CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 13 – 17 APRIL 2020

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International

The Financial Stability Board (FSB) has published a letter from its Chair, Randal K. Quarles, to G20 Finance Ministers and Central Bank Governors, which highlights the twin challenge facing the global financial system as a result of COVID-19: a dramatically increased need for credit throughout the global economy and marked uncertainty about the value of a wide range of assets. The letter details the FSB's work on assessing vulnerabilities, sharing information and coordinating policy responses. Looking beyond COVID-19, the letter also sets out ongoing FSB policy work in several areas to promote a global financial system that supports a strong recovery after the pandemic, including: non-bank financial intermediation, supporting a smooth transition away from LIBOR, harnessing the benefits of technological innovation, and promoting efficient and resilient cross-border payments.

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The FSB has also published a report delivered to the G20 on international cooperation and coordination to address the financial stability implications of COVID-19. The report sets out five principles that underpin the international response to support the real economy, maintain financial stability and minimise the risk of market fragmentation. Using these principles, authorities intend to:

- monitor and share information on a timely basis to assess and address financial stability risks from COVID-19;
- recognise and use the flexibility built into existing financial standards to support their response;
- seek opportunities temporarily to reduce operational burdens on firms and authorities;
- act consistently with international standards and not roll back reforms or compromise the underlying objectives of existing international standards; and
- coordinate on the future timely unwinding of the temporary measures taken.

The G20 Finance Ministers and Central Bank Governors have issued a communiqué following their virtual meeting on 15 April 2020, in which they commit to use all available policy tools to support the global economy during the pandemic, boost confidence, maintain financial stability and prevent deep and prolonged economic effects. Amongst other things, the Finance Ministers and Central Bank Governors have indicated that they:

- support the further adoption and swift implementation of a strong financial response to help countries in need and to uphold global financial stability and resilience, including delivering a comprehensive IMF support package, implementing the support proposed by the World Bank Group and multilateral development banks, addressing debt vulnerabilities in low-income countries due to the pandemic, and enhancing coordination among international organisations to maximise their impact and optimise the use of resources;
- support a time-bound suspension of debt service payments for the poorest countries that request forbearance and agreed on a coordinated approach with a common term sheet providing the key features for this debt service suspension initiative – they have also called on private creditors, working through the Institute of International Finance (IIF), to participate in the initiative on comparable terms; and
- support the principles set out in the FSB's COVID-19 report to the G20 and ask the FSB to continue monitoring financial sector vulnerabilities and coordinating on regulatory and supervisory measures between its member countries, international organisations and standard-setting bodies, using the existing flexibility within international regulatory standards without compromising on the previously agreed reforms.

In response, the Institute of International Finance (IIF) has issued a statement from its President and CEO, Tim Adams, welcoming the priority that the G20 has placed on debt servicing concerns in the poorest and least developed countries. As a crisis-fighting measure, the IIF has recommended that private creditors voluntarily grant IDA-eligible countries, upon request, debt payment forbearance for a fixed period of time.

European Union

The ECOFIN Council has published a statement emphasising the need to continue bank lending and maintain a well-functioning insurance sector during the coronavirus pandemic. It welcomes the recent statements from various EU bodies and supervisory authorities on the application of regulatory and accounting requirements for financial institutions in the current exceptional circumstances and on the flexibility regarding deadlines of supervisory reporting and public disclosure.

In addition the Council urges:

- authorities to take an ambitious and coordinated approach when considering how to make the best use of the available flexibility and initiatives and to ensure that there is a level playing field amongst Member States;
- banks to refrain from making distributions during this period and to use any freed capital or profits to meet the urgent financing needs arising from the crisis; and
- insurance companies to take timely and comprehensive measures to preserve their capital position, including the temporary suspension of all discretionary distributions.

The Eurogroup has held a video conference to work on further measures for a coordinated response to the economic fallout of the pandemic, as requested by EU leaders on 26 March 2020, and agreed on a report outlining its proposals to the leaders. Amongst other things, the Eurogroup:

- welcomed the Commission's proposals regarding the further temporary flexibility in the use of EU funds;
- agreed that a dedicated COVID-19 instrument to support the financing of emergency aid through the provision of grants is necessary to reinforce healthcare systems;
- welcomed the initiative of the EIB Group to create a pan-European guarantee fund of EUR 25 billion, which could support EUR 200 billion of financing for companies;
- proposed the establishment of a Pandemic Crisis Support, based on the existing ECCL precautionary credit line, as a relevant safeguard for euro area Member States;
- agreed on the need to establish, for the duration of the emergency, a temporary loan-based instrument for financial assistance under Article 122 of the Treaty on the Functioning of the European Union; and
- agreed to work on a Recovery Fund to prepare and support the recovery, providing funding through the EU budget.

The EU Commission has approved:

- a BGN 1.5 billion (approximately EUR 770 million) Bulgarian wage subsidies support scheme for preserving employment in the sectors most affected by the confinement measures put in place due to the coronavirus outbreak;

- a EUR 50 billion Belgian loan guarantee scheme to support the Belgian economy in the context of the coronavirus outbreak;
- two Croatian schemes with an overall estimated budget of EUR 1 billion, to support affected companies. Under the two schemes, the public support will take the form of zero-interest loans and loans with subsidised interest rates, respectively;
- a Czech aid scheme of up to CZK 1 billion (approximately EUR 37 million) to support investments by small and medium-sized enterprises (SMEs) in the production of products that are relevant to the coronavirus outbreak;
- the prolongation and modification of the French 'Fonds de solidarité' scheme for small enterprises in temporary financial difficulties;
- a EUR 10 billion French guarantee scheme to support the domestic credit insurance market;
- amendments to two German schemes to support affected companies (Bundesregelung Kleinbeihilfen 2020 and Bundesregelung Darlehen 2020);
- a German guarantee scheme to stabilise trade credit insurance market;
- an Italian aid scheme to support self-employed workers and companies with up to 499 employees affected by coronavirus outbreak;
- an Italian guarantee scheme for new working capital and investment loans granted by banks to support companies affected by the outbreak;
- two Lithuanian support schemes with a total estimated budget of EUR 150 million, which are offered by the national promotional institution INVEGA and provide liquidity in the form of subsidised loans to affected companies;
- a PLN 527 million (approximately EUR 115 million) Polish scheme providing support in the form of direct grants intended to partially cover interests on loans, which should normally be borne by the borrower; and
- a RON 16 billion (approximately EUR 3.3 billion) Romanian scheme to support SMEs affected by the outbreak.

The Commission has also sent to Member States for consultation a draft proposal to further extend the scope of the State aid temporary framework adopted on 19 March 2020. The temporary framework was first amended on 3 April 2020 to increase possibilities for public support to research, test and produce products relevant to the fight against coronavirus, to protect jobs and to further support the economy. The Commission is now proposing to extend the scope of the temporary framework further by enabling Member States to provide recapitalisations to companies in need. The Commission has emphasised that such public interventions should remain measures of last resort, since they may have a significant impact on competition in the Single Market. They will also be subject to clear conditions as regards the State's entry, remuneration and exit from the companies concerned, strict governance provisions and appropriate measures to limit potential distortions of competition. The Commission is consulting Member States on the possibility of providing public support in the form of equity or hybrid capital instruments to severely affected companies, provided that it is the most appropriate means of support and subject to clear conditions.

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The General Board of the European Systemic Risk Board (ESRB) has held its 37th regular meeting, at which it focused on the consequences of the coronavirus pandemic for the EU's economy and the financial system. It has published a spreadsheet providing information on the policy measures taken by Member States, EU institutions and national authorities in response to the pandemic so far, which will be updated on a regular basis. The General Board underlined that a timely and coordinated policy response is key, in particular to achieve synergies between fiscal, monetary and regulatory policies. To this end, the General Board has decided to focus its attention on the following five priority areas:

- implications for the financial system of guarantee schemes and other fiscal measures to protect the real economy;
- market illiquidity and implications for asset managers and insurers;
- the impact of procyclical downgrades of bonds on markets and entities across the financial system;
- system-wide restraints on dividend payments, share buybacks and other payouts; and
- liquidity risks arising from margin calls.

The General Board also discussed arrangements for the involvement of the relevant authorities from the UK in the work of the ESRB.

The European Central Bank (ECB) has issued a press release stating that it supports the measures taken by euro area macroprudential authorities to address the impact of the outbreak on the financial sector. The ECB has assessed the notifications submitted by national macroprudential authorities for each proposed measure provided for in the Capital Requirements Regulation and Directive and has issued a non-objection decision, thereby endorsing the measures taken to reduce capital requirements, including the countercyclical capital buffer. It has also announced it is providing temporary relief for capital requirements for market risk by reducing the qualitive market risk multiplier, a supervisory measure which is used to compensate for the possible underestimation by banks of their capital requirements for market risk.

The ECB has also published an overview of the macroprudential measures taken by euro area authorities (including central banks and banking supervisors) in response to the coronavirus outbreak and their impact on banks' regulatory capital.

The European Securities and Markets Authority (ESMA) has issued:

- a public statement to promote coordinated action by national competent authorities (NCAs) regarding the timeliness of fulfilling external audit requirements for interest rate benchmark administrators and contributors to interest rate benchmarks. ESMA expects NCAs not to prioritise supervisory actions against administrators and supervised contributors relating to the timeliness of fulfilling those audit requirements where the audits are carried out by 30 September 2020. In addition, ESMA encourages NCAs to generally apply a risk-based approach in the exercise of supervisory powers in their day-to-day enforcement of the Benchmarks Regulation in a proportionate manner concerning the timeliness of fulfilling those audit requirements;

- a public statement postponing the application of the annual non-equity transparency calculations and the calculations for the systematic internaliser test for derivatives, ETCs, ETNs, emission allowances and structured finance products (SFPs) under MiFID2. The publication of the calculations including the liquidity assessment and the determination of the pre-trade and post-trade large in scale and size specific to the instrument thresholds for derivatives, ETCs, ETNs, emission allowances and structured finance products will be postponed from 30 April 2020 to 15 July 2020 and their application from 1 June 2020 to 15 September 2020. The transitional transparency calculations (TTC) will continue to apply until and including 14 September 2020. ESMA will publish the data for the performance of the systematic internaliser test for derivatives, ETCs, ETNs, emission allowances and structured finance products by 1 August 2020 and the mandatory systematic internaliser regime for derivatives, ETCs, ETNs, emission allowances and structured finance products will apply from 15 September 2020; and
- a new Q&A to provide guidance to issuers on the application of its guidelines on alternative performance measures (APM) in the context of COVID-19. ESMA urges issuers to use caution when adjusting APMs or introducing new APMs to address the impact of the pandemic. Instead it requests that issuers consider adding information to their disclosures, explaining how COVID-19 impacted, or is expected to impact, their operations and performance, the level of uncertainty and the measures adopted to address the impact of the outbreak.

In addition, ESMA has issued opinions agreeing to the renewal of the emergency restrictions on short selling and similar transactions by the Finanzmarktaufsicht (FMA) of Austria, the Financial Securities and Markets Authority (FSMA) of Belgium, the Autorité des Marchés Financiers (AMF) of France, the Hellenic Capital Market Commission (HCMC) of Greece and the Comisión Nacional del Mercado de Valores (CNMV) of Spain. All five NCAs had imposed restrictions in March 2020 which were due to expire in April, and all five decided to renew those restrictions. Following coordination by ESMA, the renewal process has been aligned and the renewal decisions will all be in place until 18 May with the possibility of a further renewal. The restrictions apply as follows:

- all shares admitted to trading on the relevant trading venues for which the NCA is the relevant competent authority, as well as to all related instruments relevant for the calculation of the net short position;
- the measures may be lifted before the deadline if the risks of a loss of market confidence are reduced or may be further extended after the deadline considering market conditions;
- the prohibitions apply to transactions executed both on a trading venue and over-the-counter; and
- the measures do not apply to market making activities or index-related instruments or baskets of financial instruments if the shares covered by the ban represent 50% or less of the index or basket weight.

Belgium

In Belgium, three Royal Decrees adopted based on the special powers granted to the Government in relation to the coronavirus have been published in the Belgian State Gazette. The first Royal Decree concerns the extension of the statute of limitations and the procedural deadlines which expire pending the crisis, and the application of the written procedure in civil proceedings. A second Royal Decree contains provisions relating to criminal proceedings and the execution of criminal sentences. A third Royal Decree concerns various measures in relation to co-ownership and shareholders meetings. Amongst other things, the Royal Decree relating to the extension of deadlines in civil proceedings provides that limitation periods and deadlines in civil proceedings expiring between 9 April and 3 May 2020 are automatically extended for one month after the end of the lockdown period. Hearings which would, as a consequence of the extension, fall due less than one month after the filing of the last submissions will be postponed. The extension of procedural deadlines may, however, be excluded upon the motivated request of a party which states that the proceedings are urgent and that there is a risk in delaying the proceedings. Oral hearings are cancelled and courts and tribunals will decide based on the documents on file if the hearing is scheduled between 11 April and 3 June 2020 and the parties have filed submissions. The parties have the possibility to refuse that the case is treated based on the written documents only (without a hearing), but the judge can still choose to apply the written procedure if at least one party agrees to this.

Czech Republic

The Czech Senate has approved a draft bill proposing an opt-in-based substantive moratorium on loans. Consumer, as well as commercial, loans are in scope subject to number of exceptions provided for in the draft bill. In relation to commercial loans, the moratorium applies only to repayments of principal and not to interest and fees. The moratorium will apply during a so-called 'protection period' from the first day of the calendar month following the date of the opt-in until, at the option of the debtor, 31 July 2020 or 31 October 2020. The legislative report to the draft bill states that the Act should be interpreted as applying to loans provided in the Czech Republic irrespective of whether the lender is a Czech entity and irrespective of the governing law of the loan. It is currently expected that the draft bill will be published and become effective during the week of 20 April 2020. The debtors who will opt-in during April 2020 will thus be protected from 1 May 2020.

France

The French Minister of the Economy and Finance has issued a press release presenting the public reinsurance scheme for credit insurance risks made available through the French Caisse centrale de réassurance, in accordance with the Amending Finance Law for 2020 as supplemented by the related Decree of 4 April 2020 and authorised by the EU Commission on 12 April 2020. According to the press release, the scheme will enable companies that have taken out such cover and that are notified of reductions or refusals of guarantee for certain customers due to the deterioration of the economic climate to continue to be covered, and should take the form of credit insurance supplements offered by insurers to all their French policyholders via three products (Cap, Cap + and CapFranceExport) which will be marketed as of 15 April. In this context, insurers benefit from a state-guaranteed reinsurance of EUR 10 billion. The press release notes that factoring companies insured on behalf of these companies are also eligible for the reinsurance scheme.

Luxembourg

The Luxembourg financial sector supervisory authority (CSSF) has issued:

- a communiqué on the approach to SFTR implementation in the context of the pandemic. Given the difficulties encountered by the concerned entities in finalising the implementation of the SFT reporting requirements and in completing the necessary technical set-up before 14 April 2020, the CSSF has decided that it will not prioritise its supervisory actions against counterparties, entities responsible for reporting and investment firms in respect of their reporting obligations pursuant to SFTR or MiFIR, regarding SFTs concluded between 13 April 2020 and 13 July 2020 and SFTs subject to backloading under SFTR. The CSSF will monitor implementation by the relevant market participants and expects them to be sufficiently prepared ahead of the next phase of the reporting regime, i.e. 13 July 2020, in order to start reporting as of this date;
- a communiqué informing investment fund managers (IFMs) of the launch of a new weekly online questionnaire intended to provide the CSSF with weekly updates on financial data (total net assets, subscriptions and redemptions) and on governance arrangements in relation to the activities performed by certain IFMs (including without limitation UCITS management companies/UCITS self-managed investment companies and authorised external/internally-managed AIFMs) established in Luxembourg or in other EU/non-EU countries and managing at least one UCITS, regulated or non-regulated AIF and/or any other UCI (not qualifying as AIF) in view of the specific circumstances and risks to which these companies are exposed during the current period of market turbulence. All concerned IFMs should be contacted directly by the CSSF in the context of this new questionnaire, which will have to be completed and submitted by the relevant IFMs through the CSSF eDesk Portal on a weekly basis by close of business every Wednesday, in accordance with the general principles outlined in the User Guide on Weekly IFM Questionnaire. The first questionnaire covering the week from 13 to 17 April 2020 shall be submitted to the CSSF by close of business on 22 April 2020, and the submission process will then be repeated for the subsequent weekly questionnaires until further notice by the CSSF (the last day of each reference week being considered as the reference date for the information to be submitted). In practice, the relevant IFMs must have an eDesk account with a LuxTrust authentication to access and submit the weekly questionnaire to the CSSF, but they can also mandate a Luxembourg-based service provider for the transmission of the questionnaire on their behalf. Further details on the questionnaire, the related scope of application and additional explanations assisting the IFMs in filling in the questionnaire are outlined in the dedicated section of the CSSF eDesk Portal and in the User Guide on the Weekly IFM Questionnaire. Any additional technical questions about the eDesk Platform can be sent to the CSSF at edesk@cssf.lu and any other questions can also be sent to ifm_covid@cssf.lu;
- a communiqué on information requests based on Commission Implementing Regulation (EU) 2018/1624 of 23 October 2018 in the context of the pandemic. In line with the European Banking Authority's recent statement on supervisory reporting and Pillar 3 disclosures in light of COVID-19, the CSSF has decided to extend until 29 May 2020 the

remittance date for the information to be submitted to the CSSF (in its function as resolution authority) under the Implementing Regulation. This extension does not apply to templates relating to the concerned institution's liability structure, own funds requirements and intragroup financial interconnections (only relevant for institutions under the CSSF's direct remit) which are expected to be reported by 30 April 2020 at the latest; and

- a communiqué on working from home in the context of COVID-19 following the confirmation by the Luxembourg Government that the lockdown will be extended (with limited exceptions) until at least 25 May 2020, the CSSF urges all financial institutions under its prudential supervision to continue working from home where possible and emphasises that no prior authorisation is needed for such work arrangements. It also emphasises that satisfactory IT security conditions must be in place.

The CSSF has also issued a new Circular CSSF 20/740 to provide guidance to all professionals subject to AML/CTF supervision by the CSSF in relation to the money laundering and terrorism financing (ML/TF) risks and AML/CTF implications of the pandemic. The CSSF stresses in particular that the fight against financial crime remains a priority and requires that supervised professionals continue to ensure that Luxembourg's financial system is not abused for ML/TF purposes. The new circular describes:

- new and emerging ML/TF threats resulting from COVID-19;
- possible areas of particular vulnerability for the financial sector;
- mitigating actions that require particular focus for supervised professionals; and
- the CSSF's approach to AML/CTF supervision during this period.

In addition, the CSSF has published an updated version of its COVID-19 FAQs reflecting the statements, recommendations and other guidance issued by EU and international bodies to mitigate the impact of COVID-19 for banks and investment fund managers. As regards investment fund managers, the CSSF confirms that it intends to comply with ESMA's public statement of 9 April 2020 concerning the deadlines applicable under the UCITS and AIFM Directives for the publication of the annual and half-yearly reports of the UCITS and AIFs that they manage, and consequently asks investment fund managers to inform the CSSF and their investors if they expect the relevant periodic reports to be published beyond the regulatory deadlines. As regards banks, the CSSF reflects the relevant statements and guidance issued by the European Banking Authority (EBA), ESMA, the ECB and the International Accounting Standards Board (IASB) in the course of March 2020 on the application of the IFRS 9 accounting framework in the specific context of the COVID-19 pandemic, and describes in particular the flexibility offered by IFRS 9 to mitigate volatility in banks' regulatory capital, financial statements and reporting obligations regarding the pandemic. The CSSF also highlights the possibility for banks to use the transitional arrangement related to IFRS 9 implementation, subject to prior authorisation by the CSSF.

The updated FAQs also provide clarity on the CSSF's expectations in case of breaches by the UCITS it manages of the regulatory VaR limit (i.e. 20% for the absolute VaR or 200% for the relative VaR) or of any other more restrictive internal VaR limits (i.e. a limit below the regulatory thresholds) as laid down in the UCITS' prospectus. In particular, the CSSF indicates that breaches of the regulatory or internal VaR limit by UCITS, which occur as a result of the increase of volatility in financial markets, may be considered as passive breaches (i.e. breaches beyond the control of the relevant UCITS or of its managers) provided that there are no new positions taken by the UCITS which increase the overall level of risk of its portfolio. The CSSF does not require notification of such passive breaches and they do not preclude the UCITS' manager from continuing to manage the UCITS, but appropriate steps should be taken to meet the VaR limit within a reasonable time period by taking into account the prevailing market conditions and the best interests of the UCITS' investors. By contrast, active breaches of the regulatory or internal VaR limit by UCITS have to be reported to the CSSF at opc.prud.sp@cssf.lu with some minimum information, as detailed in question 16 d) of the FAQs.

Poland

The Management Board of the National Bank of Poland has adopted a resolution setting out the conditions for granting bill discount credits to banks. Polish banks, branches of foreign banks and branches of credit institutions which have their current accounts with the National Bank of Poland will be able to enter into agreements for bill discount credits with the National Bank of Poland.

The Polish Financial Supervision Authority (KNF) has published a statement setting out its expectations of banks and insurance companies during the COVID-19 pandemic. Amongst other things, KNF urges firms to take a conservative approach with regard to disbursements of variable components of remuneration, to review the practices concerning remuneration and bonuses from the point of view of prudential management of capital and to limit actions that could result in a weakening of the capital base. KNF has also announced that, as part of its 'anti-crisis shield' measures, it has granted permission to Bank Gospodarstwa Krajowego (BGK) to delegate to other banks the assessment of capacity to repay a liability and analyses of the risk of disbursing a liability, in relation to credit facilities guaranteed by BGK as part of the portfolio guarantee line financed from the Liquidity Guarantees Fund.

Switzerland

The Swiss Financial Market Supervisory Authority (FINMA) has announced further exemptions in the context of the COVID-19 crisis. Firstly, FINMA is granting exemptions in the model approach to market risk intended to mitigate the volatility-induced procyclicality. These exemptions concern the number of backtesting exceptions that are relevant to the calculation of capital adequacy and apply until 1 July 2020. Secondly, FINMA is extending the timeframes in derivatives trading for the implementation of the margin requirements for non-centrally cleared OTC derivatives for certain counterparties by one year.

The Swiss Federal Council has passed an ordinance to minimise corporate failure. The ordinance removes the obligation of a company to notify the bankruptcy court in case of a failure to be able to pay its debts, which would usually lead to immediate insolvency procedures. It also introduces a right for SMEs to apply for a moratorium from payment obligations for up to three months without having to present a restructuring plan. The ordinance comes into force on 20 April 2020.

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United Kingdom

The British Business Bank has provided further details of the new Coronavirus Large Business Interruption Loan Scheme (CLBILS), which will provide a government guarantee of 80% to enable banks to grant loans to businesses that were viable before the COVID-19 outbreak but are facing significant cash flow difficulties that would otherwise make their business unviable in the short term. Under the revised terms of the CLBILS, lenders may provide loans of up to GBP 25 million to firms with an annual turnover of between GBP 45 million and GBP 250 million and up to GBP 50 million to firms with an annual turnover of over GBP 250 million. The scheme will be delivered through a range of British Business Bank accredited lenders and partners, to be listed on its website. It will launch on 20 April 2020.

The Financial Policy Committee (FPC) has met to review developments in the financial system related to the coronavirus outbreak. The Committee usually assesses risks to UK financial stability and the resilience of the UK financial system, and publishes that assessment in biannual Financial Stability Reports. Given developments in recent weeks, the FPC has decided to supplement its normal practice with an additional interim Financial Stability Report. That interim Report will be published on 7 May, alongside the May Monetary Policy Report issued by the Monetary Policy Committee. The interim Report will contain the Committee's assessment of the risks to UK financial stability and the resilience of the UK financial system to ongoing economic and market shocks.

Meanwhile the Financial Conduct Authority (FCA) has published a number of items setting out its expectations of firms during the coronavirus pandemic. These include:

- an updated statement of its expectations regarding the financial resilience of solo-regulated firms, in which it emphasises that it expects firms to plan ahead, conserve capital and to consider whether discretionary distributions of capital for the purposes of dividends, share buy-backs or remunerations are prudent given the market circumstances. It states that firms may use capital and liquidity buffers to support the continuation of their activities if needed but must keep the FCA or named supervisor informed. It also reminds non-bank lenders subject to IFRS 9 that the standard requires that any forward-looking information used in expected credit loss estimates is both reasonable and supportable, and that they should take into account the impact of the coronavirus crisis and related state support;
- a consultation on a proposed package of relief measures for motor finance and high-cost short-term credit (including payday loans) customers. Amongst other things, the FCA is proposing that motor finance firms and firms that enter into rent-to-own, buy-now-pay-later or pawnbroking agreements are required to provide a three month payment freeze for customers who are having temporary financial difficulties due to the coronavirus crisis, and that payday lending firms provide a one month interest-free payment freeze. Comments are due by 20 April 2020; and
- an update following the EU Commission's statement on the upcoming application date of the cross border payments regulation, in which the FCA follows the Commission's request that firms comply with the requirements if possible, and that, if current circumstances linked to the coronavirus crisis prevent them, they implement the obligations as soon as possible. The

FCA confirms it will take a reasonable approach towards enforcement of the rules in light of the need to preserve the stability and continuity of online payment services.

The FCA has also published two new Dear CEO letters on lending to small businesses and insuring SMEs and business interruption. The FCA expects that for each bank that lends to SMEs there is a Senior Manager, or Senior Managers where appropriate, with clear responsibility for that activity. The FCA will take account of the Lending Standards Board's Standards of Lending Practice for Business Customers when considering how Senior Managers and other relevant employees under the Senior Managers and Certification Regime discharge their duties. It also expects CEOs and boards to take reasonable steps to ensure that the Senior Manager(s) with responsibility for small business lending is discharging that responsibility suitably. With regard to business interruption insurance, the FCA has emphasised that where it is clear that an insurance firm has an obligation to pay out on a policy, it is important that claims are assessed and settled quickly. If there are reasonable grounds to pay part of a claim but not to make the payment of such claims in full, the FCA is asking insurers' CEOs and boards to adopt an approach of making an interim payment.

The Prudential Regulation Authority (PRA) has decided to maintain firms' systemic risk buffer (SRB) rates at the rate set in December 2019, in response to the economic shock from COVID-19. These rates will be reassessed in December 2021. The PRA has also published a modification by consent of the calculation of the total exposure measure of the leverage ratio.

The Financial Ombudsman Service has published the latest edition of Ombudsman News (issue 151), providing an update on the resources it has brought together to help businesses resolve and prevent complaints arising from the pandemic.

Companies House has updated its guidance to note that it will temporarily suspend actions to strike off and dissolve companies that have applied for voluntary strike off. The notice will be published in the Gazette as normal but no further action will be taken in an effort to protect creditors and any other interested parties who may wish to object to the company being struck off the register but are unable to, due to disruptions caused by the coronavirus outbreak. Companies House will also treat late filing, as well as related appeals and late payments, sympathetically during this time.

Australia

The Australian Prudential Regulation Authority (APRA) has announced new commencement dates for six prudential and reporting standards that have been finalised but are yet to come fully into effect. This follows APRA's announcement in March that it was suspending the majority of its planned policy and supervision initiatives in response to COVID-19. Amongst other things, APRA has indicated that it will defer the next two phase-in periods of initial margin requirements for non-centrally cleared derivatives as set out in CPS 226 by one year, consistent with the joint decision by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO).

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Japan

The Japanese Financial Services Agency (FSA) has also published draft amendments to the Cabinet Office Order on Financial Instruments Business, etc. deferring the implementation of the final two phases of the margin requirements for non-centrally cleared derivatives by one year following the BCBS-IOSCO announcement. Public comments on the proposed amendments are due on 18 May 2020.

Singapore

The Singapore Parliament has passed the COVID-19 (Temporary Measures) Act 2020. The Act provides temporary and targeted measures which are designed to alleviate the unexpected pressures which COVID-19 is putting on firms and businesses. The Act also introduces temporary measures for the conduct of court proceedings and enables the Minister for Health to make regulations or 'control orders' for the purpose of controlling the incidence or transmission of COVID-19 in Singapore. Amongst other things, the Act provides for the following:

- temporary relief for parties which are unable to perform obligations arising from certain categories of contracts (including certain loan facilities, performance bonds, hire-purchase agreements, construction contracts and leases of non-residential property), if the inability to perform is materially caused by a COVID-19 event. The relief will be available for six months in the first instance but may be extended or shortened by the Minister for Law;
- temporary relief for financially distressed firms and other businesses, including increases to the monetary thresholds and statutory periods to respond to demands from creditors for bankruptcy and insolvency. The temporary amendments will be applicable for six months in the first instance but may be extended or shortened by the Minister;
- temporary alternative arrangements for the conduct of meetings which would otherwise be conducted in person;
- temporary measures to allow court proceedings and actions and proceedings in the Syariah Court to be conducted using remote communication technology; and
- enabling the Minister charged with the responsibility for health to make regulations to provide for widespread prohibitions and restrictions on movement of people, closures of premises, and restrictions as to the time, manner or extent of conducting any business, undertaking or work.

Meanwhile, the Singapore Government has gazetted:

- the COVID-19 (Temporary Measures) (Control Order) Regulations 2020, which are effective for the period between 7 April 2020 and 4 May 2020 (both dates inclusive) and introduce, among other things, certain restrictions on leaving one's place of residence, a prohibition on social gatherings and mandatory social distancing requirements;
- the COVID-19 (Temporary Measures) (Control Order) (Amendment) Regulations 2020, which amend the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 to incorporate a new Part 4, which relates to compoundable offences. The new part provides that an offence under section 34(7) or 35(9) or (10) of the COVID-19 (Temporary

Measures) Act 2020 may be compounded, for a sum up to SGD 2,000, by any of the following persons, in accordance with section 243(2), (4) and (5) of the Criminal Procedure Code: the Director of Medical Services; the Director-General of Public Health appointed under section 3(1) of the Environmental Public Health Act; the Director-General, Food Administration appointed under section 3(1) of the Sale of Food Act; and an enforcement officer authorised by the Minister for the purposes of this regulation. The Amendment Regulations are effective from 9 April 2020;

- the COVID-19 (Temporary Measures) (Control Order) (Amendment No. 2) Regulations 2020. Amongst other things, the Amendment No. 2 Regulations amend the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 to revise provisions regarding restrictions on movement of people, in relation to closure of premises, in relation to businesses operated by essential service providers, as well as operating or managing specified dormitories; to incorporate new provisions relating to obligations of an owner or occupier of any shopping centre as well as occupiers of permitted premises, and operating or managing specified hostels; and to incorporate a new Part 3A, which sets out requirements in relation to essential service providers and essential service workers. The Amendment No. 2 Regulations are effective from 10 April 2020;
- the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020, which is deemed to have come into operation on 27 March 2020. The Order has been made in respect of the COVID-19 (Temporary Measures) (Control Order) Regulations 2020, and the Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020. It sets out the alternative arrangements to personal attendance in respect of general meetings of companies; general meetings of variable capital companies (VCCs) and meetings of classes of members of VCCs holding shares in respect of a sub-fund; general meetings of unitholders of registered business trusts; meetings of unitholders of relevant unit trusts; and meetings of holders of a series of debentures expressed to be governed by the law of Singapore;
- the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) (Amendment) Order 2020, which is deemed to have come into operation on 27 March 2020. The Amendment Order has been gazetted to amend the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 in response to the additional guidance on the conduct of general meetings during the elevated safe distancing period issued by the Accounting and Corporate Regulatory Authority, the Monetary Authority of Singapore and Singapore Exchange Regulation on 13 April 2020. The Amendment Order sets out additional requirements for non-listed companies and entities regarding publication of a notice of a meeting by electronic means;
- the Companies (Amendment No. 2) Regulations 2020 which introduces a 60-day extension for all listed and non-listed companies whose annual general meetings were due to be held during the period between 16 April 2020 to 31 July 2020 (both dates inclusive) and for all listed and non-listed

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companies whose annual returns were due to be filed during the period between 1 May 2020 to 31 August 2020 (both dates inclusive); and

- the Business Trusts (Accounts of Registered Business Trusts) (Substitution of Period) Order 2020, provides that the trustee-manager of a registered business trust (with a financial year end of 31 December 2019, 31 January 2020, 29 February 2020 or 31 March 2020) will be required to lay before the unitholders of the trust at their annual general meeting a profit and loss account for the period since the preceding account (or in the case of the first account, since the registration of the registered business trust) made up to a date not more than six months before the date of the meeting (in the case of a registered business trust listed or quoted on an approved exchange in Singapore), or not more than eight months before the date of the meeting in the case of any other registered business trust.

The Singapore Exchange Limited (SGX) has announced that, in consultation with the Monetary Authority of Singapore (MAS), it will introduce measures to support issuers amid the challenging business and economic climate due to COVID-19, including enabling the acceleration of fund-raising efforts. In particular, the measures include the following:

- suspension of entry into the Financial Watch-List – the SGX operates a Financial Watch-List and places companies on the List to compel them to turn around their financial performance after 3 years of losses and when market capitalisation falls below SGD 40 million. The SGX understands that, in light of the current conditions, placing listed issuers on the List during this period might cause undue prejudice to companies in navigating the business challenges in this climate. Accordingly, the SGX will provisionally suspend the half-yearly reviews on the first market days of June 2020 and December 2020 to place issuers on the Financial Watch-List. The suspension is to enable issuers to focus on meeting the current business and economic challenges and dealing with any resultant liquidity crunch. Under this measure, companies which meet the exit criteria under the listing rules will continue to be able to exit the Watch-List. Moreover, the SGX will determine where appropriate if the suspension requires further extension in due course; and
- enhanced share issue limit for Mainboard issuers – the SGX will provisionally enable Mainboard issuers to seek a general mandate for an issue of pro-rata shares and convertible securities of up to 100% of their share capital (excluding treasury shares and subsidiary holdings in each class) versus 50% previously, subject to certain conditions as set out in the announcement. The enhanced share issue limit is effective from 8 April 2020 and will be in force until 31 December 2021. The limit on the aggregate number of shares and convertible securities issued other than on a pro rata basis remains at not more than 20%. Issuers intending to raise funds using the enhanced share issue limit must seek shareholders' approval by way of an ordinary resolution either through obtaining a general mandate for the enhanced share issue limit at their annual general meeting or via specific shareholder approval by convening an extraordinary general meeting.

The SGX has indicated that it will work closely with issuers in effecting these measures and giving expedited clearance to their fund-raising efforts.

The MAS has amended its Notices relating to residential property, (Notices 115, 115B, 128A, 632, 632B, 645A, 825, 825B, 831A, 1106, 1106B and 1115A), to give effect to the support measures announced by the MAS and the financial industry on 31 March 2020 to support individuals and small and medium-sized enterprises facing temporary cashflow difficulties amid the COVID-19 crisis. The revised Notices are effective from 6 April 2020. Individuals with residential property loans may apply to their respective bank or finance company to defer either principal payment or both principal and interest payments up to 31 December 2020. Interest will accrue only on the deferred principal amount, no interest will be charged on the deferred interest payments. Lenders will approve the request for deferment as long as the individual is not in arrears for more than 90 days as at 6 April 2020. Individuals do not need to demonstrate any impact from the COVID-19 pandemic to obtain the deferment. The relief has been provided on an opt-in basis, as the cashflow circumstances will differ for every individual. In response to public and media queries, the MAS has clarified the application of the loan-to-value (LTV) limits and total debt servicing ratio (TDSR) for residential mortgages and mortgage equity withdrawal loans (MWLs). The clarifications are intended to help individuals and businesses explore options to meet their cash flow needs.

The MAS has also revised its existing Notice 120 on disclosure and advisory process requirements for accident and health insurance products. The Notice 120 has been revised mainly to incorporate new paragraphs to provide a temporary exemption from certain requirements relating to telemarketing and direct marketing. The revised Notice 120 also introduces definitions of 'selected A&H insurance representative client' and 'selected client'. The revised Notice 120 became effective on 13 April 2020.

Following its announcement that it is adjusting selected regulatory requirements and supervisory programmes to enable financial institutions to focus on dealing with issued related to the COVID-19 pandemic, the MAS has revised its existing guidelines on margin requirements for non-centrally cleared over-the-counter (OTC) derivatives contracts to defer by one year the implementation of the final two phases of the margin requirements for non-centrally cleared derivatives. The new timelines are:

- 1 September 2021 for a bank or merchant bank whose group's aggregate non-centrally cleared derivatives exposure is more than SGD 80 billion; and
- 1 September 2022 for a bank or merchant bank whose group's aggregate non-centrally cleared derivatives exposure is more than SGD 13 billion and up to SGD 80 billion.

The MAS has also announced that it will extend the assessment period for the award of digital bank licences. The extension is intended to:

- allow the digital bank licence applicants to dedicate their resources and attention towards managing the immediate impact of the COVID-19 pandemic on their businesses; and
- enable the MAS to focus resources on ensuring monetary and financial stability, and ensuring that financial institutions remain resilient, and able to perform their role in supporting businesses and individuals through this challenging time.

In January 2020, the MAS released an update that it had received 21 applications for digital bank licences and planned to announce the successful applicants in June 2020. The MAS has indicated that successful applicants will be informed in the second half of 2020 instead of June 2020 as originally intended.

Along with the Ministry of Finance (MOF) and the Inland Revenue Authority of Singapore (IRAS), MAS has also announced new measures to provide real estate investment trusts listed on the Singapore Exchange (S-REITs) with greater flexibility to manage their cash flows and raise funds during the COVID-19 pandemic. The new measures include:

- extending the timeline for S-REITs to distribute at least 90% of their taxable income derived during the financial year 2020, in order to qualify for tax transparency, from three months after the financial year end to twelve months. The IRAS will provide further details of the change by early May 2020; and
- raising, with immediate effect, the leverage limit for S-REITs from 45% to 50%, to provide S-REITs greater flexibility to manage their capital structure; and
- deferring until 1 January 2022 the implementation of a new minimum interest coverage ratio (ICR) requirement.

The MAS emphasises that it continues to expect S-REIT managers to carefully assess their ability to service financial obligations before taking on additional debt. S-REITs will be required to disclose their leverage ratios and ICRs in annual reports and interim financial results to provide investors with timely information about the financial position of S-REITs and the impact of higher leverage on their risk profiles.

The MAS has also published a new set of FAQs on relief measures relating to the COVID-19 situation. The FAQs expand on the MAS' announcement that it will defer the implementation of certain licensing and business conduct requirements introduced under the Securities and Futures (Amendment) Act 2017 by extending the transitional period by one year to 8 October 2021. These requirements had been effected on 8 October 2018, with the transitional period originally ending on 8 October 2020. The FAQs are intended to provide clarifications on the relief measures and other queries received from financial institutions on the licensing and conduct requirements for intermediaries under the Securities and Futures Act (Cap. 289) (SFA) relating to the COVID-19 situation. In particular, the FAQs clarify the following:

- how the extension of the extended transitional period will affect corporations that were already dealing in the new over-the-counter (OTC) derivatives contracts before the expansion of product scope in the SFA on 8 October 2018, and employees of financial institutions who were already dealing in or advising on the new OTC derivative contracts on behalf of the financial institution before the expansion of the product scope in the SFA on 8 October 2018;
- appointed representatives of financial institutions will be allowed to conduct regulated activities for Singapore customers from their overseas location on behalf of the financial institution as a temporary arrangement, if such representatives are unable to return to Singapore due to the COVID-19

situation, subject to the taking of certain measures by the relevant financial institution; and

- representatives of financial institutions' foreign-related licensed entities will be allowed to conduct regulated activities in Singapore with their customers outside of Singapore as a temporary arrangement, if such representatives are unable to return to their overseas location from Singapore due to the COVID-19 situation, subject to the taking of certain measures by the relevant financial institution.

United States

The Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency have issued an interim final rule temporarily to defer real estate-related appraisals and evaluations under the agencies' interagency appraisal regulations, in order to allow regulated institutions to extend financing to creditworthy households and businesses quickly. The agencies are deferring certain appraisals and evaluations for up to 120 days after closing of residential or commercial real estate loan transactions. Transactions involving the acquisition, development, and construction of real estate are excluded from the interim rule. These temporary provisions will expire on 31 December 2020, unless extended by the federal banking agencies. The National Credit Union Administration (NCUA) considered a similar proposal on 16 April.

The Federal Reserve has published term sheets for its Main Street New Loan Facility and Main Street Expanded Loan Facility (for existing loans). The combined size of these two facilities will be up to USD 600 billion. Businesses with up to 10,000 employees or up to USD 2.5 billion in 2019 annual revenues are eligible participate in both facilities. In addition, to be eligible, a borrower must:

- be a business that is created or organised in the United States or under the laws of the United States;
- have significant operations in the United States; and
- have a majority of its employees based in the United States.

The Federal Reserve's Open Market Trading Desk has announced details of its overnight and term repurchase agreement operations, which are aimed at ensuring an ample supply of reserves and to support the smooth functioning of short-term US dollar funding markets. The Desk has published an operational schedule and technical parameters, such as the minimum bid rate and proposition limit, which will be updated daily to reflect the operational details for the following business day's operations.

The Federal Reserve has also announced that its Paycheck Protection Program (PPP) Liquidity Facility is fully operational and available to provide liquidity to eligible financial institutions in order to help support small businesses. The Small Business Administration's PPP guarantees loans extended by qualified lenders to small businesses so that those businesses can keep workers employed.

The US Small Business Administration has issued interim final rules for implementation of Sections 1102 and 1106 of the CARES Act – which establish the Paycheck Protection Program and related principal forgiveness. These interim final rules include the following clarifications:

- loan availability – while applicants can apply for and receive the loan up until 30 June 2020, the loans will be offered on a first-come, first-served basis;
- use of funds – the CARES Act permits loan recipients to use the funds for payroll costs and other expenses including mortgage interest payments, rent and utilities. These rules require that at least 75% of the PPP loan proceeds shall be used for payroll costs, regardless of whether the applicant applies for loan forgiveness;
- 'payroll costs' for the purposes of PPP loan calculations consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation;
- independent contractors do not count as employees for the purposes of PPP loan calculations as they have the ability to apply for a PPP loan on their own;
- the interest rate on a PPP loan will be 100 basis points or 1%; and
- the maturity on a PPP loan is two years.

The Division of Corporation Finance of the US Securities and Exchange Commission (SEC) is allowing Form 144 submissions to be made by emailing a PDF copy to PaperForms144@SEC.gov rather than mailing it to the SEC in hard copy from 10 April 2020 until 30 June 2020. Form 144 is used to notify the SEC of unregistered sales of securities by affiliates of an issuer in reliance on the safe harbor provided by Rule 144 under the US Securities Act of 1933, as amended. If a manual signature on the Form 144 cannot be submitted by email, the submitter may provide a typed form of signature in lieu of a manual signature as long as:

- the signatory retains a manually signed signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic submission and provides such document, as promptly as practicable, upon request by Division or other Commission staff;
- such document indicates the date and time when the signature was executed; and
- the submitter (with the exception of natural persons) establishes and maintains policies and procedures governing this process.

RECENT CLIFFORD CHANCE BRIEFINGS

Zooming in on privacy and cybersecurity controls in the wfh environment

Implementing and enforcing effective controls over third-party service providers is more important than ever.

Working from home has become the new normal, and companies have increasingly turned to new technologies to assist in continuing to provide business services remotely. This emergency transformation, however, does not eliminate the need for companies to assess the quality and security of communication platforms prior to deploying these technologies in connection with the delivery of services. Recent developments related to Zoom, a popular videoconferencing platform, illustrate the need for companies to continuously assess and monitor their service providers. Privacy advocates and regulators have called into question Zoom's privacy practices, and the company now faces private litigation as well as inquiries by government authorities.

This briefing discusses the issues surrounding Zoom's data privacy and cybersecurity practices.

https://www.cliffordchance.com/briefings/2020/04/zooming-in-on-privacy-and-cybersecurity-controls-in-the-wfh-envi.html

Czech loan moratorium – its true impact in the field of large corporate financing

On 7 April 2020, the lower house of the Czech Parliament, the House of Deputies, approved a draft bill on certain measures regarding loan repayments in relation to the COVID-19 pandemic.

A detailed reading of the version of the bill presented to the Senate raises a number of questions and uncertainties about the impact of the proposed rules on relationships between borrowers and lenders. If adopted in their current form, the rules, in addition to their ambiguities, will affect the dynamics of commercial relationships throughout the loan market.

This briefing provides a review of the likely impacts of such rules in the field of large corporate financing.

https://www.cliffordchance.com/briefings/2020/04/coronavirus---czech-loan-moratorium--its-true-impact-in-the-fiel.html

Implications for Material Adverse Effect clauses in NY law-governed credit agreements

A Material Adverse Effect clause permits the parties to a contract to void it if an event occurs which changes the fundamental underpinning on which the contract was entered. In the lending context, lenders and borrowers will heavily negotiate what constitutes a 'material adverse effect' and will qualify certain representations and covenants in a credit agreement by reference to whether or not a breach of such representation or covenant could or would result (or has resulted) in a material adverse effect. Similarly, credit agreements will often include events of default that are triggered if a material adverse effect occurs. The COVID-19 pandemic and the related precautionary measures being taken globally to try to contain the disease have led various borrowers and lenders to question whether an MAE provision has been triggered under existing credit facilities.

This briefing discusses the implications of the pandemic for Material Adverse Effect clauses in NY law-governed credit agreements.

https://www.cliffordchance.com/briefings/2020/04/coronavirus--implications-for-material-adverse-effect-clauses-in.html

NYSE temporarily suspends certain shareholder approval requirements

On 6 April 2020, the US Securities and Exchange Commission approved the immediate effectiveness of a rule change proposed by the New York Stock Exchange. This rule change facilitates raising capital, including from related parties or an existing investor, by partially waiving the NYSE's shareholder approval requirements though the end of June, subject to specified conditions.

This briefing discusses the rule change.

https://www.cliffordchance.com/briefings/2020/04/coronavirus--nyse-temporarily-suspends-certain-shareholder-appro.html

The US Cares Act and the Main Street Lending Program

On 9 April the Federal Reserve announced USD 2.3 trillion of new or expanded facilities under the Coronavirus Aid, Relief and Economic Security Act that was enacted by the US Congress and signed into law by the President just two weeks earlier. Through one of the new programs, the Main Street Lending Program, the central bank will make available as much as USD 600 billion in eligible loans for US businesses with up to 10,000 employees or up to USD 2.5 billion in 2019 annual revenues. The Main Street Lending Program is intended to provide financial support to small and mid-sized businesses that were in good financial health before the circumstances caused by the COVID-19 pandemic, subject to certain eligibility conditions and other restrictions. The program creates two facilities – one for new eligible loans, and one to upsize existing eligible loans.

This briefing discusses the Main Street Lending Program.

https://www.cliffordchance.com/briefings/2020/04/coronavirus--the-us-cares-act-and-the-main-street-lending-progra0.html

US Federal Reserve broadens new term asset-backed securities loan facility

On 9 April 2020, the Board of Governors took additional action to expand the new TALF program. Notably, the program was expanded to broaden the range of assets that are eligible collateral for TALF. TALF-eligible collateral will now include the triple-A rated tranches of both outstanding commercial mortgage-backed securities and newly issued collateralized loan obligations.

The new TALF program is modelled on a similar credit facility established in 2008 to ensure the proper functioning of critical ABS markets during the Global Financial Crisis. However, the purpose of this TALF is different from the 2008 TALF and is generally focused to facilitate lending to consumers and businesses.

This briefing discusses the important differences between this TALF and the 2008 TALF.

https://www.cliffordchance.com/briefings/2020/04/coronavirus-update---u-s--federal-reserve-broadens-new-term-asse.html

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