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CRR2: EU Commission adopts amended supervisory reporting standards

The European Banking Authority (EBA) has acknowledged the adoption by the EU Commission of an Implementing Act amending the Capital Requirements Regulation (CRR) with regard to COREP and FINREP changes.

The FINREP amendments are intended to allow supervisors to assess and monitor non-performing exposures (NPEs) and forbearance exposures more effectively and the amendments regarding COREP reflect the new securitisation framework.

The Implementing Act will now be published in the Official Journal and will apply with different reference dates due to the different application dates of the underlying regulatory requirements.

Sustainable finance: EU Commission consults on review of Non-Financial Reporting Directive

The EU Commission has launched a consultation on its review of the Non-Financial Reporting Directive (NFRD).

In its December 2019 European Green Deal paper, the Commission committed to reviewing the NFRD as part of its strategy to strengthen sustainable investment in Europe. Reviewing the Directive is part of the Commission's effort to scale up sustainable finance by improving corporate transparency and providing all stakeholders with more comparable and relevant information on sustainable business activities.

Comments to the consultation are due by 14 May 2020. The Commission will use the feedback to help draft its impact assessment on the review of the Directive.

MiFID2/MiFIR: EU Commission begins review of regulatory framework for investment firms and market operators

The EU Commission has launched a consultation on possible reforms to MiFID2 and MiFIR. Under the terms of MiFID2 and MiFIR, which began to apply in January 2018, the EU Commission must present the EU Parliament and the EU Council with a report on the operation of the framework, and if necessary, a legislative proposal for reform, after two years of application.

The Commission's consultation seeks feedback on potential changes to investor protection rules, and potential actions to foster research coverage for SMEs and address the possible introduction of a new transparency tool allowing investment managers, investment advisers and their clients access to 'live' asset prices across the EU in a consolidated format (consolidated tape). The introduction of the consolidated tape may require changes to MiFID2 and MiFIR.

Comments are due by 20 April 2020.

Capital Markets Union: High Level Forum publishes interim report

The High Level Forum (HLF) has published an interim report on the Capital Markets Union (CMU).

Set up by the EU Commission in November 2019, the HLF comprises 28 capital markets experts tasked with reviewing and advancing the CMU initiative.

The interim report sets out an overview of the potential benefits of the CMU and the barriers to its completion, which the HLF intends to address via concrete and targeted policy recommendations. To that end, the report sets out the following topics that are emerging in forum discussions:

- financing for business, including access to company data, development of cross-border long-term investment vehicles, institutional investor participation, company listings and market-based financing;

- market infrastructure, including more integrated and efficient trading and post-trading, and liquidity of secondary markets;
- retail investment, including occupational and personal pension products, and development of financial literary and equity culture; and
- cross-cutting issues, including those relating to tax, legal certainty and supervision.

The HLF also intends to examine issues relating to fintech and sustainable investment, as well as possible synergies between public and private instruments.

The HLF's final report is due to be published in May 2020.

Working group on euro risk-free rates publishes report on transfer of EONIA's liquidity to €STR

The working group on euro risk-free rates has published a report on the transfer of liquidity from EONIA's cash and derivatives products to the €STR.

The report supplements a previous report from the working group published in August 2019 on the impact of the transition from EONIA to the €STR on cash and derivatives products, and provides clarifications around specific topics that have been discussed since then.

The report highlights that contracts referenced to EONIA with maturities beyond 3 January 2022 would entail significant risks. The working group recommends that market participants should replace EONIA products with €STR products and reduce their EONIA-linked legacy exposures as soon as possible.

The working group encourages market-makers proactively to price in the €STR rather than EONIA as their default, and central counterparties are advised to consider developments in the nettability (compression) of the €STR and EONIA.

The working group expects a full migration from EONIA-linked to €STR-linked products. It therefore recommends that the current EONIA market liquidity characteristics be used as a benchmark for building the initial target for the €STR and that market participants analysing the available data assess the liquidity of the €STR derivatives market.

MREL: EBA publishes quantitative report

The EBA has published its annual quantitative report on minimum requirement for own funds and eligible liabilities (MREL) capacity in the EU. The report is based on MREL decisions submitted to the EBA up to June 2019 and resources as at December 2018. Key findings of the report include:

- the decisions of 222 banks, representing 80% of the EU's total domestic assets, favour resolution, either by bail-in or by a transfer, rather than liquidation;
- 105 of the 222 sample banks already meet their MREL;
- the remaining 117 exhibit MREL shortfalls representing a total of EUR 178 billion; and
- on average, weighted by risk-weighted assets (RWAs) the MREL requirements in the EU range from 26.5% of RWAs for global systemically

important institutions (G-SIIs) and 19% for non-systemically important banks.

The EBA calls on European resolution groups to take advantage of the current positive market conditions to issue MREL debt and close their shortfalls.

MREL: SRB consults on changes to policy

The Single Resolution Board (SRB) has launched a consultation on proposed changes to its policy statement on MREL to bring it in line with amendments introduced by the EU Commission's banking reform package. Amongst other things, the SRB is seeking views on proposals to implement provisions related to:

- MREL requirements for global systemically important institutions;
- changes to the calibration and quality of MREL;
- dedicated rules for certain business models and resolution strategies; and
- the phasing-in of any changes.

Comments are due by 6 March 2020 and the SRB expects to publish the final MREL policy statement by the end of April 2020.

ESRB reports on impact of cyber attacks on financial stability

The European Systemic Risk Board (ESRB) has published a report on the impact of cyber incidents on financial stability. In order to investigate whether and how a cyber incident could cause a systemic crisis, the ESRB conducted a survey of its member jurisdictions and developed an analytical framework which it applied to a number of hypothetical and historical scenarios. From this analysis it found that:

- cyber risks are different to other sources of operational risk due to the potential speed and scale of their propagation, and the intent of perpetrators;
- the estimated cost of cyber incidents on the global economy in 2018 ranged from USD 45 billion to USD 654 billion; and
- cyber incidents can evolve into a systemic crisis when they impact confidence as well as operations (i.e. when confidence in the financial system drops so low that institutions cease lending activity).

Overall the ESRB concludes that cyber incidents are a source of systemic risk to the financial system and could have serious negative consequences for the real economy. It calls for further work to be done to address system vulnerabilities and states that it intends to explore the costs and benefits of different systemic mitigants going forward.

FSB writes to G20 setting out focus for Saudi Arabian Presidency

The Financial Stability Board (FSB) has written to the G20 Finance Ministers and Central Bank Governors setting out the focus areas for the Saudi Arabian G20 Presidency.

In the coming year, the FSB work programme will address existing vulnerabilities, promote coordination in risk areas, and deepen the FSB's understanding of where new vulnerabilities might arise.

Specific areas of focus include:

- LIBOR transition;
- technology;
- identifying new and emerging vulnerabilities;
- stablecoins and cross-border payment systems;
- non-bank financial intermediation (NBFI);
- evaluating the post-crisis regulatory framework; and
- monitoring the implementation of post-crisis reforms.

Polish Financial Supervision Authority sets out position on selected aspects of provision of investment advisory services

The Polish Financial Supervision Authority (PFSA) has published its position on selected aspects of the provision of investment advisory services. In its position, the PFSA addresses issues related to product governance and requirements connected with the provision of investment advice. In the position the PFSA sets out, among other things, the circumstances in which a service should be classified as investment advice and the obligations related to the provision of this service, including with regard to the knowledge, competences and experience of the persons providing such advice, as well as the role of compliance of the activity with the law and internal audit.

FSDC releases report on private wealth management industry in Hong Kong

The Financial Services Development Council (FSDC) has released a report, entitled 'Hong Kong as the Regional Wealth Management Hub – Sector Survey Paper'. The report is intended to consider how Hong Kong can leverage its fundamentals to further develop its private wealth management (PWM) business, from the perspectives of industry practitioners as well as current and potential clients.

The report concludes that Hong Kong possesses much potential to preserve its premier position in the PWM market, citing a transparent regulatory framework, technology-friendly environment, availability of professional talents, as well as proximity to the Mainland China and experience in serving its market.

Based on the findings of the report, the FSDC intends to consider the feasibility and practicality of a follow-on study, looking into actions needed to strengthen Hong Kong's role as a PWM hub.

FSC outlines financial policy roadmap for 2020

The Financial Services Commission (FSC) has outlined its financial policy roadmap for 2020 to support innovative businesses through financial innovation and promote inclusive finance.

Amongst other things, the key policy tasks focus on:

- preventing capital concentration in the real estate market and introducing a new loan-to-deposit ratio to encourage more corporate lending by financial companies;
- providing targeted support to innovative firms by providing them both financial and non-financial assistance in the amount of KRW 40 trillion;
- allowing companies to use diverse types of assets as collateral;
- evaluating companies based on their technologies and future growth potential;
- providing support to start-ups, scale-ups and innovative firms tailored to specific needs at different stages of their businesses;
- encouraging innovation in the financial services industry while working on the improvement of the current financial regulatory framework through the regulatory sandbox program;
- promoting MyData business and expansion of open banking and fintechs;
- establishing a debt restructuring system focusing on the needs of debtors to support and encourage their recovery from failed business attempts; and
- providing an institutional foundation to promote financial consumer protection by pushing for the enactment of legislation on consumer credit and financial consumer protection.

FSC and FSS announce measures to improve regulatory framework for hedge funds

The FSC and the Financial Supervisory Service (FSS) have announced measures to improve their regulatory framework for hedge funds. The measures are intended to ensure the autonomy of private fund management while addressing regulatory inadequacies and vulnerabilities by introducing a minimum necessary level of regulation.

From November 2019 to January 2020, the Government conducted a review of the hedge fund market to assess potential risks and vulnerabilities and found that most hedge funds were not involved in risky operations or investment structures. Based on its market review, the Government has prepared the following key measures in order to strengthen investor protection and ensure credibility in the market:

- enhancing risk management based on market discipline – the Government intends to work to establish a foundation in which different market participants and players can provide a supervisory role and 'checks and balances' against one another;
- additional measures for investor protection – the FSC intends to address vulnerabilities in the structure of funds with a minimum necessary level of regulatory measures to better protect investors; and
- improving supervision and inspection by financial regulators through, amongst other measures, strengthened reporting requirements and a fast-track revocation of registration regime for fund management companies failing to meet certain requirements.

The regulators have indicated that the Government plans to finalise and announce specific measures to improve the regulatory framework for the hedge fund market in March 2020, after gathering opinions from stakeholders and experts.

RECENT CLIFFORD CHANCE BRIEFINGS

Narrowly tailored credit event amendments implemented at last

The long awaited amendments to the 2014 ISDA Credit Derivatives Definitions to address narrowly tailored credit events came into effect on 27 January 2020. The amendments apply to credit derivative transactions with a corporate reference entity (but not to transactions with a sovereign reference entity) and have been implemented through the 2019 Narrowly Tailored Credit Event Supplement to the 2014 Definitions.

This briefing considers the scope of the amendments as well as the background to the amendments following the recent market focus on narrowly tailored (or manufactured) credit events.

https://www.cliffordchance.com/briefings/2020/02/narrowly-tailored-credit-event-amendments-implemented-at-last.html

LIBOR transition for the infrastructure sector

With 2020 set to be a critical year for LIBOR transition, the infrastructure market will face some significant challenges as it transitions towards the use of risk-free rates (RFRs).

This briefing discusses some of those challenges and the steps market participants should be taking now to ensure a smooth transition before the end of 2021.

https://www.cliffordchance.com/briefings/2020/02/libor-transition-for-the-infrastructure-sector.html

Post-Brexit UK tariff regime opens for public consultation

Following the UK's withdrawal from the EU, the Department for International Trade is consulting on the UK default tariff rates as of 1 January 2021. These tariffs – to be called 'the UK Global Tariff' regime – will apply to imports from major economies including the US and China (subject to any new trade agreements), and may also apply to imports from some countries with which the EU currently has preferential trade agreements, such as Canada, Japan and Mexico. If the UK is unable to agree a trade deal with the EU before the end of 2020, the tariffs will be imposed on imports from the EU in addition to new checks on the UK-EU border.

If your business imports goods from exposed economies or in tariff-sensitive sectors, you should consider taking part in the consultation. The deadline for responses is 5 March 2020.

This briefing discusses the UK Government's proposals.

https://www.cliffordchance.com/briefings/2020/02/post-brexit-uk-tariff-regime-opens-for-public-consultation.html

US Dollar LIBOR transition – challenges for securitizations and note issuers

On 21 January 2020, the Alternative Reference Rates Committee (ARRC) published a consultation regarding spread adjustments for cash products such as floating rate notes and securitizations. This consultation solicits input from market participants regarding calculation methodologies for spread adjustments. The ARRC has committed to recommending spread adjustments as part of its efforts to provide robust contractual fallback provisions to facilitate the transition from US Dollar LIBOR-based floating rates to SOFR-based floating rates. The year 2020 is a critical year for preparing for LIBOR cessation.

This briefing discusses benchmark transition challenges related to LIBOR-based floating rate notes and securitizations and related issues to be considered by floating rate note issuers, securitization sponsors and servicers.

https://www.cliffordchance.com/briefings/2020/02/us-dollar-libor-transition-challenges-for-securitizations-and-no.html

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