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COVID-19: ECB writes open letter on contingency preparedness

The European Central Bank (ECB) has written an open letter to institutions to remind them of the critical need to consider and address potential pandemic risk in their contingency strategies. The letter prompts supervised entities to review their business continuity plans and consider what actions can be taken to enhance preparedness to minimise the potential adverse effects of the spread of COVID-19.

The letter identifies main risks associated with a potential pandemic and calls for institutions to take appropriate actions for preparing and responding to such an event, which may include:

- establishing adequate measures of infection control in the workplace;
- assessing to which extent contingency plans include a pandemic scenario which provides for scaling measures commensurate with the institution's geographic footprint and business risk for the stages of a pandemic outbreak;
- assessing how quickly measures foreseen under the pandemic scenario of the contingency plan could be implemented and how long operations could be sustained under such a scenario;
- assessing whether alternative and sufficient back-up sites can be established;
- assessing and urgently testing whether large scale remote working or other flexible working arrangements for critical staff can be activated and maintained to ensure business continuity;

- proactively assessing and testing the capacity of existing IT infrastructure, also considering a potential increase of cyber-attacks and potential higher reliance on remote banking services;
- assessing risks of increased cyber-security related fraud, aimed both at customers or at the institution via phishing mails; and
- entering into a dialogue with critical service providers to understand whether, and to ascertain how, services continuity would be ensured in case of a pandemic.

The ECB expects institutions to reach out to their Joint Supervisory Team (JST) immediately if significant shortfalls are identified when performing these checks and inform their JST in case of any significant developments.

EBA consults on identification methodology and reporting and disclosure requirements for G-SIIs

The European Banking Authority (EBA) has published a consultation paper on proposed updates to the identification methodology for global systemically relevant institutions (G-SIIs) and related capital buffer rates. The revision has been prompted by the revised framework for global systemically important banks (G-SIBs), published by the Basel Committee on Banking Supervision (BCBS) in July 2018, among other factors.

The consultation sets out the following texts:

- draft regulatory technical standards (RTS) on the identification methodology for G-SIIs;
- draft implementing technical standards (ITS) on Pillar 3 disclosure of indicators for G-SIBs; and
- draft revised guidelines on the specification, reporting and disclosure of indicators of global systemic importance.

Comments on the consultation are due by 5 June 2020. A public hearing will be held on 27 March 2020 in Paris.

EBA publishes additional analysis on implementation of Basel III, specialised lending and MREL

The EBA has published further analysis on the implementation of Basel III in the EU. In August and December 2019, the EBA responded to a call for advice from the EU Commission on the implementation of the final Basel III standards. It submitted two reports covering credit risk operational risk, securities financing transactions and output floor, and market risk and credit valuation adjustment risk standards respectively. It has now published additional analysis focusing specifically on the impact of Basel III on the areas of specialised lending and minimum requirement for own funds and eligible liabilities (MREL).

The analysis on specialised lending sets out, amongst other things, an overview of the use of regulatory approaches and portfolio composition and an analysis of the impact of the loss given default input floors and of the output floor. The analysis on MREL supplements the EBA's previous advice by combining the impact assessment of the finalisation of Basel III with some elements of the BRRD2 framework. Key findings of this analysis include that, for the 36 sample banks, the increased risk-weighted assets under Basel III would lead to a 22-26% increase in BRRD2 requirements, which translates into a shortfall in MREL resources ranging from EUR 86-105 billion.

EBA reports on institutions' Pillar 3 disclosures

The EBA has published a report assessing institutions' Pillar 3 disclosures with the aim of identifying best practices and potential areas for improvement that should help institutions enhance their own disclosures.

The report suggests that through the implementation of common disclosure formats and qualitative explanations which help communicate meaningful prudential information, institutions are on the correct path to achieving consistency and comparability. However, some of the EBA's findings may hamper the ability of users to access, understand and compare the information, including:

- omission of information without any indications of reasons for omission;
- unclear identification and location of Pillar 3 reports, hindering the ability of users to find them;
- lack of consistency in the structure of Pillar 3 reports and of some of the information reported, particularly qualitative information;
- oversimplification of interim reports compared to end-of-year reports; and
- lack of reconciliation of quantitative information across disclosure templates or inconsistent ways of calculating quantitative flows of information.

The EBA has also observed that while environmental, social and governance (ESG) related information is still scarce, institutions are starting to recognise environmental and climate chance risks as emerging risks and embedding sustainability considerations in their strategic agendas.

EBA reports on RTS on professional indemnity insurance for mortgage credit intermediaries

The EBA has published a report on the regulatory technical standard (RTS) specifying the minimum monetary amount of the professional indemnity insurance (PII) or comparable guarantee for mortgage credit intermediaries. After assessing information obtained from national authorities, from a sample of intermediaries and through desk-based research, the EBA has concluded that no amendments to the RTS are currently required.

The EBA has specified that this conclusion has been reached as its mandate set out in the Mortgage Credit Directive (MCD) only refers to the threshold amounts themselves. Therefore, the EBA has not conducted any thorough assessment of the contents of insurance contracts, nor has it assessed or analysed:

- the extent to which the usage of the minimum payout amounts prescribed in the RTS are potentially impeded by specific clauses in PII contracts;
- the nature of the comparable guarantee(s) that may be used in the market; or
- what should be understood as a 'comparable guarantee' at all.

In accordance with the MCD, the EBA will review the RTS on PII every two years.

EMIR: ESMA issues report on C6 energy derivatives and related obligations

The European Securities and Markets Authority (ESMA) has published a report on C6 energy derivative contracts in relation to obligations under the European Market Infrastructure Regulation (EMIR).

ESMA's report has been prepared at the request of the EU Commission, which, under MiFID, must prepare a report on whether certain EMIR obligations should apply to C6 energy derivative contracts.

C6 energy derivative contracts refer to derivative contracts relating to coal or oil that are traded on an organised trading facility (OTF) and that are physically settled.

ESMA's report assesses the adequacy of C6 energy derivative contracts, which are currently subject to the clearing obligation and margin requirements under EMIR. ESMA analysed the potential impact of including these contracts in the calculation to determine which counterparties are subject to clearing.

The report has been submitted by ESMA as input for the Commission's report under Article 90(4) of MiFID.

SEPA: updated 2019 payment scheme and SPL rulebooks published

The European Payments Council (EPC) has published updated 2019 Single Euro Payments Area (SEPA) payment scheme rulebooks and version 2.0 of the SEPA Proxy Lookup (SPL) scheme rulebook.

The updated SEPA payment scheme rulebooks, which are in force from 1 April 2020 to 21 November 2021, are:

- the 2019 Credit Transfer (SCT) rulebook version 1.1;
- the 2019 Instant Credit Transfer (SCT Inst) rulebook version 1.1;
- the 2019 Direct Debit Core (SDD) rulebook version 1.1; and
- the 2019 Direct Debit B2B (SDD B2B) rulebook version 1.1.

The updated rules reflect the creation of a Dispute Resolution Committee (DRC), which replaces the Compliance and Adherence Committee (CAC) and the Appeals Committee. There are no changes to the business and operational rules.

The updated SPL scheme rulebook, which results from the 2019 change management process and comes into force on 1 June 2020, includes changes to the email address and reachability check, the specification of a maximum liability amount and Responding Registry Provider (RRP) fees.

Brexit: UK publishes letter on equivalence assessments

The UK Government has published a letter dated 27 February 2020 from Rishi Sunak, Chancellor of the Exchequer, to Valdis Dombrovskis, European Commissioner for Financial Stability, Financial Services and Capital Markets Union (CMU), on the UK's preparations for assessments of financial services equivalence.

The letter notes the UK's commitment to conclude equivalence assessments by the end of June 2020 and its intention to work collaboratively with the EU to support their autonomous decision-making. To that end, the UK proposes to establish a dialogue for the exchange of information distinct from the current negotiations on the future relationship, which includes HM Treasury officials reaching out to their EU counterparts to:

- initiate discussions on equivalence;
- establish a programme of meetings; and
- provide initial technical information on the UK's equivalence framework and regulatory regime.

Broadly, the letter reiterates the UK's commitment to working with the EU to build a friendly future relationship on financial services based on cooperation between sovereign equals.

Sustainable finance: FCA consults on proposals to improve climate change-related financial disclosures by listed issuers

The Financial Conduct Authority (FCA) has published a consultation paper (CP20/3) on proposals to enhance climate-related disclosures by listed issuers and the clarification of existing disclosure obligations.

The FCA is proposing to introduce a new rule for commercial companies with a premium UK listing that requires them to state whether they comply with the recommendations of the Financial Stability Board (FSB) taskforce on Climate-related Financial Disclosures (TCFD) and explain any non-compliance. The disclosures would be voluntary, at least initially, as the FCA recognises that issuers' capabilities are still developing in some areas and binding requirements may not be achievable.

Additionally, the FCA proposes to provide guidance, through a technical note, on existing obligations set out in EU legislation and in the FCA Handbook that may already require issuers to disclose information on climate-related and other environmental, social and governance (ESG) matters, under certain circumstances. This guidance would be relevant for a wider scope of entities, including all companies with listed securities, not just those in the premium segment.

The FCA expects that the proposed rule would be a first step towards adoption of the TCFD's recommendations more widely within its rules as they apply to listed companies and financial services companies.

Comments are due by 5 June 2020. The FCA will consider the feedback received to CP20/3 and plans to publish a policy statement, along with the finalised rules and technical note, later in 2020.

FCA publishes policy statement on proposed amendments to permitted links rules in COBS Sourcebook

The FCA has published a policy statement (PS20/4) setting out its response to feedback received to its December 2018 consultation (CP18/40) on the proposed amendment of COBS 21.3 permitted links rules in the Conduct of Business Sourcebook (COBS) along with the final rules and guidance.

The new rules seek to address any unjustified barriers the permitted links rules in COBS may present to investment by retail investors in a broader range of long-term assets in unit-linked funds, while continuing to offer an appropriate degree of investor protection.

Firms wishing to make use of the new conditional permitted links will need to ensure compliance with these rules with effect from 4 March 2020.

FCA releases statement on Covid-19

The FCA has announced that it is working in conjunction with the Bank of England (BoE) and HM Treasury with the financial services sector to ensure effective responses to the Covid-19 outbreak. The FCA expects all firms to have contingency plans in place to deal with major events, and it is actively reviewing the contingency plans of a wide range of firms alongside the BoE.

The FCA also expects firms to take all reasonable steps to meet their regulatory obligations, including using relevant systems, using recorded lines when trading and giving staff access to compliance support. The FCA has stated that it has no objection if firms are able to meet these standards from backup sites or with staff working from home.

The FCA has indicated that it wants to work with firms and trade associations to understand, deal with and resolve any issues they may face and continue to have an active dialogue with firms, institutions and industry bodies in the coming weeks. The FCA will keep its guidance under review as necessary.

PRA publishes policy statement on supervising liquidity and funding risks

The Prudential Regulation Authority (PRA) has published a policy statement setting out its final policy and feedback to responses received to its consultation (CP27/19) on the supervision of liquidity and funding risks. In CP27/19 the PRA sought feedback on proposals to update the supervisory statement 'The PRA's approach to supervising liquidity and funding risk' (SS24/15) to reflect relevant updates to the Bank of England's Market Operations Guide and to reiterate relevant expectations set out in its supervisory statement 'Recovery Planning' (SS9/17).

In particular, the PRA proposed that there should be no presumptive order in which firms should use the Bank of England's liquidity facilities, including the Discount Window Facility (DWF), or draw down their own liquid asset buffers to meet a liquidity need, and that the expectations set out in SS9/17 should also apply with regards to firms' use of central bank facilities as outlined in SS24/15.

Overall respondents supported the PRA's proposals and the final policy has been published as consulted upon. The amended SS24/15 came into effect on 2 March 2020.

PRA writes to Solvency II insurers, large non-Directive firms and CRR firms on board diversity rules

The PRA has published a letter from its Executive Directors for International Banks Supervision, UK Deposit Takers Supervision and Insurance Supervision to CRR firms and large and medium insurers on the PRA rules on board diversity.

The letter aims to reinforce the importance the PRA places on diversity for improving decision-making and providing effective challenge, and is a reminder of the requirement to comply with PRA rules in this area.

It follows the publication of the EBA's report on the benchmarking of diversity practices in February 2020, which showed that 70% of the sampled UK credit institutions and investment firms have a policy in place for promoting diversity on the management body. The PRA notes that while there has been substantial progress since the initial EBA benchmarking exercise in 2015 (when only 15% of the sampled UK credit institutions and investment firms reported to have a policy), compliance is still not universal.

The PRA encourages chairs to satisfy themselves that their firm is meeting the PRA's requirements and take remedial action where they are not.

PSR issues revised General and Specific Directions

The Payment Systems Regulator (PSR) has issued new General Directions (GDs) 1 to 5 and Specific Direction 1 (SD1).

The following directions replace the 'day one' directions issued in 2015 to reflect various market and legislative changes, such as PSD2, as implemented in the UK through the Payment Services Regulations (PSRs 2017), and the Interchange Fee Regulation (IFR):

- GD1 on cooperative relationships with the PSR, which is extended to apply to parties regulated under the IFR and the PSRs 2017;
- GD2 on access requirements for payment system operators regulated under the Financial Services (Banking Reform) Act 2013 (FSBRA);
- GD3 on access requirements for payment system operators regulated under the PSRs 2017, which is extended to JCB, UnionPay, Diners Club and American Express;
- GD4 on requirements for interbank payment systems relating to service-user interests, which consolidates the previous GDs 4 and 6;
- GD5 on avoiding conflicts of interest between operators of payment systems and providers of central infrastructure to those same payment systems; and
- SD1 on access for sponsor banks, which clarifies that the directive covers all entities within a ring-fenced group and all indirect access services.

The PSR has also published its response to its consultation on the new directions and a factsheet setting out the changes made.

The new GDs take effect from 5 April 2020. The new SD1 takes effect from 5 May 2020.

BaFin publishes guidance note on crypto safe custody business

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has published a guidance note with information on crypto safe custody business.

The note provides explanatory guidance and information on the interpretation of crypto safe custody business, which was introduced as a new financial service in the German Banking Act (Kreditwesengesetz, KWG) as of 1 January 2020, by the Act Implementing the Amending Directive to the Fourth European Money Laundering Directive (Gesetz zur Umsetzung der Änderungsrichtlinie zur Vierten Europäischen Geldwäscherichtlinie). Undertakings wishing to provide this service now require a licence from BaFin.

German Sustainable Finance Advisory Board consults on its interim report

The Sustainable Finance Advisory Board (Sustainable Finance-Beirat) established by the German Federal Government has presented its interim report on the significance of sustainable finance to the great transformation

(‘Die Bedeutung einer nachhaltigen Finanzwirtschaft für die große Transformation’) containing the first concrete initiatives for a German sustainable finance strategy.

The Federal Government is committed to ensuring that financial market players take sustainability aspects into account in their decisions. Sustainable finance can make an important contribution to securing financial market stability and achieving the climate and sustainability goals.

State Secretary of Finance Dr. Jörg Kukies said the report shows which approaches the Board sees for a German sustainable finance strategy. He noted that apart from the planned issuance of green bonds by the German Federal Government in 2020 a sustainability concept for certain assets linked to the Government was adopted, and that the Board now expects financial market players to make a move.

State Secretary for the Environment Jochen Flasbarth added that the development of a sustainable finance strategy for Germany is a fundamental measure of the 2030 climate protection programme, and that a sustainably oriented financial system is crucial to making the transformation to a climate-neutral and sustainable real economy a success.

The interim report is now being consulted on for a four week period starting on 5 March. All market participants are invited to comment in the context of the written consultation and to provide impulses for the further specification of the recommendations.

CSSF issues communiqué regarding examination of non-financial information published by certain issuers for 2018 financial year

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a communiqué regarding the examination of non-financial information published by certain issuers for the 2018 financial year.

The communiqué notes that the financial year ending 31 December 2018 marked the second year of the application of the Law of 23 July 2016 on disclosure of non-financial and diversity information for certain large undertakings and groups.

According to the communiqué, the overall level of disclosure in relation to environmental, social, employee, respect for human rights, anticorruption and bribery matters in the non-financial statement of issuers covered by the Law has improved compared to the previous year, showing not only an increased level of compliance with the Law, but also a genuine integration of these matters into the lifecycle of companies.

The report is structured around the guidance provided by the non-binding guidelines on non-financial reporting (methodology for reporting non-financial information) (2017/C 215/01) issued by the EU Commission and setting out key principles for providing useful, relevant and comparable information. In order to provide such information, entities should first identify the matters that are materially significant.

While the CSSF emphasises that the non-financial statements are generally fair, understandable, comprehensive and oriented towards the entity’s stakeholders, the CSSF also notes that these statements are not always well balanced, and that the fundamental concept of materiality is not yet applied equally by all reviewed issuers.

The communiqué specifies that there is still room for improvement and that a higher level of disclosure is expected in certain areas, in particular:

- the description of the entity's business model incorporating the sustainability criteria;
- the due diligence process in place to ensure that the entity achieves concrete objectives; and
- the key risks relating to the matters set out in the Law and their management.

CSSF issues circular amending regime for semi-annual reporting of borrower related residential real estate indicators

The CSSF has issued circular 20/737 amending circular CSSF 18/703 on the introduction of semi-annual reporting of borrower related residential real estate indicators.

The circular is addressed to all lenders in residential real estate.

The objective of the circular is to modify circular 18/703 and to provide information on an update of the data collection template. The new data collection template is no longer an annex to circular CSSF 18/703, but can now be found on the CSSF website.

Reporting institutions should therefore always ensure that they use and submit the latest version. The CSSF has indicated that it will inform reporting institutions of future changes to the template.

A redline version of circular 18/703 is enclosed with the circular.

CSSF issues press release on results of enforcement of 2018 financial information published by issuers subject to Transparency Law

The CSSF has issued a press release (20/06) on the results of the enforcement of the 2018 financial information published by issuers subject to the law of 11 January 2008 on transparency requirements for issuers (the Transparency Law).

In the context of its mission of supervising securities markets, the CSSF is in charge of examining the financial information published by issuers of securities. Through this activity, generally known as enforcement, the CSSF seeks to ensure that the financial information complies with the relevant reporting framework, i.e. the applicable accounting standards. Beyond the legal and regulatory requirements, the examination of the financial information is intended to contribute to investor protection and confidence in the financial markets.

The matters raised in the press release derive from a combination of:

- financial reporting issues identified during the CSSF's examinations undertaken during 2019;
- matters identified in the course of the CSSF's work on these subjects but not raised with specific issuers; and
- the CSSF's expectations of issuers with regard to future financial reports.

The purpose of the press release is to assist the issuers' management and those charged with governance in the preparation of financial reports by offering observations on selected topics. The press release may also provide users of financial statements with some useful information on which they may focus when using those financial statements.

BRRD2: Amendments to Act on Bank Guarantee Fund, Deposit Guarantee Scheme and Compulsory Resolution published

The Polish Ministry of Finance has prepared draft amendments to the Act on the Bank Guarantee Fund, the Deposit Guarantee Scheme and Compulsory Restructuring, which are intended to implement Directive (EU) 2019/879 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (BRRD2) into Polish law.

Among other things, the draft extends the time limit for Polish banks to fulfil the minimum requirement for own funds and eligible liabilities (MREL) to 2024. Furthermore, the amendments introduce:

- new terms – 'resolution entity' and 'resolution group', which are determined with the preferred resolution strategy;
- a moratorium, i.e. rights for the compulsory resolution authority to temporarily suspend the performance of certain liabilities to certain of the entity's creditors at a stage before the resolution process begins but after the bank has been recognised as being on the verge of insolvency;
- provisions aimed at protecting retail investors against the risk of investing in a banks' debt securities that could be bailed-in;
- provisions on contractual recognition of the suspension of liabilities under financial agreements concluded by a national entity if the agreement is governed by the law of a third state; and
- modifications to provisions on contractual recognition of bail-in in relation to liabilities governed by the law of a third state.

Royal Decree on legal regime for financial credit establishments published

Royal Decree 309/2020, of 11 February, on the legal regime for financial credit establishments implementing Law 10/2014, of 26 June, on the regulation, supervision and solvency of credit institutions has been published. The Royal Decree implements Title II of Law 5/2015 of 27 April specifying the legal regime for Spanish financial credit establishments and consolidated groups or subgroups of financial credit establishments with a parent company in Spain with regard to access to activity, solvency requirements and the supervisory regime.

The Royal Decree has the following structure and contents:

- general provisions – the main purpose of this section is to strengthen the rules on significant shareholdings, suitability, incompatibilities and registration of senior executives, corporate governance and remuneration and solvency policy;
- activity requirements – in this section, the new authorisation procedure for these institutions is implemented (in particular, the new single authorisation regime for hybrid institutions, which are configured as payment or electronic money institutions that carry out activities specific to financial credit establishments). Cross-border activities, opening of offices, acting through agents, significant shareholdings, suitability requirements and

principles of corporate governance and remuneration policy are other issues regulated in this section;

- solvency and conduct requirements – the principal innovation is the establishment of a liquidity cushion that financial credit establishments will have to hold and the obligation to maintain an appropriate structure of funding sources and maturity of assets, liabilities and commitments;
- supervision by the Bank of Spain; and
- additional issues regarding transformation into banks, audit of annual accounts, foreign branches and subsidiaries, etc.

The Royal Decree will enter into force on 1 July 2020, except for article 30 regarding the liquidity cushion, which will enter into force three months after the publication of the Bank of Spain's circular implementing the provisions of said article, and the second final provision (amending the Mercantile Registry Regulations), which will enter into force the day after its publication in the Official Spanish Gazette.

Spanish Government consults on implementation of Covered Bonds Directive

The Spanish Ministry of Economic Affairs and Digital Transformation has launched a consultation on the implementation in Spain of Directive (EU) 2019/2162 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU.

The consultation is open until 17 March 2020.

Capital Markets Board of Turkey extends temporary ban on short selling

The Capital Markets Board of the Republic of Turkey (CMB) has announced that the temporary ban on short selling shares traded in Borsa Istanbul, which was put in place on 28 February 2020 and also covers any trading positions that are closed out on the same day that they were opened, will stay in force until further notice. The CMB has further clarified that until the temporary ban is lifted, brokers are liable to ensure that no shares are being sold in breach of the temporary ban.

HKEX updates and streamlines guidance materials

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has updated three guidance letters, eight sets of frequently asked questions (FAQs), and withdrawn fifteen guidance materials to streamline its guidance and related materials, and provide the market with clarity on the application of certain listing rules and practices.

The changes include the following:

- Guidance letters HKEXGL89-16 (Guidance on issues related to 'controlling shareholder' and related Listing Rules implications), HKEX-GL52-13 (Guidance for mineral companies), and HKEX-GL36-12 (Guidance on due diligence to be conducted by the sponsor and disclosure in the listing document relating to a distributorship business model) have been updated;
- FAQs that have been updated:
  - FAQ Series 1 (rule requirements regarding listing criteria issues);

- FAQ Series 5 (rule amendments regarding growth enterprise market (GEM) Review);
- FAQ Series 8 (rule amendments regarding the 2008 combined consultation);
- FAQ Series 20 (rule requirements regarding notifiable transactions, connected transactions and issues of securities);
- FAQ Series 24 (listing rule changes to complement the Securities and Futures Commission's New Sponsor Regulation effective on 1 October 2013);
- FAQ Series 26 (questions regarding the new Companies Ordinance and its impact on issuers);
- FAQ Series 31 (questions regarding the review of listing rules on disclosure of financial information with reference to the new companies ordinance and Hong Kong financial reporting standards and proposed minor/housekeeping rule amendments); and
- FAQ No. 008-2017 to 022-2017 and 023-2018 (questions regarding the review of the GEM and changes to the GEM and Main Board listing rules); and

- Guidance materials – eight guidance materials have been consolidated into the revised guidance for mineral companies, four outdated listing decisions (LD106-1, LD46-3, LD21-2 and LD12-3) and three interpretative letters (RL4-05, RL6-05 and RL22-07) have been withdrawn.

HKMA issues circular on sound risk management practices for algorithmic trading

The Hong Kong Monetary Authority (HKMA) has issued a circular to all authorised institutions to share with them a number of sound practices to manage the risks associated with algorithmic trading (algo-trading).

In 2018 the HKMA conducted a survey to understand the extent and nature of authorised institutions' algo-trading activities. The results indicated, among other things, that around 40% of the surveyed authorised institutions already undertook algo-trading, most commonly in executing trade orders and market-making for foreign exchange-related transactions. The survey also suggested that algo-trading may become more prevalent in the banking industry.

In light of the 2018 survey results, the HKMA conducted a round of thematic on-site examinations in 2019, focused on algo-trading. The examinations were intended to assess the adequacy and effectiveness of authorised institutions' risk management practices relating to algo-trading activities, including governance and oversight, development and testing of algorithms, and risk monitoring and controls.

In the course of the examinations, the HKMA observed a number of sound practices adopted by the more advanced authorised institutions. In the circular, the HKMA sets out its supervisory expectations around algo-trading and shares the sound practices observed during the thematic examinations. The HKMA expects authorised institutions engaged in algo-trading activities to give due consideration to the supervisory expectations and sound practices when developing their risk management framework, having regard to the nature, scale and complexity of their algo-trading activities.

FSC announces plans to supervise implementation of new mortgage regulations through administrative guidance

The Korean Financial Services Commission (FSC) has announced that it will supervise the implementation of the new mortgage regulations through administrative guidance on mortgage loan regulations in speculative areas beginning on 2 March 2020, as a part of government-wide efforts to prevent speculative demand and curb housing market overheating in newly designated speculative areas.

Amongst other things, the key provisions under the new mortgage regulations include the following:

- loan-to-value (LTV) regulation in newly designated speculative areas – the current LTV ratio of 60% will be lowered to 50% when purchasing homes valued up to KRW 900 million in the newly designated speculative areas. For amounts above KRW 900 million, a 30% LTV ratio will be applied; and
- mortgage loans for businesses – the current mortgage loan restrictions for businesses will equally be applicable to newly designated speculative areas.

FSC plans to introduce consumer credit bill to enhance financial inclusiveness

The FSC has announced its plans to draft a bill on consumer credit and push for the enactment of the legislation within 2020 in order to enhance financial inclusiveness.

The FSC notes that under the current personal debt management system, it can be difficult for delinquent debtors to recover on their own and they face the risk of turning into long-term delinquent debtors. The improvement is intended to focus on providing more safeguards for debtors and providing more chances for them to improve their financial situation by modifying the structure that currently tolerates excessive debt collection practices.

The new legislation will replace the current Act on Registration of Credit Business, etc. and Protection of Finance Users. It will also take essential provisions on the contents and procedures of loan contracts from the Credit Business Act, while establishing new regulations on delinquent debt management, termination of contracts, etc.

The key provisions of the new legislation include the following:

- establishing a new debtors' right through which debtors can request debt restructuring from financial institutions, in order to help them find ways to recover and resume their normal economic activities;
- restricting accumulation of delinquent debts and excessive debt collection practices; and
- requiring financial companies to maintain the responsibility of protecting consumer trust when debts are collected by third party collectors.

The FSC has indicated that the taskforces that have been studying ways to improve the management of personal arrears will conclude their investigation in March 2020 and the findings will be announced in the second quarter of 2020. Based on their findings, the FSC will draw up a bill on consumer credit and submit it to the National Assembly in the second half of 2020 with the aim that the legislation becomes enacted within 2020 for implementation in the second half of 2021.

Korean Government approves revision to Financial Investment Services and Capital Markets Act relating to OTC derivatives markets

The FSC has announced that the Korean Government has approved a revision bill to the Financial Investment Services and Capital Markets Act (FSCMA). The revision is intended to enhance transparency and reduce systemic risks in over-the-counter (OTC) derivatives markets by establishing statutory provisions for:

- a trade repository, which will be introduced in October 2020 through amendments to the Regulation on Financial Investment Businesses; and
- margin requirements for non-centrally cleared OTC derivatives, which are currently implemented via administrative guidelines issued by the Financial Supervisory Service (FSS).

In particular, the key provisions under the revision bill include the following:

- reporting requirement to trade repository – financial investment companies will be required to report transaction information on OTC derivatives to a trade repository and may be subject to fines of up to KRW 100 million for violation of reporting requirements;
- authorisation for trade repository business – a trade repository will be required to obtain authorisation for 'trade repository business' and abide by regulatory requirements for executive qualifications and internal controls;
- supervision of trade repository – a trade repository will be required to obtain an approval from the FSC for establishing or amending its operational rules. The FSS can also inspect the business operations and financial status of a trade repository. Further, the FSC may revoke the authorisation, suspend the business operations or sanction executives of a trade repository if they commit illegal activities;
- provision of trading information – a trade repository will be required to provide financial authorities, including the FSC, the FSS, and the Bank of Korea with transaction information and disclose transaction-related statistics online; and
- margin requirements for non-centrally cleared derivatives – financial institutions whose balance of non-centrally cleared derivatives is more than KRW 3 trillion will be required to deposit margins for their transactions in non-centrally cleared derivatives.

The FSC has indicated that the revision bill will be submitted to the National Assembly in March 2020.

RECENT CLIFFORD CHANCE BRIEFINGS

LIBOR transitioning – the impact on facility agents

With LIBOR due to be phased out by the end of 2021, loan agents need to understand how this will affect their business and how to best prepare themselves for such an unprecedented change.

This briefing discusses the impact of LIBOR transitioning for agents – both from the perspective of their own position and as representatives for lenders.

https://www.cliffordchance.com/briefings/2020/03/libor-transitioning---the-impact-on-facility-agents.html

LIBOR transitioning – navigating the impact for trustees in the capital markets

Corporate trustees for notes that mature after the end of 2021 should brace themselves for LIBOR being phased out. While trustees have been closely monitoring benchmark replacement terms since the FCA signalled that it would no longer compel banks to submit LIBOR submissions, LIBOR transitioning will increase as 2021 draws closer and trustees will need to be prepared for the impact on their role.

This briefing discusses the impact of LIBOR transitioning for trustees.

https://www.cliffordchance.com/briefings/2020/03/libor-transitioning---navigating-the-impact-for-trustees-in-the-.html

Coronavirus (Covid-19) issues relating to loan financings in APAC

The Coronavirus (Covid-19) outbreak is causing disruption to businesses across sectors and jurisdictions.

This briefing discusses some practical tips for lenders and borrowers in loan financings to consider.

https://www.cliffordchance.com/briefings/2020/03/coronavirus--covid-19--issues-relating-to-loan-financings-in-apa.html

Coronavirus (Covid-19) – Insurance issues

The outbreak of Coronavirus (Covid-19) and the resulting disruption to travel and supply chains, as well as to operations, risks exposure to significant losses for many businesses. Those losses may well be covered under insurance.

This briefing discusses the steps that businesses with policies governed by English law need to take to determine whether relevant cover is available, and to maximise the prospects of the insurance responding where it is.

https://www.cliffordchance.com/briefings/2020/03/coronavirus--covid-19---insurance-issues.html

Coronavirus (Covid-19) – challenges for employers

As the Coronavirus (Covid-19) outbreak continues to spread, businesses face a range of issues.

This briefing discusses the key risks and legal considerations for employers.

https://www.cliffordchance.com/briefings/2020/03/libor-transitioning---the-impact-on-facility-agents.html

Coronavirus – close-outs – where are we now?

Coronavirus has caused disruption and volatility to the financial markets leading to margin calls and settlement disruptions with the result that defaults may become more widespread.

This briefing includes some reminders for institutions dealing with failures to pay or deliver to bear in mind, looking at close-outs and terminations in general terms.

https://www.cliffordchance.com/briefings/2020/03/coronavirus--close-outs---where-are-we-now-.html

Coronavirus, contracts, supply chains and the threat of disputes

There is huge uncertainty as to the course that Coronavirus will take, but uncertainty is not a justification for companies and their directors to ignore the threat posed by the virus. Planning must include how to handle existing transactions that may be at risk from the virus, as well as the protections required in transactions being negotiated now.

This briefing discusses issues in English law.

https://www.cliffordchance.com/briefings/2020/03/coronavirus--contracts--supply-chains-and-the-threat-of-disputes.html

Coronavirus – can electronic signatures help?

The precautions being put in place globally to address the spread of Coronavirus (Covid 19) include recommending or requiring many to work from home. This has raised the question of whether it is possible to legally execute documents by electronic signature. The answer is it depends. Relevant factors include the governing law of the document, the type of document that is to be signed, the form of electronic signature used and whether there are cross-border implications to be considered.

This briefing discusses the position of electronic signatures under English law and looks briefly at electronic signing (or e-signing) platforms.

https://www.cliffordchance.com/briefings/2020/03/coronavirus--can-electronic-signatures-help-.html

AMLD5 – expansion of the UK trust registration service – implications of the draft regulations for UK business

On 24 January 2020, HM Revenue and Customs (HMRC) and HM Treasury (HMT) published the anticipated technical consultation on the expansion of the trust registration service to cover all express trusts in order to implement the EU Fifth Anti-Money Laundering Directive (AMLD5). Appended to the consultation document are the proposed draft regulations for the expanded registration requirement. The technical consultation promises a proportionate approach by government to the registration requirement and an intention to keep out of scope trusts which present a low risk of being manipulated for money laundering and terrorist financing purposes (low AML risk).

However, the draft regulations do not fully realise this ambition. Given the ubiquity of trusts in English law, this risks creating considerable commercial disruption and even undermining the purpose of the regulations. Clifford Chance has therefore submitted a response to the consultation informed by our practical experience of trusts across a wide range of commercial transactions.

This briefing discusses some of the key themes in the response.

https://www.cliffordchance.com/briefings/2020/03/amld5-expansion-of-the-uk-trust-registration-service.html

New reforms to Saudi derivatives market

The Saudi Arabian Monetary Authority (SAMA) enacted rules on trade repository reporting and risk mitigation requirements for OTC derivatives contracts in November 2019 to introduce reforms in response to G20 commitments to regulate over-the-counter (OTC) derivatives markets in the aftermath of the global financial crisis.

Similar reforms in other jurisdictions have already fundamentally changed derivatives trading internationally in many ways and Saudi financial institutions will have already been party to the extra-territorial impacts of these global reforms.

The SAMA Trade Reporting and OTC Risk Mitigation Rules introduce similar changes, with the aims of reducing systemic risk and improving transparency in the derivatives markets, which will impact not just SAMA-regulated entities, but also corporates, other 'buy-side' financial investors and regional financial institutions.

This briefing discusses the new rules.

https://www.cliffordchance.com/briefings/2020/03/new-reforms-to-saudi-derivatives-market.html

Head of criminal enforcement in the DOJ Antitrust Division lays out leniency program priorities at the International Cartel Workshop

On 19 February 2020, Deputy Assistant Attorney General Richard A. Powers of the US Department of Justice's Antitrust Division opened the 13th International Cartel Workshop with a speech on leniency. Powers is only the fourth person to serve as the division's head of criminal enforcement since the leniency policy was instituted, and his tenure will be defined in part by how the division copes with the growing challenges to the leniency system. While the speech mainly reflected longstanding policy, Powers' remarks provided new insight into how the division is implementing recent policy changes aimed at incentivizing companies to create and maintain robust antitrust compliance regimes. Powers also addressed the ballooning costs of participating in the leniency program, which arise from the increasingly complex and international nature of many cartel investigations and which could continue to grow if a key damages-reduction provision is allowed to expire this June. Unfortunately, the remarks lacked specifics on how the division plans to rein in these costs. Given the extraterritorial application of US antitrust laws, companies around the world should take note of Powers' remarks as a window into the division's thinking on these issues.

This briefing discusses the speech given by Powers.

https://www.cliffordchance.com/briefings/2020/03/head-of-criminal-enforcement-in-the-doj-antitrust-division-lays-.html

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