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

International Regulatory Group Contacts

Marc Benzler +49 69 7199 3304
Caroline Dawson +44 207006 4355
Steven Gatti +1 202 912 5095
Owen Lysak +44 207006 2904
Lena Ng +65 6410 2215
Gareth Old +1 212 878 8539
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
www.cliffordchance.com

Sustainable Finance: EU Council adopts Taxonomy Regulation

The EU Council has adopted at first reading a regulation on the establishment of a framework or 'taxonomy' to facilitate sustainable investment.

The Taxonomy Regulation, which is intended to provide businesses and investors with a common language to identify those economic activities that are considered environmentally sustainable, is based on six EU environmental objectives:

- climate change mitigation;
- climate change adaptation;
- sustainable use and protection of water and marine resources;
- transition to a circular economy;
- pollution prevention and control; and
- protection and restoration of biodiversity and ecosystems.

The Regulation still needs to be adopted by the EU Parliament at second reading.

EU Commission consults on draft delegated regulations under Benchmarks Regulation

The EU Commission has launched a consultation on three draft delegated regulations under the EU Benchmarks Regulation.

The draft delegated regulations relate to:

- introducing minimum standards to help benchmark administrators design the 'EU climate transition' and 'EU Paris-aligned' benchmarks;
- requiring companies that publish financial benchmarks to explain clearly in the benchmark statement how environmental, social and governance criteria are reflected for each benchmark; and
- the minimum content of explanation required on how environmental, social and governance factors are reflected in the benchmark methodology.

Comments are due by 6 May 2020.

Equivalence: EBA amends guidelines on confidentiality and professional secrecy regimes

The European Banking Authority (EBA) has updated its guidelines on the equivalence of confidentiality and professional secrecy regimes by adding the New York State Department of Financial Services (US) to the current list of non-EU (third country) supervisory authorities whose confidentiality regimes can be regarded as equivalent.

The EBA guidelines are intended to help EU authorities in their assessment of third country equivalence and to facilitate cooperation with third country supervisory authorities and their participation in supervisory colleges overseeing international banks.

CRR: EBA issues opinion on proposed EU Commission amendments to draft RTS assigning risk weights to specialised lending exposures

The EBA has delivered an opinion on the EU Commission's proposed amendments to final draft regulatory technical standards (RTS) under Article 153(9) of the Capital Requirements Regulation (CRR) on assigning risk weights to specialised lending exposures.

In June 2016, the EBA submitted the final draft RTS to the EU Commission for endorsement. In March 2020, the Commission informed the EBA of its intention to endorse the draft RTS with amendments.

The EBA views that the amendments, which are of a substantive nature, do not alter the draft RTS in a significant manner and that the draft RTS, despite these changes, maintain a good balance between the flexibility and risk sensitivity required for the internal ratings-based approach (IRB approach) and the need for a harmonised regulatory framework.

FSB consults on recommendations for regulation, supervision and oversight of global stablecoins

The Financial Stability Board (FSB) has published a consultation paper on the regulation, supervision and oversight of global stablecoin (GSC) arrangements. The paper:

- describes GSCs;
- analyses the risks they pose;
- considers the existing regulatory, supervisory and oversight approaches to GSCs;
- lists the issues that authorities may need to address, including those that arise in a cross-border context; and
- sets out ten high-level recommendations for the regulation, supervision and oversight of GSCs.

Amongst other things, the FSB recommends that authorities:

- have and use the necessary powers, tools and resources to comprehensively regulate, supervise and oversee GSC arrangements;
- apply regulatory requirements to GSCs on a functional and proportionate basis;
- ensure there is sufficient regulation, supervision and oversight of GSCs across borders and sectors and that GSCs meet all applicable requirements of a particular jurisdiction before commencing operations there;
- ensure GSC arrangements have a comprehensive governance framework with clear allocation of accountability, effective risk management frameworks, robust data management systems and appropriate recovery and resolution plans;
- ensure that GSC arrangements provide users and stakeholders with sufficient information to permit them to understand the functioning of the arrangement (including its stabilisation mechanism) and the nature and enforceability of any redemption rights; and

- ensure that GSCs have systems and products that can adapt to new regulatory requirements as necessary.

Comments on the consultation are due by 15 July 2020. The FSB intends to publish its final recommendations in October 2020.

ISDA announces preliminary results of second consultation on pre-cessation fallbacks for LIBOR

The International Swaps and Derivatives Association (ISDA) has announced the preliminary results of its second consultation on the implementation of pre-cessation fallbacks for derivatives referenced to LIBOR.

This follows an inconclusive consultation held in May 2019. ISDA launched a second consultation in February 2020 following additional information being made available by the Financial Conduct Authority (FCA) and ICE Benchmark Administration on the length of time a non-representative LIBOR would be published.

The initial results of the second consultation indicate that a significant majority of respondents are in favour of including both pre-cessation and permanent cessation fallbacks as standard language in the amended 2006 ISDA Definitions for LIBOR and in a single protocol for including the updated definitions in legacy trades.

ISDA intends to move forward on the basis that pre-cessation fallbacks based on a 'non-representativeness' determination and permanent cessation fallbacks would apply to all new and legacy derivatives referencing LIBOR that incorporate the amended 2006 ISDA Definitions. The updated definitions for other covered interbank offered rates (IBORs) will continue to include permanent cessation fallbacks only.

ISDA intends to publish a final report analysing the consultation results and providing information on next steps in the coming weeks.

ESMA and MAS sign MoU on Singapore's financial benchmarks

The European Securities and Markets Authority (ESMA) and the Monetary Authority of Singapore (MAS) have signed a Memorandum of Understanding (MoU) establishing cooperation arrangements under the EU Benchmarks Regulation (BMR).

Among other things, the MoU provides a mechanism for the exchange of information between ESMA and the MAS, and sets out procedures concerning the coordination of supervisory activities relating to the administration of benchmarks.

The signing of the MoU follows the European Commission's equivalence decision adopted on 29 July 2019 recognising Singapore's regulatory framework on financial benchmarks as equivalent to the requirements under the BMR. This decision allows financial institutions in the EU to continue using SIBOR and the Singapore Dollar Swap Offer Rate (SOR) as reference rates in their contracts.

Consob publishes new transparency rules for significant equity investments

Consob has adopted two measures (Resolutions no. 21326 of 9 April 2020 and no. 21327 of 9 April 2020) which provide for a regime of enhanced transparency as regards both the obligation to disclose significant shareholdings in specific Italian companies listed on the stock exchange and the 'declaration of intentions' in the event of the acquisition of investments in listed companies, as required by the so-called 'anti-invasion rule'.

As regards the changes in significant shareholdings, among other things, Consob has lowered the thresholds triggering the disclosure obligation for 104 listed companies from 3% to 1% for 'non-SMEs' business subjects and from 5% to 3% for SMEs.

As regards the enhanced transparency requirements regarding the 'declarations of intentions', which is the obligation on investors to disclose, upon exceeding a specific threshold, their investment objectives for the following six months, Consob has lowered the threshold from 10% to 5%. This provision also applies to the 104 aforementioned companies. Further thresholds of 10%, 20% and 25% remain unchanged.

Both measures are in force for three months starting on 11 April 2020, unless revoked earlier. The previous Resolution of 17 March 2020 (Resolution no. 21304) has been repealed.

Ministry of Finance consults on Act to implement CRD 5/CRR 2 package in Poland

The Ministry of Finance has published for consultation the draft of the Act Amending the Banking Law and Certain Other Acts. The purpose of the draft Act is to introduce changes to the national legal order in connection with the entry into force of the legal regulations regarding capital requirements for financial institutions, under the revised Capital Requirements Directive (CRD 5) and Capital Requirements Regulation (CRR 2) package.

Polish Financial Supervision Authority publishes communiqué on AML / CFT risk assessments

The Polish Financial Supervision Authority (PFSA) has underlined the particular importance of the correct assessment by obliged entities subject to its supervision of the risk related to money laundering and terrorism financing relating to their activity.

In its communiqué, the PFSA presents its position on good practices that should be applied by obliged entities in their internal processes for the identification and assessment of money laundering and terrorism financing risks.

ASIC releases feedback on financial institutions' preparation for LIBOR transition

The Australian Securities and Investments Commission (ASIC) has released feedback on responses to the 'Dear CEO' letter from selected major Australian financial institutions, detailing their preparations for the end of LIBOR – an initiative supported by the Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia (RBA).

In May 2019, ASIC wrote to the chief executive officers of selected major Australian financial institutions, supported by APRA and RBA, requesting information to better understand how these institutions are preparing for the end of LIBOR. Institutions responded to the letter in July 2019, providing regulators with information on their transition preparation.

The feedback highlights the need for all institutions to plan for LIBOR transition, the aspects to consider in transition and the importance of addressing the related issues early.

The regulators encourage all financial and corporate institutions in Australia to read the feedback, consider the implications of transition for their own situation, and plan accordingly for the end of LIBOR. They also encourage institutions to communicate and highlight the potential impacts of LIBOR transition to their stakeholders, including end consumers, to raise awareness of the issues more broadly.

Moreover, institutions that responded to the letter have been separately provided with specific feedback from ASIC and APRA on their transition preparations. This feedback includes ASIC's and APRA's general assessment of the transition preparations, related recommendations and a plan for ongoing engagement on these issues.

The regulators have indicated that they will monitor industry developments and, where appropriate, engage with relevant stakeholders to seek assurance that these outcomes are being adequately addressed. They also recognise that disruptions from the coronavirus outbreak may affect the timing of some aspects of institutions' transition plans.

China enhances framework of market-oriented allocation of resources to further liberalise financial markets

The Central Committee of the Communist Party of China (CPC Central Committee) and the State Council have issued an opinion on improving the market-oriented allocation mechanism of production resources, which aims to further facilitate the free and orderly allocation of resources, deepen market-oriented reforms and stimulate market activity in various fields including financial markets, land, labour, technology and data.

Among others, the following efforts will be made with the aim of accelerating the development and liberalisation of China's domestic capital and financial markets:

- to further develop the size of the PRC bond market and increase types of available bond products, further promote the connectivity with overseas bond markets and improve the disposal of bonds following a default;
- to promote the effectiveness of the pricing mechanism in the bond market and enhance China's Treasury yield curve as the pricing benchmark;
- to continue internationalisation of Renminbi and relax China's foreign exchange controls on cross-border investment, financing and financial market transactions denominated in Renminbi;
- to gradually open up the futures market to foreign investors and reduce the restrictions on both inbound and outbound investments in securities and asset management industries; and

- to further relax the requirements for foreign financial institutions to acquire a financial licence in China and encourage Chinese financial institutions to participate in trading in global financial markets.

Implementing regulations and rules are expected to follow soon.

HKMA lowers regulatory reserve requirement for locally incorporated authorised institutions

The Hong Kong Monetary Authority (HKMA) has issued a circular to inform all locally incorporated authorised institutions that the regulatory reserve requirement on locally incorporated authorised institutions has been lowered by 50% with immediate effect.

The HKMA observes that locally incorporated authorised institutions have made good progress in enhancing their expected loss provisioning models, systems and controls, since the implementation of the Hong Kong Financial Reporting Standard 9 (HKFRS 9) in January 2018. This indicates that the 'expected loss' provisioning requirement under the HKFRS 9 is robust and responsive to changes in external conditions. Accordingly, the need for locally incorporated authorised institutions to maintain a regulatory reserve on top of the accounting provisions has diminished.

The mechanism for determining the level of regulatory reserve reduction for individual authorised institutions and the consequential adjustment to the target rate for the calculation of the benchmark regulatory provision has been set out in the annex to the circular.

As the outbreak of COVID-19 has caused major disruptions to local economic activities, the HKMA strongly encourages authorised institutions to utilise the additional lending headroom created by the regulatory reserve to support customers to overcome the impact of COVID-19. It is the HKMA's expectation that the regulatory reserve release should not be used for dividend distribution, share buyback or payment of bonus to senior management. The HKMA intends to keep the situation under regular review and will continue to assess the implementation of the HKFRS 9 by locally incorporated authorised institutions and further adjust the regulatory reserve requirement is warranted in the future.

SFC and HKEX conclude consultation on uncertificated securities market model

The Securities and Futures Commission (SFC), Hong Kong Exchanges and Clearing Limited (HKEX) and the Federation of Share Registrars Limited (FSR) have published the conclusions on their January 2019 joint public consultation on a revised operational model for implementing an uncertificated securities market in Hong Kong.

The consultation was triggered by market concerns that the operational model proposed earlier would compromise some of the settlement efficiencies enjoyed by the market and have a significant impact on participants' funding needs. The model put forward in the consultation is intended to address these concerns while still offering investors an option to hold securities in their own names and without paper.

The regulators note that the feedback on the consultation indicated strong support for the proposals. The proposed operational model seeks to:

- enable securities to be moved into and out of the clearing and settlement system more efficiently and cost effectively than today;
- address concerns about settlement efficiencies being compromised, and the potential impact on market participants' funding needs; and
- result in less market disruption and costs as it builds on existing processes, operational flows and infrastructure.

Based on the feedback received, the regulators have indicated that they will further develop the model and the regulatory framework to support it with a view to implementing the uncertificated securities market regime from 2022.

CFTC requests comments on proposed amendments to Commodity Broker Bankruptcy Regulations

The Commodity Futures Trading Commission (CFTC) has published proposed amendments to Part 190 of its regulations that govern bankruptcy proceedings of commodity brokers such as futures commission merchants (FCMs) and derivatives clearing organizations (DCOs).

The proposed amendments, which are not related to the COVID-19 pandemic, are intended to update Part 190 to reflect shifts in the regulatory framework over the decades, current market practices and lessons learned from past commodity broker bankruptcies,

Proposed changes to Part 190 include:

- strengthening the rules requiring shortfalls in property segregated for customers be made up from the FCM's general assets;
- clarifying that claims of public customers come before proprietary and affiliate claims, and that public customers are entitled among themselves to a pro rata distribution based on their respective claims;
- transferring positions of public customers, and their proportionate share of associate collateral, to a solvent FCM;
- clarifying the trustee's discretion to make reasonable estimates under conditions of imperfect information;
- a new section setting out the core concepts for Part 190 to enhance clarity and transparency;
- clarifying that Part 190 is applicable where FCMs are also broker-dealers in the context of proceedings under the Securities Investor Protection Act, and to the resolution of a DCO Under Title II of the Dodd-Frank Act; and
- a new subpart C governing the bankruptcy of a DCO.

Comments on the proposed amendments are accepted for a 90-day period, which began on 14 April 2020.

SEC enhances standards for critical market infrastructure

The US Securities and Exchange Commission (SEC) has adopted amendments to its rules for securities clearing agencies to apply enhanced standards to all SEC-registered central counterparties and central securities depositories. The rule amendments build on rules adopted by the

Commission in 2016 pursuant to the Dodd-Frank Act to establish enhanced standards for the operation and governance of securities clearing agencies deemed systemically important and those that are central counterparties for security-based swaps.

The adopted rules will become effective 60 days after publication in the Federal Register.