative reporting-related changes on the horizon.

https://www.cliffordchance.com/briefings/2020/01/your-2020-agm-update-and-beyond.html

Treasury Department issues final rules implementing CFIUS regulations under FIRRMA

On 13 January 2020 the United States Treasury Department's Office of Investment Security issued two final rules implementing the Foreign Investment Risk Review Modernization Act of 2018. The final rules are broadly similar to the proposed rules issued in September 2019, but make some important modifications including defining 'principal place of business', adopting some provisions of the Critical Technology Pilot Program, and adjusting the qualifications for excepted investors. The final rules also designate Australia, Canada, and the United Kingdom as the first excepted foreign states. The final rules are slated to enter into force on 13 February 2020.

This briefing discusses the final rules.

https://www.cliffordchance.com/briefings/2020/01/treasury-department-issues-final-rules-implementing-cfius-regula.html

US commodities anti-manipulation law and open market trading

In an article published on 3 January 2020, the Wall Street Journal caused some concern and confusion about the reach of the US Commodity Futures Trading Commission to prosecute open market trading as price manipulation without proving the intent to create an artificial price. If free to do so, the CFTC would have broad discretion to prohibit a variety of trading strategies long thought to be lawful. As we have explained in previous publications, and contrary to the impression left by a quotation in the Wall Street Journal article, no court to date has found manipulation based on open market trading absent proof of an intent to create an artificial price. If courts in fact find that the CFTC can prove manipulation without this intent, then all sizeable trades in a given market – including completely legitimate trades – would be subject to a significant risk of mischaracterization as manipulative trades, due to their inevitable price impact.

This briefing discusses the Wall Street Journal Article and the CFTC's anti-manipulation authority with regard to open market trading.

https://www.cliffordchance.com/briefings/2020/01/u-s--commodities-anti-manipulation-law-and-open-market-trading.html

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