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Coronavirus: EU and UK financial regulators respond

EU and UK financial regulators have issued various statements and announced measures in response to the outbreak of coronavirus (Covid-19). Amongst other things, the regulators have addressed:

- contingency preparedness and expectations for firms to continue to provide services and take reasonable steps to comply with regulatory obligations, such as prompt entry of orders and transactions into relevant systems and telephone recording requirements (e.g. statements by the [European Central Bank \(ECB\)](#), [Financial Conduct Authority \(FCA\)](#), [Autorité des marchés financiers \(AMF\)](#), [German Federal Financial Supervisory Authority \(BaFin\)](#), [Dutch Central Bank \(DNB\)](#), and a [Communiqué](#) and [FAQ](#) from the Commission de Surveillance du Secteur Financier (CSSF) focusing on remote working issues;
- issues for listed companies about holding general meetings – the [Spanish Comisión Nacional del Mercado de Valores \(CNMV\)](#) has published an update on this;
- capital / prudential actions, such as the [Prudential Regulation Authority \(PRA\)](#) announcing that the Financial Policy Committee (FPC) has reduced the UK countercyclical capital buffer rate to 0% of banks' exposures to UK borrowers with immediate effect. The rate had been 1% and had been due to reach 2% by December 2020. The [National Bank of Belgium](#) has also reduced the countercyclical capital buffer, which was set at 0.5% in June 2019, back to 0%; and
- regulators' own emergency responses, including staff working remotely (e.g. CNMV has published an [update](#) about half of its staff working

remotely. The [ECB](#) and [European Banking Authority \(EBA\)](#) have also announced their own operational changes linked to coronavirus).

The ECB has also issued a statement providing [temporary capital and operational relief](#) to its directly supervised banks, as well as announcing a [package of monetary policy measures](#), including additional longer-term refinancing operations to provide immediate liquidity support to the euro area financial system.

The [European Securities and Markets Authority \(ESMA\)](#) has issued a statement recommending that:

- all financial market participants and infrastructures should be ready to apply their contingency plans, including deployment of business continuity measures, to ensure operational continuity in line with regulatory obligations;
- issuers should disclose as soon as possible any relevant significant information concerning the impacts of Covid-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation;
- issuers should provide transparency on the actual and potential impacts of Covid-19, to the extent possible based on both a qualitative and quantitative assessment of their business activities, financial situation and economic performance in their 2019 year-end financial report if these have not yet been finalised or otherwise in their interim financial reporting disclosures; and
- asset managers should continue to apply the requirements on risk management and react accordingly.

EBA publishes chapter on management information systems in the context of valuation for resolution

The EBA has published a [chapter](#) on management information systems (MIS) which forms part of its Handbook on valuation for purposes of resolution. The chapter aims to enhance institutions' preparedness in business and focuses on how resolution authorities should assess institutions' MIS, in the context of the resolvability assessment, to ensure that data and information are swiftly provided to support a robust valuation for resolution, referred to as Valuation MIS.

The EBA approach to Valuation MIS embeds the proportionality principle and is complemented by a data dictionary for benchmarking purposes, which the EBA expects institutions to use to perform a self-assessment of the internally available data and information. According to the EBA, the results of the self-assessment will form the basis of a dialogue between the institution and the resolution authorities in the context of the resolvability assessment to calibrate the Valuation MIS requirements.

Working group on euro risk-free rates consults on swaptions impacted by transition from EONIA to the €STR

The working group on euro risk-free rates has launched a [consultation](#) on whether to issue recommendations to address specific issues for swaption

products as a result of the proposed transition from EONIA to the euro short-term rate (€STR).

This follows the publication of a report in February 2020 on the transfer of EONIA's cash and derivative markets liquidity to the €STR.

The CCP discounting switch from EONIA to the €STR, planned for June 2020, will raise specific issues for swaption products. If the exercise date of these contracts is after the CCP transition date, their valuation may change as a result of the discounting switch from EONIA to the €STR. However, the CCP compensation mechanism will not apply to them because the contracts are bilateral, not cleared.

The working group on euro risk-free rates is seeking feedback as to whether it should issue recommendations regarding the voluntary exchange (or lack thereof) of a cash compensation between bilateral counterparties to such swaption contracts.

Comments are due 3 April 2020.

Benchmarks: ESMA consults on draft RTS

ESMA has published a [consultation](#) on draft regulatory technical standards (RTS) under the Benchmarks Regulation.

The five draft RTS, required to be developed by ESMA under the ESAs' Review / Omnibus 3 Regulation (EU) 2019/2175, cover:

- administrators' governance arrangements;
- the methodology for determining benchmarks;
- characteristics of the systems and controls for identifying and reporting infringements;
- the mandatory administration of critical benchmarks; and
- the criteria under which competent authorities may review compliance statements by non-significant benchmarks.

The consultation closes on 9 May 2020. ESMA intends to publish a final report and submit the draft RTS to the EU Commission for endorsement by 1 October 2020.

MiFID2/MiFIR Review: ESMA consults on transparency for non-equity instruments and derivatives trading obligation

ESMA has published a [consultation](#) on its MiFID2/MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives.

ESMA broadly finds that the level of pre-trade and post-trade transparency in non-equity markets remains limited due to the high use of waivers and the complex deferral regime. ESMA therefore sets out proposals aimed at simplifying the structure of the transparency framework and improving the overall transparency available to market participants.

The review report also covers the following related mandates:

- to report on the impact of the trading obligation for derivatives and the progress made in moving trading in standardised OTC derivatives to exchanges or electronic trading platforms; and
- to submit an assessment of the operation of the thresholds for the liquidity criterion 'average daily number of trades' for bonds.

ESMA published a consultation on the transparency regime applicable to equity and equity-like instruments in February 2020.

The consultation closes on 19 April 2020. ESMA intends to publish a final report in July 2020.

ESMA publishes 2020 Supervision Work Programme for credit rating agencies, trade repositories, and third-country CCPs and CSDs

ESMA has published its [annual report](#) to highlight its direct supervisory activities during 2019 regarding credit rating agencies (CRAs) and trade repositories (TRs), its activities regarding the recognition and monitoring of third-country central counterparties (TC-CCPs) and central securities depositories (TC-CSDs), and the work it will undertake in 2020 to prepare for the new supervisory mandates conferred to it under the Securities Financing Transactions Regulation (SFTR), the Securitisation Regulation, the Benchmarks Regulation and MiFIR.

EU Commission appoints John Berrigan as new Director-General of DG FISMA

The EU Commission has announced its decision to appoint [John Berrigan](#) as Director-General of DG Financial Stability, Financial Services and Capital Markets Union (DG FISMA) with immediate effect.

Mr Berrigan was Deputy Director-General in DG FISMA between 16 December 2015 and 3 March 2020, and has been acting Director-General since previous Director-General Olivier Guersent took up his role as Director-General at DG Competition on 1 January 2020.

EU Commission publishes report on Interchange Fees Regulation

The EU Commission has published the final [report](#) of a study on the application of the Interchange Fees Regulation (IFR).

The study, contracted out by the Commission to Ernst & Young, broadly finds that the IFR has reduced the interchange fees for card-based payments and facilitated entry into and competition on several payment markets, but warns that benefits of the IFR, such as lower merchants' costs, may be reduced if acquiring margins and scheme fees continue to increase.

Recommendations include:

- keeping the interchange fee caps on consumer card transactions;
- monitoring the level, structure and transparency of scheme fees;
- strengthening the provision of transparent, simple and unblended price information for merchants;

- supporting a full harmonisation of the technical features of POS terminals;
- securing the active default choice of the merchant to increase competition;
- keeping the commercial card transactions exemption;
- analysing whether to eliminate the special provisions for national interchange fee caps;
- monitoring the acquiring market and considering strengthening the provisions encouraging cross-border acquiring;
- considering the need for harmonised formats, standards, technical protocols and rules set by card schemes to improve interoperability, as well as for new digital payment instruments; and
- collecting more information to assess whether a maximum fee amount for debit card transactions should be introduced.

The Commission intends to submit a report on the application of the IFR to the EU Parliament and the Council, as required under Article 17, later this year.

Technical Expert Group on Sustainable Finance publishes final EU taxonomy report

The Technical Expert Group on Sustainable Finance (TEG), a stakeholder group designed to assist the EU Commission in developing elements of green finance policy, has published the final version of its EU taxonomy [report](#).

The updated report, which is supplemented by a [technical annex](#), includes sustainability criteria for:

- climate mitigation covering 70 economic activities; and
- climate adaptation covering 68 economic activities.

TEG has not included nuclear energy in the list of sustainable activities.

Alongside the EU taxonomy report, TEG has published an [EU Green Bond Standard usability guide](#) intended to ensure that the financed investments contribute to the EU environmental objectives by following the EU taxonomy criteria.

BoE and FCA publish letter to trade associations on LIBOR transition

The Bank of England (BoE) and FCA have published a [joint letter](#) to trade associations on how LIBOR transition may affect their members and stakeholders and next steps.

The aim of the letter is to help raise awareness of how the LIBOR discontinuation may affect businesses and to highlight some key resources which could be shared with members and stakeholders of trade associations. The letter covers:

- alternatives to using LIBOR;
- key dates and targets; and
- next steps.

The letter also advertises a webinar hosted by the FCA, BoE, Working Group on Sterling Risk-Free Reference Rates and UK Finance on 20 March to

discuss in detail the key tasks needed to make the move from LIBOR. It is hoped the webinar will help trade associations build LIBOR transition into their work plans, communication strategies and outreach to members and stakeholders.

FCA publishes statement on LIBOR contractual triggers

The FCA has published a [statement](#) on how it plans to announce LIBOR contractual triggers.

An increasing number of contracts referencing LIBOR include a 'pre-cessation trigger' that converts the contract to reference a relevant risk-free rate (RFR) plus an appropriate spread if the FCA finds that any LIBOR settings are no longer going to be representative of the underlying market the rates seek to measure. Many LIBOR cessation triggers are activated by an FCA announcement that LIBOR will cease.

The FCA has published a statement to explain how it intends to make such announcements if required, so that these statements are clear, unambiguous, and notice is given at the same time to all market participants.

The FCA has indicated that announcements will:

- be made via the Regulatory News Service (RNS) at the same time as, or very shortly followed by, a posting of a fuller statement on the FCA website;
- be clear that they are being made in the awareness that they will engage certain contractual triggers that are activated by pre-cessation or cessation announcements made by the FCA;
- be clear about the LIBOR currencies and tenors they relate to; and
- include the date of cessation or, if applicable, date from which the relevant LIBOR settings are not going to be representative.

FCA calls for input on use of data and advanced analytics in wholesale markets

The FCA has launched a [call for input](#) (CFI) on the use and value of data and advanced analytics in wholesale financial markets. The FCA is seeking to gain views on how data and advanced analytics are accessed and used, the value they offer to market participants and if they are competitively sold and priced. The scope of the review covers both FCA-regulated and connected, non-regulated firms and activities.

The CFI will focus in particular on trading data and benchmarks, which are used in wholesale financial markets to trade, make investment decisions, evaluate positions and meet regulatory obligations, and by trading venues and market data vendors to provide additional services such as consolidated data feeds.

Comments are due by 1 May 2020 and the FCA intends to publish a feedback statement in Autumn 2020 setting out its findings and any work it has decided to take to address potential harms posed by the use of data and advanced analytics in wholesale markets.

FCA consults on OEICs' premium listing obligations

The FCA has published a [consultation paper](#) following its February 2017 [discussion paper](#) which questioned whether premium listing obligations for open ended investment companies (OEICs) should be dis-applied and OEICs should be listed in the standard-listing segment. Respondents to the discussion paper agreed that there is limited rationale for the premium listing of OEICs and that a standard listing of these companies' units might be more appropriate.

The FCA is proposing to change the Listing Rules applicable to OEICs to dis-apply existing requirements that:

- are disproportionate because they prescribe transparency and safeguards that are already present in underlying funds regimes under which the OEIC is already authorised or recognised; or
- are not relevant or are inoperable for OEICs because they don't take account of the specific features of OEICs' business models or structures.

According to the paper, the FCA wants to make consequential changes which will align its listing requirements for OEICs more closely with standard listing for shares in LR14 Standard listing.

Comments are due by 9 June 2020.

HM Treasury consults on proposed overseas funds regime

HM Treasury is [consulting](#) on a proposed overseas funds regime (OFR) intended to establish a more appropriate basis for recognising overseas retail funds, including EU undertakings for collective investment in transferable securities (UCITS). The framework is intended to promote the interconnectedness of financial markets and consumer choice, advance trading opportunities and support bilateral agreements with other countries.

The UK Government has introduced a temporary marketing permissions regime (TMPR) for EU UCITS that have exercised their rights to market in the UK via a passport before the end of the transition period. The TMPR will enable EU UCITS to continue to access the UK market in a very similar way as under the passport for a limited period after the end of the Brexit transition period. HM Treasury's proposed framework seeks to address concerns relating to money market funds (MMFs) using the TMPR and whether Section 272 of the Financial Services and Markets Act 2000 (FSMA 2000) is a proportionate and viable regime for recognising funds long-term, given the importance of EU funds in the UK market.

Comments to the consultation are due by 11 May 2020. The Government will review responses to the consultation and issue a response in due course. As announced in the Queen's Speech, the government will bring forward a Financial Services Bill which will include the OFR.

HM Treasury publishes financial services documents alongside March Budget 2020

Alongside the Chancellor's delivery of the [March Budget 2020](#), HM Treasury has published a number of documents relating to the UK financial services sector.

The Treasury has published the [outcome](#) of the Financial Services Future Regulatory Framework Review consultation. The Treasury views this as the first phase of the review of the post-Brexit UK regulatory framework. It considers specifically the issue of coordination between the UK regulators, with the aim of improving the effectiveness of coordination in the future. The document summarises responses received to the call for evidence, and sets out how the financial services regulators, working with the Government, propose to improve regulatory coordination through the introduction of the Financial Services Regulatory Initiatives Forum and the Regulatory Initiatives Grid.

The Treasury has also published a [policy statement](#) on prudential standards in the Financial Services Bill, which confirms the Government's intention to implement Basel III in the UK. The statement announces that the Government will take powers to enable the implementation of updated prudential rules for UK banks and investment firms. In the statement, the Treasury notes that in the long term, it is conducting a review to determine how the regulatory framework will need to adapt to the UK's position outside of the EU and it will consult on proposals in due course. This will include examining the ongoing allocation of regulatory responsibilities between Parliament, the Treasury and the regulators.

In addition, the Government is [consulting](#) on proposals to introduce new market access arrangements for financial services between the UK and Gibraltar. Comments on that consultation are due by 11 May 2020.

According to Budget report, the Government also intends to consult on a measure to bring certain cryptoassets into the scope of financial promotions regulation, with an aim to protect consumers and support innovation in cryptotassets. There is an intention to consult later in 2020 on the broader regulatory approach to cryptoassets.

Treasury Committee approves Andrew Bailey's appointment as BoE Governor

The UK Parliament's Treasury Committee has published a [report](#) on the appointment of Andrew Bailey, former CEO of the FCA, as Governor of the BoE.

While the Committee has concluded that Andrew Bailey has the professional competence and personal independence to be appointed as Governor, it notes a gap between public expectations and the current powers and performance of the FCA, and has serious concerns relating to the culture and operations of the FCA and the industry it regulates. The Committee therefore intends to:

- consider these issues in a forthcoming pre-appointment hearing with the new CEO of the FCA;
- return to the issue of the FCA's perimeter, which was the subject of its predecessor Committee's report published in August 2019; and
- assess progress made in improving the culture of the finance industry following the recommendations made by the Parliamentary Commission on Banking Standards, which was established in July 2012 in the context of the 2008 financial crisis and the 2012 LIBOR scandal.

The tenure of the current BoE Governor, Mark Carney, ends on 15 March 2020. Andrew Bailey is due to take up his post on 16 March 2020 for an eight-year term.

BoE consults on central bank digital currencies

The BoE has published a [discussion paper](#) on the benefits and challenges posed by central bank digital currencies (CBDCs) and on their future design if introduced in the UK. The BoE notes that it has not yet made a decision on whether to introduce a CBDC and intends to engage widely on the associated advantages, disadvantages and practicalities before doing so.

Key benefits identified in the paper include improving the resilience, reliability, efficiency, inclusivity and competitiveness of the payments system and offering greater choice for consumers. A key challenge would be the potential implications for the BoE and commercial banks if significant deposit balances were moved away from them into CBDCs, including on their balance sheets, credit provision and the way the BoE implements monetary policy and supports financial stability.

The discussion paper also outlines an illustrative 'platform' model of CBDC, in which the BoE would provide an infrastructure that would sit alongside its real time gross settlement service and to which private sector payment interface providers could connect to offer customer-facing CBDC payment services. The interface providers could also build 'overlay services', i.e. additional functionality that is not part of the BoE's core infrastructure, as a value-add for some or all of their users.

The BoE is seeking views from stakeholders on whether the benefits of CBDCs outweigh their risks and, if so, on the appropriate design for a future CBDC. Comments are due by 12 June 2020.

Working Group on Sterling Risk-Free Rates publishes statement on bond market conventions and roadmap to discontinuation of new GBP LIBOR lending

The Working Group on Sterling Risk-Free Reference Rates has published:

- a [statement](#) on bond market conventions, use of the SONIA Index and weighting approaches for observation periods; and
- a [roadmap](#) outlining a path for the discontinuation of new Sterling LIBOR-based cash lending by end-Q3 2020.

The statement welcomes the Bank of England's discussion paper on the publication of a SONIA compounded index. The statement outlines how bond markets can use the proposed SONIA index and its relevance for issuers' choice of conventions.

The roadmap has been published by the Working Group's Loan Enablers Task Force, and is intended to act as a guide for lenders, borrowers and infrastructure providers. The roadmap is focused particularly on the development of products referencing compounded SONIA as the primary risk-free rate in sterling markets.

AMF publishes its legal analysis on application of financial regulations to security tokens

The AMF has published its [legal analysis](#) setting out the conditions under which financial regulation is intended to apply to security tokens that legally qualify as financial instruments. The document covers both the issuance and exchange of security tokens and their registration in investment funds. The AMF's legal analysis provides clarifications on the regime applicable to financial instruments registered on a shared electronic registration system (DEEP) and on the obligations of collective investment scheme depositaries.

According to the document:

- the Prospectus Regulation appears compatible with security token offerings (STOs), but the information contained in the prospectus will have to be adapted to the specific features of security tokens; and
- the exchange of security tokens faces major legal obstacles because of the decentralised nature of blockchain technology.

The AMF therefore suggests:

- the creation of a European 'Digital Lab' to secure the settlement of financial instruments in the blockchain notably by suspending regulatory obstacles to token security market infrastructure projects. Such a Digital Lab would allow national competent authorities to waive certain EU law requirements which are incompatible with the blockchain environment subject to appropriate guarantees (notably, the entity benefiting from the exemption would have to comply with the key principles of the regulations and be subject to increased supervision by the relevant authority);
- specifying in an AMF position the perimeter of the concepts of trading venues and bulletin boards; and
- clarifying the fact that, as a matter of constant law, the financial securities registered in a blockchain take nominative form under French law and that the liability of collective investment undertaking depositaries is limited to record keeping.

Following its legal analysis, the AMF has published a [position](#) (DOC-2020-02) which clarifies the scope of the trading venue, applicable in particular to financial instruments registered in a distributed ledger.

BaFin consults on amending regulation on voting rights notifications

BaFin has published a [draft Regulation](#) amending the Voting Rights Notification Regulation (Verordnung zur Änderung der Stimmrechtsmitteilungsverordnung) for [consultation](#).

By way of this draft regulation, BaFin, in agreement with the German Federal Ministry of Finance (Bundesministerium der Finanzen), intends to establish the electronic transmission of voting rights notifications to BaFin and the relevant issuer as the exclusive way of transmission.

Comments on the draft are due by 6 April 2020. The entry into force of the Regulation amending the Voting Rights Notification Regulation is planned for 1 June 2020.

Covid-19: CSSF issues clarifications on measures to be taken by supervised entities

The CSSF has issued a [press release](#) on the measures to be taken by supervised entities in the context of the novel coronavirus (Covid-19) outbreak.

The press release states that supervised entities need to take reasonable and appropriate security measures to protect their personnel, including, in the context of the coronavirus, extending remote working arrangements subject to certain conditions being met. If circumstances so require, they should also activate their business continuity plan and, as the case may be, resort to other production sites inside or outside the Grand-Duchy of Luxembourg.

The CSSF has also issued a [frequently asked questions document](#) (FAQs) clarifying the minimum ICT security requirements applicable to remote access arrangements implemented in the context of the coronavirus:

- implementing high privilege access to systems – regulated entities should identify and increase security for user profiles that present the highest risk immediately (IT administrators, employees in charge of payments/transactions) and if possible also for other user profiles;
- ensuring communications are secure (e.g. by using a VPN system); and
- tracking connections (IP geofencing, granting access to servers only during working hours etc.).

The CSSF has indicated that the measures are exceptional and of a limited duration. Hence, regulated entities must define the trigger events that activate the remote access arrangements and ensure that they will be deactivated when the exceptional circumstances cease to exist.

SAFE issues Q&A on foreign exchange risk management by overseas institutional investors in CIBM

The State Administration of Foreign Exchange (SAFE) has issued a set of [policy Q&As](#) regarding the Circular on Relevant Issues on Improving Foreign Exchange Risk Management by Overseas Institutional Investors in the China Interbank Bond Market it published on 13 January 2020, further facilitating foreign exchange (FX) risk management by overseas institutional investors (OIs) in the China interbank bond market (CIBM). The circular came into force on 1 February 2020.

The Q&A are intended to clarify the following:

- channels to trade FX derivatives – an OI may choose freely from the different channels available to trade FX derivatives as set out in the circular and switch between them as necessary, but has to make a choice between (i) accessing and trading on the interbank FX market by itself or (ii) trading as a client with no more than three domestic financial institutions (including but not limited to settlement agent banks). An OI can trade with a counterparty that is not a settlement agent and is not required to open an account with such counterparty;
- meaning of FX exposure – FX exposure is defined as the exposure to RMB exchange rate volatility arising from bond investments made by an OI (including principal, interest, and market value of a bond investment, whether purchased through offshore RMB or FX);

- documentation due diligence – domestic financial institutions do not need to verify an OII's bond trading background as each OII is required to make a hedging-only undertaking to the relevant PRC financial institutions or the China Foreign Exchange Trade System (CFETS) before starting to trade;
- FX derivatives exposure adjustment period – an OII should adjust its FX derivative exposure (measured by the trade date of the relevant trade) within five working days of (i) a change in the OII's underlying bond positions taking place or (ii) the last working day of the month; and
- option premiums and gains/losses – option premiums and gains/losses from trading FX derivatives shall be handled through the special FX account and can be converted into RMB or other currencies as needed.

Japanese Ministry of Environment publishes Green Bond Guidelines 2020 and Green Loan and Sustainability Linked Loan Guidelines 2020

The Ministry of the Environment (MoE) has published the further [revised version](#) of the Green Bond Guidelines (originally drafted in 2017, revised in 2018) to ensure consistency with international principles and practical developments, especially those being developed in the EU, although there is no taxonomy equivalent to the EU sustainable finance taxonomy.

In conjunction with the revision and with a view to promoting further issuance of green loans and sustainability linked loans, MoE has also published the Green Loan and Sustainability Linked Loan Guidelines to align with the Green Loan Principles and the Sustainability Linked Loan Principles developed by the Loan Market Association (LMA) and others in 2018 and 2019 respectively.

Bank of Korea and Bank of Indonesia sign renewal of bilateral local currency swap arrangement

The Bank of Korea and the Bank Indonesia have [signed](#) a renewal of the bilateral local currency swap arrangement, which allows for the exchange of local currencies between the two central banks of up to KRW 10.7 trillion or IDR 115 trillion.

The renewed arrangement is intended to promote bilateral trade and financial cooperation for the economic development of the two countries. In particular, the arrangement will ensure the settlement of trade in local currency between the two countries even in times of financial stress and thus support regional financial stability.

Under the renewal, the effective period of the facility will be three years, i.e. from 6 March 2020 to 5 March 2023, which could be extended by mutual consent of both sides.

FSC announces policy plans for fintech, start-ups and SMEs for 2020

The Financial Services Commission (FSC) has [announced](#) its fintech and digital finance key policy plans for 2020, which include advancing digital finance, promoting data economy, cultivating new fintech industry and services, working on regulatory reform in the fintech and digital sectors, and strengthening the foundation for innovation.

The FSC's key policy plans for fintech and digital finance are intended to:

- promote innovation in digital finance and establish a digital risk management system, in order to ensure long-lasting innovation and stability in the financial sectors;
- further develop the data industry, build data infrastructure and establish a framework for data protection, in order to help the data industry play a leading role in financial innovation;
- create an environment that facilitates the development of new fintech services while pre-emptively managing risks in the areas of consumer protection, security, etc.;
- ease entry barriers to the financial industry and improve regulations to fit the needs of different businesses in sync with the financial regulatory sandbox program; and
- support fintech start-ups and scale-ups by making more infrastructure, investment and business support available.

The FSC has also [outlined](#) its policy plans for 2020 to support Korea's innovation-led growth, as a follow-up to its work plan announced on 17 February 2020. The plans are intended to provide innovative start-ups and small and medium-sized enterprises (SMEs) with financing support.

The key initiatives under these plans include the following:

- targeted support to 1,000 innovative firms;
- introduction of a new business credit scoring system modeled after 'Paydex';
- introduction of collective guarantee scheme for SMEs; and
- introduction of non-recourse factoring.

FSC to ease rules on overseas expansion of financial institutions

The FSC has [announced](#) plans to revise the regulations on overseas expansion of financial institutions in order to ease the regulatory burden of operating overseas businesses and help boost their global competitiveness. The revisions will take effect gradually within 2020 in a two-pronged process. The first stage amendments to the regulations include the following:

- an expanded application of the ex post facto reporting rule for foreign direct investment (FDI) – the amendment will allow ex post facto reporting of new foreign direct investment for financial institutions with cumulative investment in the amount of USD 30 million or less during the recent year. Moreover, the government will work to maintain stability in the foreign exchange market by reviewing the soundness of overseas investment businesses and through the imposition of penalties for businesses deemed to be substandard;
- an improvement to the regular reporting process – currently, financial companies are required to report the status of the establishment and operation of their overseas businesses to both the Financial Supervisory Service (FSS) and the Bank of Korea once every three months. Under the amendment, financial companies will be required to report the status of the

establishment and operation of overseas businesses to the FSS once every year; and

- a simplified reporting rule for dissolving overseas businesses – under the revision, ex post facto reporting will be allowed for companies seeking dissolution of overseas business operations or making changes to the initial declaration. Moreover, in case of winding up of overseas business branches, financial companies will be required to immediately report the repatriation of capital.

The FSC has indicated that the first stage amendments to the regulations will be effective from 29 April 2020. In the second stage, the government will work to remove redundancy in regulations by replacing the FDI regulations with prudential oversight in each sector where applicable.

Korean Government strengthens short selling rules

The FSC has [announced](#) that the Korean Government will tighten regulations on stock short selling for three months beginning from 10 March 2020 in response to recent market volatility.

In March 2017, the Government introduced the designation scheme for overheated short selling stocks, which began to prohibit for the next trading day the short selling of stocks with an abnormal increase in short selling trading volume and a price falling rate. Under the revised measures, the Government will now lower the bar for designating such overheated short selling stocks, including:

- for the Korea Composite Stock Price Index (KOSPI) market, an issue will be designated as an overheated short selling stock if it has a price falling rate of 5% or higher and a short selling trading volume of three times above the average (currently six times above the average);
- for the Korean Securities Dealers Automated Quotations (KOSDAQ) market, the standard for short selling trading volume will be lowered from five times above the average to two times above the average;
- stocks with price falling rate of 20% or more will be designated as overheated short selling stocks if the increase in short selling trading volume is two times and one and a half times the average in the KOSPI and the KOSDAQ market, respectively; and
- the period of the short selling ban on the designated stocks will be extended from one to ten trading days (two weeks).

The FSC has indicated that the Government will continue to take appropriate measures based on contingency plans, while closely monitoring market developments.

Korea Exchange announces business plan for 2020

The Market Oversight Commission (MOC) of the Korea Exchange (KRX) has [announced](#) its business plan for 2020.

In 2019, the MOC sought to improve market soundness through intensive monitoring on various stocks such as those related to unjust corporate raiding, fraudulent business including cheating on bio business, marginal corporations, etc. For 2020, the MOC has set the goal of its market oversight as the 'early detection of and quick response to new types of unfair trades', and it will take the following initiatives to protect investors:

- improvement in market confidence by promptly detecting unfair trades;
- strong actions against new types of unfair trades to minimise their negative effects on the markets and damage to investors;
- establishment of a fair market order and improvement in effectiveness of self-regulation;
- establishment of an effective surveillance programme to cope with increasing algorithmic trading; and
- activities to increase investor awareness and protect investors from unfair trades.

MAS revises guidelines on licensing, registration and conduct of business for fund management companies

The Monetary Authority of Singapore (MAS) has [revised](#) its existing guidelines on licensing, registration and conduct of business for fund management companies.

Previously, the guidelines [stated](#) that the MAS may, where appropriate, require a licensed fund management company to procure the letter of responsibility from its parent company. The revision to the guidelines has been made to state that the MAS may, where appropriate, require a registered fund management company to procure the letter of responsibility from its parent company.

ARRC proposes legislation to minimize legal uncertainty and adverse economic impact associated with LIBOR transition

The Alternative Reference Rates Committee (ARRC) has released a [proposal](#) for New York State legislation, which is intended to minimize legal uncertainty and adverse economic impacts associated with LIBOR transition. The ARRC recognizes that many legacy contracts referencing LIBOR do not have adequate fallback language and may be difficult to amend. New York legislation has been proposed because a substantial number of financial contracts that reference US dollar LIBOR are governed by New York law.

The proposed legislation would prohibit a party from refusing to perform its contractual obligations or declaring a breach of contract as a result of LIBOR discontinuance or the use of a recommended benchmark replacement. It would also establish that the recommended benchmark replacement is a commercially reasonable substitute for and a commercially substantial equivalent to LIBOR. In addition, it would provide a safe harbour from litigation for the use of the recommended benchmark replacement. It would not, however, override existing contract language that specifies a non-LIBOR based rate as a fallback to LIBOR (e.g. the Prime rate).

As part of the proposal, the ARRC has provided several case studies that illustrate how the proposed legislation would interact with certain products such as derivatives, business loans and securitizations.

RECENT CLIFFORD CHANCE BRIEFINGS

Coronavirus – Checklist for financial services firms

As the Coronavirus (Covid-19) outbreak continues to spread, there has been increased focus from financial services regulators around the world on the contingency plans of regulated financial firms. Regulators will expect firms to take all reasonable steps to continue meeting their regulatory obligations and to assess their operational risks, their ability to continue operating and the steps they need to take to serve and support their customers.

This briefing provides a checklist of regulatory considerations as a starting point for regulated financial services firms, including impacts on financial contracts, regulatory requirements and expectations around business continuity planning and operational resilience. These considerations will need to be addressed alongside the employment, tax, data, insurance, general contractual and other issues addressed in separate briefings available on our [Coronavirus Thought Leadership page](#) on cliffordchance.com.

<https://www.cliffordchance.com/briefings/2020/03/coronavirus--checklist-for-financial-services-firms.html>

Coronavirus issues relating to capital markets in APAC

The Coronavirus outbreak is causing disruption to businesses across sectors and jurisdictions.

This briefing discusses capital markets related issues arising from the outbreak and offering some practical considerations when executing capital markets transactions during this time.

<https://www.cliffordchance.com/briefings/2020/03/coronavirus-issues-relating-to-capital-markets-in-apac.html>

Coronavirus – Five steps to building a financial institution's resilience

Coronavirus is, by any measure, a disruption like no other. In the financial services sector, particularly in the UK, regulated firms such as banks, asset managers and insurers must ensure that their Coronavirus contingency planning meets not just the complex challenges raised by this event but also increasingly stringent regulatory standards.

This briefing discusses five steps to building a financial institution's resilience.

<https://www.cliffordchance.com/briefings/2020/03/coronavirus--five-steps-to-building-a-financial-institution-s-re.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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