INTERNATIONAL REGULATORY UPDATE 23 – 27 MARCH 2020

- **EMIR Refit: ESMA consults on post trade risk reduction services and technical standards relating to trade repositories**
- **IOSCO reports on application of existing regulatory principles to global stablecoins**
- **Brexit: HM Treasury confirms extension of regulators' transitional powers for up to two years from end of transition period**
- **Brexit: BoE updates checklist of actions to reduce risk of disruption at end of transition period**
- **Financial Services Compensation Scheme: PRA publishes final Management Expenses Levy Limit for 2020/21**
- **PRA publishes occasional consultation paper on minor amendments to its rules and policies**
- **Czech Republic introduces changes to MiFID passporting regime as of 1 May 2020**
- **Luxembourg bill on combating money laundering by criminal law published**
- **PBoC and SAFE permit additional cross-border financing by adjusting macro-prudential management system**
- **Bill providing for new registration regime to enable funds to be set up in form of limited partnerships gazetted**
- **Industry-led Steering Committee sets out key priorities to achieve smooth transition to Singapore overnight rate average**
- **MAS issues guidelines to notice on prevention of money laundering and countering financing of terrorism for specified payment services**
- **Singapore and Australia agree to enhance data connectivity in financial services**
- **Recent Clifford Chance briefings: Singapore cryptocurrency litigation. Follow this link to the briefings section.**

Clifford Chance's International Regulatory Update is a weekly digest of significant (non-Coronavirus-related) regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

To request a subscription to our Alerter: Finance Industry service, please email Online Services.

EMIR Refit: ESMA consults on post trade risk reduction services and technical standards relating to trade repositories

The European Securities and Markets Authority (ESMA) has published two

If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

Caroline Dawson +44 207006 4355
Owen Lysak +44 207006 2904
Gareth Old +1 212 878 8539
Marc Benzler +49 69 7199 3304
Steven Gatti +1 202 912 5095
Paul Landless +65 6410 2235
Mark Shipman + 852 2826 8992
Donna Wacker +852 2826 3478

International Regulatory Update Editor

Joachim Richter +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname @cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London. E14 5JJ. UK

consultation papers relating to EMIR Refit.

The consultation paper on post trade risk reduction (PTRR) services seeks views on how the clearing obligation affects PTRR services, whether there should be an exemption, the conditions or restrictions that may apply to any exemption and whether PTRR service providers should be regulated.

The consultation paper on draft regulatory and implementing technical standards (RTS and ITS) relating to trade repositories (TRs) seeks views on:

- ITS on reporting of derivatives to the TRs;
- ITS and RTS on registration of TRs;
- RTS on the procedures to be applied by the TRs to reconcile and validate data; and
- RTS on the publication and provision of data by the TRs to the relevant authorities.

ESMA's proposals seek to build on existing rules and also seek to revise certain aspects of reporting to TRs to align requirements with the global guidance developed by the CPMI and IOSCO working group for the harmonisation of key OTC derivatives data elements.

The consultation on PTRR services closes on 15 June 2020 and ESMA expects to publish a final report in mid-2020. The consultation on the RTS and ITS closes on 19 June 2020 and ESMA expects to submit a final report and draft RTS and ITS to the EU Commission for endorsement in Q4 2020.

IOSCO reports on application of existing regulatory principles to global stablecoins

The International Organization of Securities Commissions (IOSCO) has published a report on global stablecoin initiatives and the application of existing regulatory principles. The report provides:

- an overview of different stablecoin designs;
- a hypothetical case study (in which a hypothetical stablecoin, designed to use a reserve fund and intermediaries to try to achieve a stable price with regard to a basket of low volatility currencies, is used for domestic and cross-border payments);
- an exploration of how existing IOSCO principles and standards might apply to the hypothetical case study;
- an assessment of the broader implications of global stablecoins for securities regulators; and
- an analysis of the application of the Committee on Payments and Market Infrastructures and IOSCO's principles for financial market infrastructures (PFMI) to stablecoin arrangements.

Amongst other things, the report concludes that the IOSCO policy recommendations for money market funds, principles for exchange traded funds, the final report on cryptoasset trading platforms and its work on market-fragmentation, cyber resilience, and client assets could all apply to global stablecoins, such as the hypothetical case study. Ultimately, however, the applicability of principles or standards will depend on the individual stablecoin's design, jurisdiction and legal and regulatory characteristics. The

PFMI is applicable to stablecoins that perform systemically important payment system functions or other FMI functions that are systemically important.

IOSCO also notes that it has established a Stablecoin Working Group within its existing Fintech Network, which will consider and evaluate global stablecoin proposals from securities market regulators' perspectives. IOSCO intends to continue to assess the key issues which arose from the analysis set out in this report.

Brexit: HM Treasury confirms extension of regulators' transitional powers for up to two years from end of transition period

John Glen, the Economic Secretary to the Treasury, has made a written statement to the House of Commons confirming that the temporary transitional power (TTP) will be retained for up to two years from the end of the transition period.

The TTP was introduced by the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 and is intended to allow the Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority to phase-in changes to UK regulatory requirements so that firms can adjust to the UK's post-transition period regime in an orderly way.

Brexit: BoE updates checklist of actions to reduce risk of disruption at end of transition period

The Financial Policy Committee (FPC) of the Bank of England (BoE) has published an updated checklist of actions to avoid disruption to end-users of financial services at the end of the Brexit transition period.

The checklist is intended to reflect the risk to end-users if no further arrangements are put in place for cross-border trade in financial services for the end of the transition period on 31 December 2020. The risk assessment takes account of progress made in mitigating any risks.

The checklist is published alongside the FPC's March 2020 Financial Policy Summary and Record.

Financial Services Compensation Scheme: PRA publishes final Management Expenses Levy Limit for 2020/21

The Prudential Regulation Authority (PRA) has published a policy statement (PS8/20) setting out final rules for the Financial Services Compensation Scheme (FSCS) Management Expenses Levy Limit (MELL) for 2020/21 and providing feedback to responses to an earlier consultation paper (CP1/20) on the same subject.

The FSCS is the compensation fund of last resort for customers of failed authorised financial services firms across the PRA's and the Financial Conduct Authority's (FCA's) regulatory remit. The MELL is the maximum amount that the FSCS may levy for management expenses in a year without further consultation.

The FSCS MELL will apply for the financial year ending 31 March 2021. The FCA Board has also made its respective rule for the 2020/21 MELL.

PRA publishes occasional consultation paper on minor amendments to its rules and policies

The Prudential Regulation Authority (PRA) has published an occasional consultation paper (CP3/20) setting out minor amendments to its Rulebook, supervisory statements, national specific templates (NSTs) and associated LOG files, and the market risk sensitivities data item and instructions. The proposed changes include:

- minor updates and amendments to the instructions for completing PRA110;
- updates replacing LIBOR with SONIA for non-Solvency II insurance firms;
- updates and amendments to the NSTs regarding Solvency II reporting;
- updates to the senior managers regime application form;
- amendments to the branch return form;
- updates to the PRA101 form; and
- clarifications regarding significant risk transfer transactions.

Comments are due by 26 June 2020.

Czech Republic introduces changes to MiFID passporting regime as of 1 May 2020

The Act amending the Czech Capital Markets Act which regulates, among other things, the provision of investment services by MiFID investment firms in the Czech Republic under the MiFID passport, has been published in the Collection of Laws of the Czech Republic.

With effect from 1 May 2020, this regulation will change so that MiFID investment firms from another EEA Member State wishing to provide services covered by the MiFID passport in the Czech Republic under the freedom to provide services (i.e. without a branch) will be able to do so only on a temporary or occasional basis unless the services are provided to MiFID professional clients. If the services are provided to MiFID professional clients, MiFID investment firms will be allowed to provide the services under their freedom to provide services passport irrespective of whether the services are provided only on a temporary or occasional basis. The exception applicable to services provided to MiFID professional clients was not included in the original draft Bill submitted to the Parliament and was proposed during a hearing in the Parliament.

For further information on the draft Bill please refer to the Clifford Chance briefing paper prepared in August 2019, before the exception was proposed and the draft Bill approved by the Lower Chamber.

Luxembourg bill on combating money laundering by criminal law published

A new bill (no. 7533) amending the Luxembourg Criminal Code (Code pénal), the Luxembourg Criminal Procedure Code (Code de procedure pénale) and the law of 19 February 1973 concerning the sale of medical substances and the fight against the use of drugs, in order to implement Directive (EU) 2018/1673 of 23 October 2018 on combating money laundering by criminal law has been lodged with the Luxembourg Parliament.

Directive 2018/1673 supplements the framework introduced by the Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (2001/500/JHA).

The objectives of Directive 2018/1673 are to complement and to strengthen the regime introduced under Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (as amended, amongst others, by Directive (EU) 2018/843 of 30 May 2018), and to improve cooperation between competent authorities of different Member States.

In accordance with the definition of 'criminal activity' under Directive 2018/1673, the Bill amends and simplifies the list of predicate offences for a conviction for money laundering by extending it to all crimes (crimes) and delicts (délits).

Moreover, under the new Bill, numerous other amendments are proposed to Luxembourg criminal law, including amongst others:

- clarifying that it is not required for the money laundering offence to establish all factual elements or circumstances of the predicate offence;
- extending the scope of special confiscation (confiscation spéciale) to all types of assets, as well as to all types of documents and legal instruments certifying the ownership of such assets;
- raising the minimum prison sentence for money laundering from one year to three years for professionals listed under Article 2 of the law of 12 November 2004 on the fight against money laundering and terrorist financing (as amended), such as credit institutions, financial institutions, auditors, tax advisors, notaries and lawyers;
- inserting a new Article 26-2 into the Criminal Procedure Code which provides certain criteria for the determination of the competent jurisdiction in the case where the alleged money laundering acts would also constitute a criminal offence in another Member State.

The publication of the Bill constitutes the start of the legislative procedure.

PBoC and SAFE permit additional cross-border financing by adjusting macro-prudential management system

In early 2016, the People's Bank of China (PBoC) introduced a macro-prudential management system to regulate the amount of cross-border financing that Chinese entities could conduct. The MP Financing Management System was originally limited to 27 designated banks and non-financial enterprises registered in four free trade zones. On 3 May 2016, PBoC extended the MP Financing Management System nationwide and, on 12 January 2017, PBoC issued the 'Circular on Matters relating to the Overall Macro-prudential Management System for Cross-border Financing (2017)'. These measures further accelerated and streamlined the MP Financing Management System.

PBoC and the State Administration of Foreign Exchange (SAFE) have now issued the 'Circular on Adjusting the MP Adjustment Parameter for Cross-border Financing (2020)', which amends the MP Financing Management System further to permit Chinese entities to borrow more from the international market and non-PRC shareholders.

The MP Financing Management System adopts a risk-weighted approach and is based on two key concepts:

- the risk-weighted cross-border financing limit (the cap); and
- the risk-weighted cross-border financing balance (the balance).

Financial institutions and enterprises must ensure that the balance does not exceed the cap. The 2017 and 2020 circulars set out the formulas by which the balance and cap are calculated.

The value of the parameters can be reset or adjusted by PBoC (for single, multiple or all entities) based on the macro-prudential assessment or macro-control demands so as to achieve counter-cyclical adjustment and to minimise systematic risk by having more flexibility.

The 2020 circular increases the MP Adjustment Parameter from 1 to 1.25, thus increasing the cap by 25%.

Bill providing for new registration regime to enable funds to be set up in form of limited partnerships gazetted

The Hong Kong Government has gazetted the Limited Partnership Fund Bill to provide for a new registration regime to enable funds to be constituted in the form of limited partnerships in Hong Kong.

In particular, the Bill is intended to attract investment funds, including private equity and venture capital funds, to set up and operate in Hong Kong, in order to strengthen Hong Kong's position as an international asset and wealth management centre and drive demand for the related professional services in Hong Kong.

The new limited partnership fund regime will be an opt-in registration scheme administered by the Companies Registry. It is intended to cater for the operational needs of investment funds with elements of investor protection built in.

The Limited Partnership Fund Bill will be introduced into the Legislative Council for first reading on 25 March 2020.

Industry-led Steering Committee sets out key priorities to achieve smooth transition to Singapore overnight rate average

The Steering Committee for swap offer rate (SOR) transition to Singapore overnight rate average (SORA) has published its responses to the feedback received on the consultation report titled 'Roadmap for Transition of Interest Rate Benchmarks: From SOR to SORA', which was released by the Association of Banks and Singapore Foreign Exchange Markets Committee (ABS-SFEMC) on 30 August 2019.

The Committee was established by the Monetary Authority of Singapore (MAS) in August 2019 (i.e. in tandem with the issuance of the ABS-SFEMC consultation report), and was tasked to provide strategic direction and oversee the transition, including reviewing and responding to the feedback received on the ABS-SFEMC consultation.

In light of the feedback received, the Committee notes that there was broad support for SORA to be adopted as the new interest rate benchmark to replace SOR. Respondents also provided suggestions to develop SORA

markets, enhance SORA adoption, and reap synergies between SORA cash and derivative markets. In addition, respondents highlighted important transition issues that needed to be addressed, including establishing robust fallback arrangements and setting out clear transition timelines.

Following the responses to the feedback received, in order to provide further clarity to market participants, the Committee has also released an updated transition roadmap setting out key milestones and initiatives which include:

- readying SORA market conventions and infrastructure to enable broad adoption by market participants;
- building liquidity in SORA markets to support take-up by end-users;
- transition of legacy SOR contracts to reduce risks associated with outstanding SOR contracts; and
- engaging stakeholders early to facilitate smooth transition.

The MAS requires financial institutions to be proactive and make necessary preparations that are commensurate with the nature, scale and complexity of their operations and usage of such benchmarks. These include setting up a robust internal governance framework that provides oversight for the transition of operational functions and business lines to SORA, enhancement of treasury and loan systems to handle its usage, and ensuring sufficient resources to facilitate staff training and customer engagement.

MAS issues guidelines to notice on prevention of money laundering and countering financing of terrorism for specified payment services

The Monetary Authority of Singapore (MAS) has issued its 'Guidelines to Notice PSN01 on Prevention of Money Laundering and Countering the Financing of Terrorism – Specified Payment Services'.

The guidelines are intended to provide guidance to all holders of a payment service licence that carry on a business of providing a specified payment service (i.e. an account issuance service, a domestic money transfer service, a cross-border money transfer service or a money changing service), and all persons exempt under section 13(1) of the Payment Services Act 2019 where such person offers a specified product, on the requirements in MAS Notice PSN01. Amongst other things, the guidelines set out guidance relating to the following topics:

- application of MAS Notice PSN01;
- assessment of money laundering and terrorism financing;
- (ML/TF) risks and application of a risk-based approach;
- assessment of ML/TF risks in relation to new products, practices and technologies;
- customer due diligence, simplified customer due diligence and enhanced customer due diligence;
- reliance on third parties, correspondent accounts, agency arrangements and wire transfers;
- suspicious transactions reporting;
- internal policies, compliance, audit and training; and

- proliferation financing.

Singapore and Australia agree to enhance data connectivity in financial services

The Monetary Authority of Singapore (MAS) has announced that Singapore and Australia have agreed to enhance data connectivity in financial services between both countries under the Singapore-Australia Digital Economy Agreement (DEA).

The DEA is Singapore's first binding bilateral agreement with Australia to facilitate data connectivity in financial services. It is intended to ensure that financial institutions operating in Singapore and Australia are able to transfer information that they generate or hold more seamlessly across the two jurisdictions to support their risk and business decisions.

Under the DEA, Singapore and Australia have committed to prohibit requirements for data localisation, which they see as an unnecessary barrier to trade that can drive up the cost of storing data for all businesses. Moreover, both countries will allow financial institutions to choose where their data is stored.

The MAS has indicated that it will continue to promote the development of international rules for data connectivity in financial services.

RECENT CLIFFORD CHANCE BRIEFINGS

Singapore Court of Appeal allows claims against cryptocurrency exchange

On 24 February 2020, the Singapore Court of Appeal handed down its decision on the first cryptocurrency litigation in Singapore. The decision provides important guidance on the application of the doctrines of unilateral mistake to the latest technology and assessment of the knowledge underlying the operation of a machine; it also sheds light on the relationship between a cryptocurrency exchange and its users.

This briefing paper discusses the court's decision.

https://www.cliffordchance.com/briefings/2020/03/singapore-court-of-appeal-allows-claims-against-cryptocurrency-e.html

CLIFFORD
CHANCE

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ