

## INTERNATIONAL REGULATORY UPDATE 03 – 07 FEBRUARY 2020

- **Brexit:** EU Commission publishes draft negotiating mandate for future partnership
- **EIOPA** publishes discussion paper on IBOR transitions
- **ECB** consults on calculation of counterparty credit risk by banks
- **EBA** calls for more diversity in management bodies of credit institutions and investment firms
- **EBA** launches 2020 EU-wide stress test
- **EBA** reports on implementation of EU AML/CFT framework and consults on revised risk factor guidelines
- **ESMA** sets out strategy on sustainable finance
- **CSDR:** ESMA publishes new RTS postponing settlement discipline requirements
- **ESMA** amends guidelines on enforcement of issuers' financial disclosure
- **EMIR REFIT:** ESMA publishes final report on MiFIR alignments
- **MiFIR:** ESMA consults on transparency regime for equity instruments
- **MiFIR:** ESMA provides update on implementation of supervisory briefing on pre-trade transparency in commodity derivatives
- **MiFIR:** ESMA publishes review consultation on non-equity systematic internalisers
- **MiFIR:** ESMA publishes technical advice on product intervention measures
- **Prospectus Regulation:** ESMA writes to EU Commission regarding technical advice on general equivalence criteria
- **AIFMD:** ESRB highlights shortcomings of framework
- **Brexit:** PM makes written statement and speech on UK/EU future relationship
- **Brexit:** UK withdraws instrument of accession to Hague Convention on Choice of Courts
- **FCA** writes Dear CEO letter to platform service providers
- **FSMA** (Central Counterparties, Investment Exchanges, Prospectus

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and Benchmarks) (Amendment) Regulations 2020 made

- **Brexit: CSSF issues press release**
- **CSSF issues circular letter concerning online AML/CFT cross-sector survey for 2019**
- **Polish Bank Association issues recommendation concerning good practices in enterprise restructuring processes**
- **BRSA tightens restrictions on FX swaps**
- **Australian Government consults on financial accountability regime**
- **APRA publishes submission on financial technology and regulatory technology**
- **APRA sets out policy and supervision priorities for 2020**
- **CBIRC issues interim measures on equity management of trust companies**
- **SFC provides update on front-loaded regulatory approach**
- **Korean government prepares enforcement decree on peer-to-peer lending businesses**
- **Fannie Mae and Freddie Mac to discontinue LIBOR based ARMs**
- **Federal Reserve issues final rule concerning determining control of a banking organization**
- **Financial regulatory agencies request comments on proposed changes to covered funds restrictions in Volcker Rule**
- **Recent Clifford Chance briefings: OECD tax proposals, new Japanese regulations for ICOs and crypto-assets, and more. Follow this link to the briefings section**

## **Brexit: EU Commission publishes draft negotiating mandate for future partnership**

The EU Commission has published a [recommendation](#) for a Council decision authorising draft negotiating directives and the opening of negotiations on the future UK-EU partnership.

The negotiating directives annexed to the recommendation, which is based on existing EU Council guidelines and conclusions and the Political Declaration agreed between the EU and the UK in October 2019, set out the purpose, scope and content of an envisaged partnership.

In relation to financial services, the document states that the key instrument for regulating interactions between the UK and EU's financial systems will be their respective unilateral equivalence frameworks. Further, cooperation on financial services should establish close and appropriately structured voluntary cooperation on regulatory and supervisory matters, including in international bodies, while preserving the EU's regulatory and supervisory autonomy, and allowing for the informal exchange of information and bilateral discussions on regulatory initiatives and other issues of interest, such as equivalence.

The Council is expected to adopt the decision around 25 February 2020.

The EU Commission has also published a [note verbale](#) to third countries and international organisations requesting the UK continue to be treated as an EU Member State until the end of the transition period on 31 December 2020.

### **EIOPA publishes discussion paper on IBOR transitions**

The European Insurance and Occupational Pensions Authority (EIOPA) has published a [discussion paper](#) on IBOR transitions.

The paper considers a number of options and solutions to help address issues within the EIOPA risk-free rate (RFR) environment.

In particular, EIOPA highlights the potential impact of the IBOR transitions on the definition and use of the Credit Rate Adjustment (CRA) currently applied on RFR term structures. EIOPA also proposes an approach for dealing with new term structures calculated with new benchmark rates for all currencies.

Comments are due by 30 April 2020. Based on the feedback received, EIOPA intends to hold a consultation on specific policy recommendations regarding IBOR transitions.

### **ECB consults on calculation of counterparty credit risk by banks**

The European Central Bank (ECB) has launched a [consultation](#) on its methodology to assess the internal models banks apply to calculate their exposure to counterparty credit risk (CCR).

The ECB Guide on assessment methodology (EGAM) for the internal model method (IMM) and the advanced method for own funds requirements for credit valuation adjustment risk (A-CVA) is to be applied in the context of any CCR-related internal model investigation and the ongoing monitoring of approved internal models, and outlines for supervisors how the ECB intends to investigate compliance within the existing legal framework when performing these tasks. It also provides optional guidance to significant institutions on the self-assessment of the IMM and A-CVA models.

The guide aims to harmonise supervisory practices related to internal CCR models and provide transparency regarding the methodologies the ECB uses to assess the components of these models during investigations.

Comments are due by 18 March 2020.

### **EBA calls for more diversity in management bodies of credit institutions and investment firms**

The European Banking Authority (EBA) has issued a [benchmarking report](#) on diversity practices in credit institutions and investment firms analysing the development since its 2015 diversity benchmarking exercise. Data from September 2018 shows that many institutions have not adopted a diversity policy and fail to have a gender diverse board, with women's representation in management bodies still relatively low.

Whilst the issue is not limited to gender (age, professional and educational background, and geographical provenance are also a concern), in 2018 two thirds of institutions across the EU had executive directors of one gender. In nearly all such cases, those boards were composed only of men. According to the EBA, there is a positive correlation between credit institutions having

executive directors of both genders and having an above average return on equity.

The EBA also collected data on remuneration for the management body to establish if there is a gender pay gap, which showed that most institution management bodies provide higher remuneration for male members than female members. This is partly explained by the low percentage of females holding positions of chief executive officer or chairpersons, but the EBA notes that this factor alone cannot explain the differences in pay. The EBA is legally mandated to benchmark gender-neutral remuneration practices and will carry out further work in this area.

The EBA has called on institutions and Member States to consider additional measures for promoting more balanced gender representation and on competent authorities to ensure institutions' compliance with the requirement to adopt diversity policies. It argues that more diverse management bodies can improve strategic decision-making and risk taking by incorporating wider views, opinions, experiences, perceptions, values and backgrounds.

## **EBA launches 2020 EU-wide stress test**

The EBA has launched the 2020 EU-wide [stress test](#) and released the macroeconomic scenarios.

The EBA published the [methodology](#) of its 2020 stress test in November 2019. The stress test is designed to provide supervisors, banks and other market participants with a common analytical framework to consistently compare and assess the resilience of EU banks to economic shocks. In line with previous exercises, no pass-fail threshold has been included as the results of the exercise are designed to serve as an input to the Supervisory Review and Evaluation Process (SREP).

The adverse scenario follows a 'lower for longer' narrative, a recession coupled with low or negative interest rates for a prolonged period. The EU real GDP would decline by 4.3% cumulatively by 2022, resulting in the most severe scenario to date.

The EBA intends to coordinate the stress test in cooperation with the ECB and national authorities.

In parallel, the ECB intends to conduct its own stress test for those significant banks not covered by the EBA stress test. The ECB's stress test, while consistent with the EBA methodology, will consider the smaller size and lower complexity of these institutions. The results of this stress test will be used to assess each significant bank's Pillar 2 capital needs in the context of the SREP.

The EBA intends to publish the stress test results by 31 July 2020.

## **EBA reports on implementation of EU AML/CFT framework and consults on revised risk factor guidelines**

The EBA has published a [report](#) on competent authorities' approaches to the anti-money laundering and countering the financing of terrorism (AML/CFT) supervision of banks following its first AML implementation review.

The report highlights that competent authorities are working to reform their approach to AML/CFT supervision, but that challenges remain in ensuring that it is risk-based, proportionate and effective.

The report is published alongside a [consultation](#) on revised money laundering and terrorist financing (ML/TF) risk factors guidelines. The guideline revisions reflect changes to the EU AML/CFT legal framework and new ML/TF risks, including those identified by the EBA's implementation reviews.

The initiatives form part of the EBA's new role to lead, coordinate and monitor AML and CFT in EU Member States. The EBA has published a [factsheet](#) setting out information on how it will discharge its new functions.

Comments on the consultation are due by 5 May 2020.

## **ESMA sets out strategy on sustainable finance**

The European Securities and Markets Authority (ESMA) has published its [strategy](#) on sustainable finance, which is intended to integrate environmental, social and governance (ESG) related factors across its key four activities: the single rulebook, supervisory convergence, direct supervision and risk assessment.

The strategy, which contains an indicative timeline for actions, includes six key priorities for 2020:

- to complete the regulatory framework on transparency obligations via the Disclosures Regulation and to publish joint technical standards with the EBA and EIOPA;
- to report on trends, risks and vulnerabilities (TRV) of sustainable finance by including indicators related to green bonds, ESG investing and emission allowance trading;
- to analyse financial risks from climate change;
- to ensure entities supervised by ESMA adhere to its ESG guidelines;
- to mitigate the risk of greenwashing, preventing mis-selling practices and fostering transparency and reliability in the reporting of non-financial information; and
- to provide advice in the development of the EU taxonomy.

## **CSDR: ESMA publishes new RTS postponing settlement discipline requirements**

ESMA has published a [final report](#) presenting draft regulatory technical standards (RTS) that postpone the date of entry into force of the settlement discipline requirements under the Central Securities Depositories Regulation (CSDR).

Citing feedback from industry stakeholders, ESMA has considered it appropriate to provide more time before the implementation of new settlement discipline requirements to allow for IT system changes, market testing and adjustments to legal arrangements between the parties concerned. The draft RTS delay the application of the requirements until 1 February 2021.

The draft RTS will now be forwarded to the Commission for endorsement.

## **ESMA amends guidelines on enforcement of issuers' financial disclosure**

ESMA has published an updated version of its [guidelines](#) for national competent authorities (NCAs) on the enforcement of financial disclosures that



issuers, listed on regulated markets, are required to make under the Transparency Directive. The [amendments to the guidelines](#) are primarily intended to harmonise the ways in which NCAs select the issuers whose financial information should be subject to examination and the ways in which those examinations are carried out. Amongst other things, the amended guidelines require that:

- NCAs select issuers for examination based on a combination of risk-based approaches, random selection and rotation;
- all issuers should be examined at least once during a period as set by the NCA; and
- NCAs must carry out a minimum proportion of examinations which cover the entire financial statement and involve interaction with the issuer.

NCAs can implement the revised guidelines from 4 February 2020, otherwise they will become effective on 1 January 2022.

## **EMIR REFIT: ESMA publishes final report on MiFIR alignments**

ESMA has published its [final report](#) to the EU Commission assessing the necessity and appropriateness of aligning the trading obligation for derivatives under MiFIR with changes made under the Regulation amending EMIR as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (EMIR REFIT).

EMIR REFIT introduces an exemption from the clearing obligation for small financial counterparties and modifies the mechanism to determine the obligations for non-financial counterparties above the clearing threshold (NFC+). Direct amendments have not been made to MiFIR, which currently leads to a misalignment between the scope of counterparties subject to the clearing obligation and to the derivative trading obligation (DTO) under MiFIR.

In light of the close interconnection between those two obligations, EMIR REFIT requires ESMA to prepare a report assessing whether the DTO under MiFIR should be aligned with changes to the clearing obligation under EMIR REFIT, and to submit its findings to the Commission.

After consulting stakeholders, ESMA finalised its recommendations to the Commission, which consist in aligning the scope of counterparties subject to the clearing and trading obligations.

On the basis of ESMA's input, the Commission's report shall be submitted to the Parliament and Council by 18 December 2020.

## **MiFIR: ESMA consults on transparency regime for equity instruments**

ESMA has issued a [consultation](#) reviewing the transparency regime applicable to equity and equity-like instruments under MiFIR. The consultation sets out proposals aimed at simplifying the structure of the transparency regime while trying to improve the overall trade transparency available to market participants.

Under MiFIR, ESMA must submit a report to the EU Parliament and Council on the impact in practice of the transparency obligations established under MiFIR, and particularly on the impact of the volume cap mechanism established under Article 5 of MiFIR. At its own initiative, ESMA has decided also to include an assessment of other key transparency provisions and, in particular, the share trading obligations and the transparency provisions available to systematic internalisers (SIs).

ESMA's key proposals include:

- pre-trade transparency and waivers – either reduce the number of waivers available to market participants or make the use of waivers subject to stricter requirements;
- the double volume cap (DVC) mechanism – if maintained, the DVC regime should be simplified and applied in a wider and stricter way to further curb dark trading;
- SI regime – an increase of minimum quoting obligations subject to pre-trade transparency, a revised methodology for determining quoting sizes and/or an extension of the SI obligations to illiquid instruments; and
- trading obligation for shares – clarifying the scope of the trading obligation specifically in relation to third-country shares.

Comments to the consultation are due by 17 March 2020. ESMA will consider the feedback and expects to publish a final report to the Commission in July 2020. Another report analysing the transparency regime applicable to non-equity instruments will be published separately.

### **MiFIR: ESMA provides update on implementation of supervisory briefing on pre-trade transparency in commodity derivatives**

ESMA has published a [statement](#) on progress on compliance with the MiFIR pre-trade transparency requirements in commodity derivatives.

In June 2019 ESMA published a supervisory briefing setting out guidance for competent authorities to ensure compliance with pre-trade transparency requirements for commodity derivatives under MiFIR. ESMA's statement provides an update on the progress made on this workstream based on information from NCAs.

The state of play is stated as at 31 December 2019, the date that NCAs committed to supervise that all trading venues previously assessed as operating non-compliant systems would either operate under a compliant pre-trade waiver or be fully pre-trade transparent.

ESMA will continue to review the progress of the measures taken under the supervisory briefing in the first half of 2020.

### **MiFIR: ESMA publishes review consultation on non-equity systematic internalisers**

ESMA has published a [consultation](#) on the MiFIR pre-trade transparency regime for SIs in respect of bonds, structured finance products, emission allowances and derivatives (non-equity instruments).

The consultation, published as part of the MiFID2/MiFIR Review, seeks reviews on ESMA's policy recommendations, including:

- simplifying the requirements for SI quotes in liquid and illiquid instruments;
- developing a definition of exceptional market conditions under which SIs may withdraw quotes in liquid instruments;
- developing regulatory technical standards (RTS) to specify the content and format of pre-trade transparency information to be made public; and
- specifying the arrangements for publishing the quotes.

ESMA also seeks views on the findings of its analysis of the sizes at which SIs' quotes are made available to clients and other market participants.

The consultation closes on 18 March 2020. ESMA expects to publish and submit a final report to the EU Commission by July 2020.

### **MiFIR: ESMA publishes technical advice on product intervention measures**

ESMA has published its [final report](#) setting out technical advice to the EU Commission on new product intervention measures under MiFIR.

Under MiFIR, ESMA was given the power to temporarily prohibit or restrict the marketing, distribution or sale of certain financial instruments, financial instruments with certain specified features or a type of financial activity or practice (product intervention).

In May 2019 ESMA received a mandate from the Commission to provide technical advice on technical issues stemming from MiFID2 and MiFIR, including certain investor protection topics.

ESMA has drawn on the significant information it has collected on the impact of its product intervention measures as part of the review and renewal process of temporary measures in its preparation of the technical advice. In addition, ESMA issued a call for evidence to market participants, investors and their associations on the effects of the measures.

The main elements of ESMA's advice include:

- addressing the risk of arbitrage between MiFID firms and fund management companies;
- introducing a mechanism to further consolidate pan-European product intervention measures to improve convergence and the level playing field across the EU single market;
- further clarification on the application of product intervention measures to firms acting on a cross-border basis when NCAs from different Member States take overlapping product intervention measures and on the distribution of responsibilities of supervision and enforcement of NCAs of the home and host Member States in respect of those measures;
- that where an NCA intends to adopt the same product intervention measure at a national level as an applicable temporary measure adopted by ESMA, the Commission should remove ESMA's obligation to issue an opinion on that measure and exempt that NCA from consulting other NCAs that may be materially affected; and



- further clarification on the wording of Article 40(3) of MiFIR relating to situations where ESMA would not be required to issue an opinion on proposed national product intervention measures.

The technical advice will now be submitted to the Commission.

## **Prospectus Regulation: ESMA writes to EU Commission regarding technical advice on general equivalence criteria**

ESMA has [written](#) to the EU Commission regarding its mandate under Article 29(3) of the Prospectus Regulation (EU) 2017/1129 for technical advice on general equivalence criteria for prospectuses drawn up under the laws of third countries.

In the letter, ESMA argues that the operation of an equivalence regime under Article 29 of the Prospectus Regulation would raise serious practical challenges and invites the EU Commission to consider whether the mandate should be pursued under the current text of Article 29, citing the following reasons:

- Article 29(1) appears to limit the value of an equivalence regime because prospectuses would, nonetheless, be scrutinised and approved by a competent authority under the disclosure rules of the Prospectus Regulation; and
- Article 29(3) excludes key aspects of the prospectus regime, such as the disclosure rules on risk factors and it does not clarify important elements of the equivalence criteria.

Additionally, ESMA confirms that Article 28 of the Prospectus Regulation already provides third country issuers with access to the EU markets and that there is currently limited demand for an equivalence regime from competent authorities and market participants.

ESMA therefore concludes that not maintaining the mandate under Article 29 would not create significant problems.

## **AIFMD: ESRB highlights shortcomings of framework**

At the request of the EU Commission, the European Systemic Risk Board (ESRB) has [written](#) a short summary on what it sees as the shortcomings of the Alternative Investment Fund Managers Directive (AIFMD) framework.

The letter sets out the ESRB's experiences with the scope and application of the AIFMD, in particular:

- the suitability of the reporting framework and access to data for monitoring systemic risk;
- the need to operationalise existing macroprudential policy instruments; and
- the ongoing development of the macroprudential policy framework 'beyond banking' in general and for investment funds in particular.

The letter will contribute to the Commission's report to the EU co-legislators on the application and scope of the AIFMD, which is due in Q1 2020.

## **Brexit: PM makes written statement and speech on UK/EU future relationship**

The UK Prime Minister, Boris Johnson, has made a [Written Ministerial Statement](#) (WMS) and delivered a [speech](#) on the UK's priorities in the forthcoming negotiations with the EU on the future relationship.

The WMS sets out the UK Government's proposed approach to the negotiations, including its aims as to the content of a free trade agreement (FTA), an agreement on fisheries, an agreement on internal security cooperation and other areas of cooperation such as aviation.

In relation to financial services, the Government proposes that an FTA include enhanced provision for regulatory and supervisory cooperation arrangements with the EU, and for the structured withdrawal of equivalence findings.

In the speech, the Prime Minister set out an intention to engage in multiple negotiations for trade deals with various jurisdictions, and emphasised the intention to conclude a free trade agreement with the EU similar to the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada.

## **Brexit: UK withdraws instrument of accession to Hague Convention on Choice of Courts**

The UK Government has [withdrawn](#) its instrument of accession to the Hague Convention on Choice of Court Agreements.

The UK is currently bound by the Convention, which applies to exclusive choice of court agreements in international commercial contracts, according to the terms of the Withdrawal Agreement, under which EU law continues to be applicable to and in the UK, and the UK is to be treated as a Member State for the purpose of international agreements entered into by the EU, for a time-limited transition period. This transition period commenced on 1 February 2020 and ends on 31 December 2020.

The UK intends to continue to participate in the Convention at the end of the transition period and to deposit a new instrument of accession prior to that date.

## **FCA writes Dear CEO letter to platform service providers**

The Financial Conduct Authority (FCA) has published a [Dear CEO letter](#) to platform service providers, setting out its key concerns, expectations and reflecting its current focus and strategy for supervising platforms.

The FCA's supervision strategy is focused on addressing:

- technology and operational resilience;
- third-party outsourcing;
- conflicts of interest;
- the implementation of the findings and recommendations of the investment platforms market study (IPMS), if needed; and
- EU withdrawal.

The FCA expects firms to take all necessary action to ensure its requirements are met and will use the Senior Managers Certification Regime (SM&CR) to engage directly with accountable individuals on areas of concern.

## **FSMA (Central Counterparties, Investment Exchanges, Prospectus and Benchmarks) (Amendment) Regulations 2020 made**

The [Financial Services and Markets Act 2000 \(Central Counterparties, Investment Exchanges, Prospectus and Benchmarks\) \(Amendment\) Regulations 2020](#) (SI 2020/117) have been made and laid before Parliament.

SI 2020/117 makes minor updates to UK law in order to implement the following EU legislation related to financial services:

- EMIR 2.2;
- SME Growth Markets Regulation;
- Low Carbon Benchmarks Regulation; and
- Investment Funds Directive.

## **Brexit: CSSF issues press release**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [press release](#) following up on its previous communications regarding the transitional regime under the Brexit laws of 8 April 2019, as well as on mandatory notifications through the CSSF's eDesk portals.

The press release notes the formal adoption by the EU Council on 30 January 2020 of the agreement on the withdrawal of the UK from the EU, which foresees a transitional period until 31 December 2020 during which EU laws and regulations will continue to apply in the UK and UK entities will be able to continue operating in Luxembourg on the basis of their passporting rights following the UK leaving the EU at midnight CET on 31 January 2020.

Consequently, the previous CSSF communications on the transitional regimes under the Brexit laws, which were applicable only in the event of the UK leaving the EU without a withdrawal agreement, are no longer relevant. In this context, the CSSF has informed concerned entities that the individual decisions taken by the CSSF and granting the 12-month transitional regime under the Brexit laws to UK entities and all notifications made through the dedicated eDesk portals are lapsing, and the e-Desk portals have been closed with immediate effect.

The CSSF intends to continue to communicate on Brexit-related issues via press releases in the course of the transitional period as necessary.

## **CSSF issues circular letter concerning online AML/CFT cross-sector survey for 2019**

The CSSF has published a [circular letter](#) as a reminder that the annual AML/CFT online survey for the year 2019, which collects standardised key information concerning money laundering and terrorist financing risks to which professionals under CSSF supervision are exposed and the implementation of related risk mitigation and targeted financial sanctions measures, was to be launched on 3 February 2020.

The CSSF indicates that the 2019 survey remains in substance generally unchanged compared to the previous year, and that answers to this survey will have to be completed and submitted via the CSSF eDesk portal by 15 March 2020, except for professionals of the banking sector where the answers have to be submitted by 2 March 2020.

### **Polish Bank Association issues recommendation concerning good practices in enterprise restructuring processes**

The Polish Bank Association (ZBP) has [published](#) a recommendation concerning good practices in enterprise restructuring processes, prepared by a working group of which Clifford Chance is a member.

The recommendation concerns all participants in enterprise restructuring processes, and therefore apart from financial creditors (in particular banks, bondholders, lenders, insurers, leasing providers and factoring enterprises) it also concerns commercial and public law creditors, the debtors themselves, their shareholders and other investors.

As indicated in the recommendation, by defining the standards for organising and conducting restructuring processes with the participation of debtors representing different, often divergent, interests the purpose of the good practices is to increase the efficiency of these processes by increasing effectiveness, predictability and the personal scope.

### **BRSA tightens restrictions on FX swaps**

Since 13 August 2018, the Banking Regulation and Supervision Agency (BRSA) has been putting in place [restrictions](#) to prevent local banks from short selling Turkish Lira in order to avoid another local currency crisis.

As per the restrictions put in place in the summer of 2018, the total notional principal amount of local banks' FX swaps and other similar products (spot + forward FX transactions) with foreign counterparties where at the initial date Turkish banks pay Turkish Lira and receive FX should not exceed 25% of the relevant bank's regulatory capital. On 8 September 2018, the BRSA also granted an exemption for FX swap transactions carried out by local banks with their parent entities or other affiliates that are included in the consolidated financial statements of the group. On 17 September 2018, the BRSA further clarified that the amounts of transactions with different maturity periods will be added into the daily calculation of the 25% threshold in various percentages as follows:

- percentage of the transaction amount to be considered where the term is less than 90 days: 100%;
- percentage of the transaction amount to be considered where the term is 90 to 360 days: 75%; and
- percentage of the transaction amount to be considered where the term is more than 360 days: 50%.

On 9 February 2020, the BRSA tightened the threshold for the total notional principal amount of local banks' FX swaps and other similar products (spot + forward FX transactions) by lowering it to 10%, which is expected to make foreign swap counterparties' access to TRY liquidity harder. In this regard, unless current excess is eliminated, no further transactions of these types

could be entered into, and maturing transactions should not be renewed. The above-mentioned ratio is to be calculated daily on a consolidated and individual basis.

The BRSA is effectively restricting foreign swap counterparties' access to TRY liquidity in the offshore swap market and making it harder for them to borrow Turkish Lira from Turkish banks to enter into short selling trades, which has been identified as a critical factor in the depreciation of the TRY in the past year's currency crisis.

## **Australian Government consults on financial accountability regime**

The Australian Government has launched a [public consultation](#) to extend the Banking Executive Accountability Regime (BEAR) obligations to all Australian Prudential Regulation Authority (APRA) regulated entities under a new Financial Accountability Regime (FAR). The consultation follows the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry relating to extending the BEAR.

The BEAR established clear standards of conduct by imposing a strengthened responsibility and accountability framework for directors and the most senior executives in authorised deposit-taking institutions (ADIs). The FAR is intended to extend this responsibility and accountability framework across all APRA regulated entities, namely all general and life insurance licensees, private health insurance licensees, registrable superannuation entity licensees and licensed non-operating holding companies, to increase the transparency and accountability of financial entities in these industries and improve risk culture and governance for both prudential and conduct purposes.

Under the new regime, financial entities will be required to clarify responsibilities attaching to particular officers and positions. As a result, individuals will be held to account for failure to perform their obligations. Moreover, FAR entities will be classified as either core compliance entities or enhanced compliance entities, depending on the size of their total assets. Core compliance entities will be exempt from the requirement to submit accountability maps and statements to APRA and the Australian Securities and Investments Commission (ASIC).

Further, under the new regime, transitional arrangements will apply to ADIs to ensure that obligations which have been met under the BEAR and which will be the same under the FAR will be taken to have been met. For example, an accountable person registered under the BEAR may not need to re-register under the FAR.

Similarly to the BEAR, the FAR will impose certain obligations, such as accountability obligations, key personnel obligations, accountability map and accountability statement obligations, notification obligations, and deferred remuneration obligations, to financial entities. Although the FAR adopts the essential structure of the BEAR, they differ in the following respects:

- that APRA and ASIC will jointly administer the regime, and many detailed aspects will be set by APRA and ASIC to allow greater flexibility in recognition of the broader range of industries and number of entities subject to the FAR; and

- the commencement of the stronger penalty framework for corporate and financial sector misconduct.

The Australian Treasury has indicated that, the Government intends to consult on and introduce legislation by the end of 2020 to implement the new regime. Moreover, following the implementation of the FAR for APRA-regulated entities, further consultation will be held to extend FAR to solely ASIC-regulated entities.

Comments on the consultation are due by 14 February 2020.

## **APRA publishes submission on financial technology and regulatory technology**

APRA has published its [submission](#) to the Senate Select Committee on financial technology (fintech) and regulatory technology (regtech).

The submission is intended to outline how APRA is evolving its regulatory framework and approach to support the developing fintech and regtech sector, while ensuring risks are appropriately managed in line with APRA's mandate of financial soundness and stability. It also highlights that improving cyber resilience across the financial system is one of APRA's four strategic focus areas in the 2019-2023 Corporate Plan.

As per the submission to Senate Select Committee, APRA holds both a direct and a supporting role in relation to fintech and regtech. Moreover, APRA intends to understand and support these developments, in a sustainable and open fashion, and implement regtech within its own data collection systems and processes helping improve efficiency and accessibility.

## **APRA sets out policy and supervision priorities for 2020**

APRA has set out its [policy](#) and [supervision](#) priorities for 2020 with an emphasis on fulfilling the four strategic goals of its corporate plan: maintaining financial system resilience, improving outcomes for superannuation members, improving cyber-resilience in the financial sector, and transforming governance, culture, remuneration and accountability (GCRA) across all APRA-regulated institutions.

The policy priorities for 2020 are intended to give industry a forward view of APRA's planned changes to the prudential framework. The key policy priorities include:

- strengthening crisis preparedness, including the development of a new prudential standard on resolution and recovery planning;
- completing the current review of the capital framework for authorised deposit-taking institutions to implement 'unquestionably strong' capital ratios and the Basel III reforms;
- progressing a range of enhancements recommended by APRA's post-implementation review of the original superannuation prudential framework introduced in 2013; and
- continuing work on strengthening the capital framework for private health insurers.

The supervision priorities for 2020 are intended to outline how the regulator's supervision function will be directed towards significant risks within the



financial system and ensure that those risks are well managed and mitigated. The key supervision priorities include:

- maintaining financial resilience, including through increased focus on recovery and resolution planning and stress testing;
- conducting a range of GCRA-related supervisory reviews and deep dives, and using entity self-assessments to drive greater accountability;
- encouraging underperforming superannuation funds to urgently improve member outcomes or exit the industry; and
- more closely assessing institutions' capability to deal with emerging and accelerating risks, such as cyber-security and climate change.

APRA has indicated that it will also work closely with Treasury and the Australian Securities and Investments Commission (ASIC) in expanding the Banking Executive Accountability Regime to the insurance and superannuation sectors. It also intends to roll out a new prudential risk rating system to replace its long-standing Probability and Impact Rating System and Supervisory Oversight and Response System models in mid-2020.

### **CBIRC issues interim measures on equity management of trust companies**

The China Banking and Insurance Regulatory Commission (CBIRC) has issued the [Interim Measures](#) for the Equity Management of Trust Companies, which will take effect from 1 March 2020. The Interim Measures specify the responsibilities and obligations of trust companies, their shareholders and the relevant regulatory authorities respectively.

In particular, the Interim Measures remove one eligibility condition for a foreign financial institution to invest in a PRC trust company, namely that the total assets of the foreign financial institution at the end of the last fiscal year may not, in principle, be less than USD 1 billion.

The following provisions under the Interim Measures are also worth noting:

- the major shareholder(s) of a trust company, which means any shareholder holding or controlling more than 5% of the shares or voting rights or otherwise having a material influence over the operation of the trust company, should have the capability to supplement capital on a continuous basis and is required to provide a written commitment to supplement capital to the trust company when necessary according to the regulatory provisions;
- 'financial products' can hold shares in a listed trust company, while the aggregate shares held by financial products that are controlled by a single investor/issuer/manager, actual controller, affiliated parties or persons acting in concert may not exceed 5% of the total shares of such trust company;
- any major shareholder of a trust company may not hold shares in such trust company via financial products issued or managed by it or controlled by it in any other manner; and
- if a financial product is the controlling shareholder or actual controller of an investor, such investor may not become a major shareholder of a trust company.

‘Financial product’ is a term used in PRC financial markets which generally refers to any unincorporated vehicle or pool of assets which is managed or acting through another institution.

### **SFC provides update on front-loaded regulatory approach**

The Securities and Futures Commission (SFC) has published a special edition of the [SFC Regulatory Bulletin](#) to provide an update on its front-loaded approach to addressing market quality and corporate conduct issues.

The SFC’s front-loaded regulatory approach combines early regulatory intervention in listing matters and enhanced supervision of intermediaries, which are complemented by focused enforcement actions against firms with important gatekeeping functions and individuals in senior roles.

The latest bulletin highlights the SFC’s key areas of concern and recent regulatory interventions in initial public offering (IPO) applications and corporate transactions. It also highlights that, in a number of cases, failures on the part of directors, often involving conflicts of interest, played a central role in dubious corporate transactions involving overvalued acquisitions and suspect valuations.

The bulletin reminds directors of their obligations to guard shareholders’ interests and remain professional and vigilant when performing their duties. Moreover, it requires IPO sponsors to conduct proper due diligence and exercise professional scepticism when assessing IPO applicants, as well as emphasising that IPO sponsors should bear responsibility for the due diligence work conducted by third-party professionals.

### **Korean government prepares enforcement decree on peer-to-peer lending businesses**

The Financial Services Commission (FSC) has [announced](#) that the Korean government has drafted the Enforcement Decree of the Act on Online-linked Financing as the new legislation on peer-to-peer lending, which is scheduled to take effect on 27 August 2020. The draft enforcement decree is intended to set out:

- provisions with regard to entry requirements for peer-to-peer lending businesses;
- rules to regulate peer-to-peer lending business operations;
- provisions to clarify the scope of business for peer-to-peer lending business operators;
- rules relating to investor protection to encourage rational investment decisions and protect investment capital; and
- requirements for a central registry, under which a central registry will be set up to manage and maintain up-to-date information about online peer-to-peer financing transactions, such as information about borrowers and investors, and to manage limits on loans and investments.

### **Fannie Mae and Freddie Mac to discontinue LIBOR based ARMs**

The Federal National Mortgage Association FNMA (Fannie Mae) has issued [Lender Letter](#) LL-2020-01, which announces that they and the Federal Home

Loan Mortgage Corporation (Freddie Mac) will stop accepting adjustable-rate mortgages tied to the London interbank offered rate (LIBOR) by the end of 2020. Instead, they will soon accept mortgages based on the secured overnight financing rate (SOFR).

The Lender Letter contains information intended to help transition customers from LIBOR ARMs to SOFR ARMs, and discusses the following:

- updated ARM Notes and Riders – Fannie Mae has updated and published all existing standard ARM notes and riders to incorporate the ARRC fallback language. A new special feature code is required for loans closed on these documents;
- retirement of LIBOR ARMs – by the end of 2020, Fannie Mae will no longer acquire loans indexed to LIBOR, and will be retiring all LIBOR ARM plans later in 2020;
- SOFR ARMs – Fannie Mae anticipates accepting deliveries of SOFR ARMs during the second half of 2020. They are announcing several new ARM plans that use an index based on a 30-day average of SOFR; and
- future retirement of CMT ARMs – at some point in 2021 they will no longer acquire ARM loans that use an index based on constant maturity Treasury securities (CMT) and will retire all CMT ARM plans. No specific dates have been established yet.

## **Federal Reserve issues final rule concerning determining control of a banking organization**

The Board of Governors of the Federal Reserve System (FRB) has adopted a [final rule](#) revising regulations related to determinations of whether a company has the ability to exercise a controlling influence over another company for the purposes of the Bank Holding Company Act or the Home Owners' Loan Act. The final rule expands the number of presumptions for use in such determinations. If a company has control over a banking organization, the company generally becomes subject to the FRB's rules and regulations.

The final rule establishes a framework for assessing relevant factors in determining if a company has control over another company. The key factors include the company's total voting and non-voting equity investment; director, officer, and employee overlaps; and the scope of business relationships between the companies.

The final rule goes into effect on 1 April 2020.

## **Financial regulatory agencies request comments on proposed changes to covered funds restrictions in Volcker Rule**

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Commodity Futures Trading Commission, and the Securities and Exchange Commission have [published](#) a proposed rulemaking proposing changes to the regulations which implement the Volcker Rule's general prohibition on banking entities investing in or sponsoring hedge funds or private equity funds (covered funds).

The proposal would exempt the activities of certain funds that are organized outside of the United States and offered to foreign investors (qualifying foreign

excluded funds) from the proprietary trading and covered fund restrictions of the Volcker Rule codifying an existing policy statement by the Federal banking agencies that addresses the potential attribution to a foreign banking entity of the activities and investments of qualifying foreign excluded funds. The proposed amendments would also allow banks to acquire or retain ownership interests in venture capital funds, or pools of investment for small businesses and start-ups. They would also give banks more freedom to invest or sponsor credit funds that make loans, invest in debt securities, or extend credit. The proposed change would allow banks to have direct ties to 'qualifying' credit funds that have loans, debt instruments, and even some interest rate or foreign exchange derivatives.

Comments on the proposed changes will be received until 1 April 2020.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Fintech in 2020 – five trends to watch**

Technology's transformation of financial services will rapidly continue over the next decade.

This briefing predicts the five developments for fintech in 2020.

<https://www.cliffordchance.com/briefings/2020/01/fintech-in-2020--five-trends-to-watch.html>

### **High Yield outlook 2020 – Keep on keepin' on**

Spurred by an improved global macroeconomic environment, the European High Yield (HY) market had a strong performance in the second half of 2019. The current HY rally is poised to continue through the first half of 2020 supported by continued macroeconomic and near-term political certainty in Europe. Against this favourable economic and political backdrop, trends seen in the second half of 2019 are likely to persist, such as the prevalence of HY refinancing deals (including loan-to-bond and bond-to-bond), US companies opportunistically accessing the European HY market and the continuous evolution of HY covenant terms. This year is also likely to see an increase in HY-financed M&A mandates, a growing share of the global HY market represented by Emerging Markets issuers and a sustained focus on ESG by HY investors alongside continued financing competition from direct lenders.

This briefing discusses the High Yield outlook for 2020.

<https://www.cliffordchance.com/briefings/2020/01/high-yield-outlook-2020---keep-on-keepin--on.html>

### **The OECD proposal to rewrite the rules of worldwide taxation – our take on what it means, and whether it will happen**

There is now immense pressure to reform the way multinationals are taxed. The status quo – unchanged in essence for a hundred years – is widely seen by the public and policymakers as inadequate for the modern world and the digital economy. Last year, the OECD proposed a radical proposal to reshape the international tax system, creating new rights for countries to tax multinationals.

If the OECD process fails, many countries are likely to adopt unilateral measures and, with US companies the obvious targets, there is a real risk of

retaliation by the US – even a trade war. Sadly that is in our view now a very plausible outcome.

This briefing discusses the current state of the OECD proposals and assessing both their potential impact, and the likelihood they will be adopted.

<https://www.cliffordchance.com/briefings/2020/02/the-oecd-proposal-to-rewrite-the-rules-of-worldwide-taxation.html>

#### **New regulations for crypto-assets (virtual currencies) and initial coin offering and security token offering in Japan**

Japan is one of the world's first countries to establish regulations and licences for crypto-assets, initial coin offerings (ICOs) and security token offerings (STOs). On 14 January 2020, the Japan Financial Services Agency (FSA) released drafts of ordinances implementing amendments enacted in May 2019 to key legislation. This provides some clarity on the regulation of fundraising using this emerging asset class.

This briefing discusses the new regulations.

<https://www.cliffordchance.com/briefings/2020/02/new-regulations-for-crypto-assets--virtual-currencies--and-initi.html>

#### **Singapore variable capital companies – widening the array of Singapore fund structures**

On 14 January 2020, the Monetary Authority of Singapore (MAS) and Accounting and Corporate Regulatory Authority (ACRA) launched the Variable Capital Companies (VCC) framework following the passing of the Variable Capital Companies Act 2018 on 31 October 2018, which was amended by the Variable Capital Companies (Miscellaneous Amendments) Act 2019.

This briefing discusses several key features of the VCC and how the VCC strengthens the array of fund structuring options that are available to Singapore fund managers.

<https://www.cliffordchance.com/briefings/2020/01/singapore-variable-capital-companies-widening-the-array-of-singapore-fund-structures.html>

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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