CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 4 – 8 MAY 2020

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International

The Financial Action Task Force (FATF) has published a report on challenges, good practices and policy responses to new money laundering and terrorist financing threats and vulnerabilities arising from the crisis. The report notes that the pandemic is having an impact on the ability of governments and the private sector to implement anti-money laundering and counter terrorist financing measures in areas including supervision, regulation and policy reform, suspicious transaction reporting and international cooperation. It also provides examples of effective policy responses, which include:

- domestic coordination to assess the impact of COVID-19 on AML/CFT risks and systems;
- strengthened communication with the private sector;
- encouraging the full use of a risk-based approach to customer due diligence; and
- supporting electronic and digital payment options.

Clifford Chance's Coronavirus: International Regulatory Update is a weekly digest of significant 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.

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European Union

The EU Commission has approved:

- a EUR 5.2 billion Czech guarantee scheme for large companies with export activities affected by the outbreak; and
- two Danish loan schemes to support start-up companies, with a total budget of approximately EUR 296 million (DKK 2.2 billion).

The schemes were approved under the State aid temporary framework adopted by the Commission on 19 March 2020, as amended on 3 April 2020.

The EU Council has endorsed a Commission proposal to provide up to EUR 3 billion of macro-financial assistance to ten EU enlargement and neighbourhood partner countries to help them cope with the economic fallout of the pandemic. Financial assistance will be provided in the form of loans to cover these countries' immediate financing needs which have increased as a result of COVID-19. The funds will be available for twelve months and will be disbursed in two instalments. The loans will have a maximum average maturity of 15 years. The assistance will be subject to a memorandum of understanding, to be agreed between each partner country and the Commission.

The European Supervisory Authorities (ESAs) have published joint draft regulatory technical standards (RTS) to amend the Delegated Regulation on the risk mitigation techniques for non-centrally cleared OTC derivatives under the European Market Infrastructure Regulation (EMIR) to incorporate the one-year deferral of the final two implementation phases of the bilateral margining requirement agreed by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO). These changes would result in covered counterparties with an aggregate average notional amount of non-centrally cleared derivatives above EUR 50 billion becoming subject to the requirement to exchange initial margin from 1 September 2021, while covered counterparties with an aggregate average notional amount of non-centrally cleared derivatives above EUR 8 billion would become subject to the requirement from 1 September 2022. The updated version of the final report on the draft RTS on bilateral margining replaces the earlier version submitted to the EU Commission in December 2019, which dealt with the treatment of physically settled FX forward and swap contracts, intragroup contracts, equity option contracts and the implementation of the initial margin requirements. The ESAs have now submitted this new version of the draft RTS to the Commission for endorsement.

The European Securities and Markets Authority (ESMA) has issued a public statement on the risks for retail investors when trading in the highly uncertain market circumstances due to the pandemic. ESMA notes that the financial market turmoil has led to high market volatility and an increase in market, credit and liquidity risks. In this environment, ESMA believes that firms have even greater duties when providing investment or ancillary services to investors, especially when these investors are new to the market, or have limited investment knowledge or experience. ESMA has therefore reminded firms of their obligation to act in accordance with the best interests of their clients, and highlighted the most relevant conduct of business obligations under MiFID2, namely product governance, information disclosure, suitability and appropriateness.

France

A Ministerial Order dated 2 May, amending the Ministerial Order dated 23 March 2020 which sets out the conditions under which the French State bank loans guarantee should be granted pursuant to the 'PGE' scheme to counter the negative economic effects of the pandemic, has been published in the Official Journal. The new Ministerial Order sets out that exceptions can be made to the provisions of articles 6 and 7 of the Ministerial Order dated 23 March 2020 for guarantees granted pursuant to an order of the French Minister for Economy (i.e. guarantees relating to loans granted to companies with at least five thousand employees or which have a turnover higher than EUR 1.5 billion). Articles 6 and 7 relate in particular to the level of guarantee (between 70% and 90% of the amount of the receivable which is still due, depending on the number of employees and the turnover of the company) and to the remuneration of the guarantee (according to a scale depending on the size of the company and the maturity of the loan which is covered).

Germany

The German Federal Financial Supervisory Authority (BaFin) has announced in its FAQs that the cycle for determining and arranging the SREP capital add-on is suspended for the year 2020. This means that the new determinations scheduled for 2020 will be postponed and that the previously determined capital surcharges (P2R) will remain constant for 2020. The outstanding P2R determinations for 2019 will generally still be distributed. To ensure that the COVID-19 situation is taken into account in the SREP capital determination in a timely manner, the SREP capital add-on is to be redetermined for all institutions in 2021 and 2022. The outstanding letters on the target capital ratio (Eigenmittelzielkennziffer (EMZK) as the German implementation of Pillar 2 guidance) based on the LSI stress test 2019 will also continue to be sent to institutions by BaFin. The Bundesbank and BaFin will use other documents from institutions (e.g. risk reports) to assess their current risk situation.

Luxembourg

The Luxembourg financial sector supervisory authority (CSSF) has published a communiqué on AML/CFT supervision in the collective investment (CIS) sector during the pandemic, in which the CSSF refers back to its Circular 20/740 of 10 April 2020 providing information and guidance to all professionals subject to AML/CTF supervision by the CSSF (including regulated investment funds and their managers) in relation to the money laundering and terrorism financing risks and AML/CTF implications of COVID-19. The new communiqué also includes a PowerPoint presentation designed to complement Circular 20/740 with CIS sector specific details and examples, in particular as regards the COVID-19 money laundering and terrorism financing threats and vulnerabilities, typologies and red flags and the implementation of tailor-made mitigation measures to be taken by CIS entities. The presentation outlines the conclusion of the Expert Working Group AML OPC chaired by the CSSF and composed of representatives of several fund industry associations such as the Association of the Luxembourg Fund Industry (ALFI), as well as service providers and the Financial Intelligence Unit (FIU).

Turkey

In an effort to support financial stability and mitigate the economic risks associated with the outbreak, the Banking and Regulatory Supervision Agency of Turkey (BRSA) has introduced new restrictions on banks and financial institutions operating in Turkey. With its board resolution numbered 9010, the BRSA has introduced a temporary restriction on Turkish banks' TRY denominated placement, deposit, repo and lending transactions to be entered into with offshore financial institutions (including with offshore affiliates, branches and consolidated group entities of Turkish banks). Accordingly, the aggregate value of such TRY denominated placement, deposit, repo and lending transactions may not exceed 0.5% of a Turkish bank's most recently calculated regulatory capital. In addition, the BRSA has emphasised that unless any current excess above this threshold is eliminated, no further transactions of this kind can be entered into, and maturing transactions cannot be renewed by Turkish banks. The BRSA has also clarified that these ratios are to be calculated daily on an individual basis.

United Kingdom

HM Treasury's Bounce Back Loan Scheme (BBLS) has been launched to support loans of up to GBP 50,000 to small businesses with a 100% government-backed guarantee for lenders. The Chancellor of the Exchequer has written a letter to all accredited lenders under the Coronavirus Business Interruption Loan Scheme (CBILS) setting out the interest rate that Bounce Back Loans will be offered at (2.5%) and outlining legislative and regulatory changes being made to support the delivery of the scheme. The letter also clarifies the interaction between lending under BBLS and CBILS.

The Financial Services and Markets Act 2000 (Regulated Activities) (Coronavirus) (Amendment) Order 2020, which removes from the scope of the consumer credit regulatory regime loans of GBP 25,000 or less that are made by commercial lenders to sole traders, unincorporated associations and partnerships of fewer than four people under the BBLS, has come into force. The effect of this is that these types of loans will be exempt credit agreements and will therefore not be subject to the detailed consumer credit regulatory regime set down in the Consumer Credit Act 1974, the various pieces of secondary legislation made under that Act and the relevant rules made by the Financial Conduct Authority. This will exclude the activity of entering into loans under the BBLS from the ambit of regulation under Financial Services and Markets Act 2000. There is an exception as the Order allows for the existing regulatory regime to continue to apply to lenders who carry on the activity of debt collecting in relation to loans under the BBLS.

The Bank of England has announced changes to the Term Funding Scheme with additional incentives for SMEs (TFSME) and the UK leverage ratio, in order to support the BBLS. The TFSME allows eligible banks and building societies to access four-year funding at rates very close to Bank Rate. The scheme is designed to incentivise eligible participants to provide credit to businesses and households to bridge through the current period of economic disruption. The scheme includes additional incentives to provide credit to SMEs. To further support lending through the BBLS, TFSME participants will in future be able to extend the term of some of the cheap funding they access via the TFSME to align with the 6-year term of loans made through the BBLS. The amount of TFSME drawings that can be extended is expected to be determined in the first half of 2021, based on the quantity of BBLS loans outstanding at that time. The PRA has also issued a statement setting out its observations on the risk weighted treatment of exposures under the scheme, particularly eligibility for recognition as unfunded credit risk mitigation (CRM) under the Capital Requirements Regulation (CRR), and confirming that banks subject to the UK leverage ratio will be able to exclude loans under the Bounce Back Loan scheme from the UK leverage ratio exposure measure.

The Bank of England and the Prudential Regulation Authority (PRA) have announced changes to resolution measures aimed at alleviating operational burdens on PRA-regulated firms in response to the outbreak. In particular:

- the dates for the major UK banks and building societies to submit their first reports on their preparations for resolution and publicly disclose a summary of these reports have been extended by a year. These firms will now be required to submit their first reports to the PRA by October 2021 and make public disclosures by June 2022. The Bank will also make its first public statement on these firms' resolvability by June 2022;
- the compliance deadline for the Bank's Statement of Policy on valuation capabilities to support resolvability has been extended by three months to 1 April 2021. The deadline for firms to implement the Bank's other Statements of Policy relevant to resolvability remains 1 January 2022; and
- firms will not be required to submit certain resolution pack information under PRA Supervisory Statement SS19/13 'Resolution Planning' until the end of 2022, unless notified otherwise on an individual basis by the PRA.

The PRA has issued a separate statement on setting all Pillar 2A requirements as a nominal amount, instead of a percentage of total risk weighted assets (RWAs). The PRA does not believe that RWAs are a good approximation for the evolution of the risks captured in Pillar 2A in a stress. The PRA will continue regularly to assess the appropriate level of Pillar 2A and believes that the most proportionate approach is to set Pillar 2A as a nominal amount between assessments.

The Bank has provided an update for firms on the Minimum Requirement for Own Funds and Eligible Liabilities (MREL). 2021 MRELs will reflect the PRA's policy changes to Pillar 2A capital setting. The Bank will also continue to keep MRELs under review and monitor market developments in Q3 2020 to inform its approach in Q4 2020 to setting January 2021 MRELs and indicative January 2022 MRELs. In addition, the Bank has clarified that it intends to exercise its discretion with respect to the transition time firms are given to meet higher MRELs. Firms not currently subject to a leverage-based capital requirement, but which subsequently become subject to one, will be given at least 36 months after that requirement takes effect to meet the higher MREL resulting from it.

The PRA has also issued a new statement on the re-prioritisation of its work in light of COVID-19. Recognising current pressures on firms, and in light of the responses to the December 2019 Discussion Paper on the Climate Biennial Exploratory Scenario, the Prudential Regulation Committee and the Financial Policy Committee have agreed to postpone the launch of the exercise until at least mid-2021. The PRA has indicated that its ongoing work on climate change will include:

- continued support for firms' enhancements of their climate risk capabilities – amongst other things, in the summer the PRA will issue follow-on guidance on its 2019 Supervisory Statement on enhancing firms' approaches to managing the financial risks from climate change and publish the outputs from the Climate Financial Risk Forum;

- continuation of the Bank's international engagement on climate issues, including working with other central banks within the Network for Greening the Financial System, through which guides on issues like supervision and scenario analysis will shortly be published, as well as assisting the Government with its preparations for COP 26; and
- continued focus on embedding climate disclosure across the financial system, including through the Bank's own disclosures.

With regard to LIBOR transition, the PRA and Financial Conduct Authority (FCA) suspended transition data reporting at the end of Q1, and cancelled some Q1 firm meetings. The PRA and FCA have now decided to resume full supervisory engagement on LIBOR from 1 June 2020, including data reporting at the end of Q2.

Finally, the PRA has decided to pause further work on the Insurance Stress Test, given other pressures on firms and the need to focus on COVID-19 specific stresses. It will not be publishing the results of last year's test (IST2019) and will postpone the next Insurance Stress Test to 2022, with a view to seeking feedback from firms on the proposed design during Q4 2021.

Meanwhile, the Financial Services Regulatory Initiatives Forum has launched a new initiative to help financial firms prepare for upcoming regulatory work – the Regulatory Initiatives Grid. The introduction of the Grid, which was announced by the Chancellor of the Exchequer in March's Budget, has been brought forward by the Forum to help firms stretched by the impact of coronavirus. The Forum comprises the Bank of England, PRA, FCA, Payment Systems Regulator and Competition and Markets Authority, with HM Treasury attending as an observer member. The Grid lays out the planned timetable for major initiatives, including the transition from LIBOR and the introduction of financial services legislation to prepare for the end of the EU withdrawal transition period.

The FCA has extended the maximum period firms can arrange cover for a Senior Manager without being approved, from 12 weeks to 36 weeks, in a consecutive 12-month period. The modification by consent to rule SUP10.3.13R is available to all solo regulated firms. It aims to provide flexibility to firms managing their governance arrangements during the coronavirus pandemic. It also allows firms to allocate an absent Senior Manager's prescribed responsibilities to the individual covering the role (a modification to SYSC 24.1.2). Firms can apply for the modification by consent as a precautionary measure, in advance of actually needing it. The modification by consent will take effect from the date the firm applies for it, and will end on 30 April 2021.

The FCA has also set out its expectations on how firms should apply their systems and controls to combat and prevent financial crime during the crisis. The FCA has called on firms to remain vigilant to new types of fraud and amend their control environment where necessary to respond to new threats. This should include the timely reporting of Suspicious Activity Reports (SARs) of any new threats.

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Australia

The Australian Prudential Regulation Authority (APRA) has announced new commencement dates for the following six prudential and reporting standards that have been finalised but are yet fully to come into effect:

- CPS 226: Margining and Risk Mitigation for Non-Centrally Cleared Derivatives (phase-in of initial margin requirements);
- CPS 234: Information Security (third-party arrangements transition provision);
- APS 220: Credit Risk Management and APS 222: Associations with Related Entities; and
- ARS 222.0: Exposures to Related Entities and ARS 222.2: Exposures to Related Entities – Step-in risk.

This follows APRA's March 2020 announcement that it is suspending the majority of its planned policy and supervision initiatives in response to the pandemic. APRA has also confirmed 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 12 months, consistent with the joint decision by the Basel Committee and IOSCO. In relation to CPS 234, APRA has indicated that it will consider requests for a six-month extension by regulated entities on a case-by-case basis. Entities seeking an extension are required to advise APRA of the nature of their third-party arrangements, and how they are monitoring the risks associated with these arrangements. In addition, APRA has advised all regulated entities to remain vigilant in maintaining their information security. APRA has also advised that the commencement date for APS 222 will be deferred until 1 January 2022. In the interim, ADIs should not be actively increasing exposures to their overseas banking and insurance subsidiaries without prior consultation with APRA.

Additionally, APRA's work on product responsibility under the Banking Executive Accountability Regime has now been subsumed into its work on the Financial Accountability Regime (FAR), as mentioned in the Government's proposal paper on FAR. APRA intends to release further information on product responsibility when the Government consults on the exposure draft legislation and the implementation timeframe for the FAR. APRA has also indicated that it will formally amend the commencement dates for affected prudential and reporting standards in due course.

APRA has also released a new reporting standard titled 'ARS 920.0: Australian Government Small and Medium Enterprise (SME) Guarantee Scheme' to collect data from financial institutions taking part in the Australian Federal Government's Coronavirus SME Guarantee Scheme. Under the Coronavirus SME Guarantee Scheme, the Government will provide a guarantee of 50% to eligible SME lenders for new unsecured loans to be used for working capital subject to certain conditions. The new reporting standard is intended to support the Coronavirus SME Guarantee Scheme by providing data to the Government on key metrics, including the number of loans approved, number of loans impaired, and number of guarantee claims made and paid. It includes reporting form ARF: 920.0 Australian Government SME Guarantee Scheme (Portfolio Information) and reporting form ARF 920.1: Australian Government SME Guarantee Scheme (Loan Level Details). The new reporting standard will be applicable to all authorised deposit-taking institutions and registered financial corporations that are granted a guarantee under the Guarantee of Lending to SMEs (Coronavirus Economic Response Package) Act 2020. APRA requires all lenders that are approved under the scheme to complete the new reporting standard on a weekly basis. The new reporting standard is effective from 16 April 2020 and applies to reporting periods ending on or after 17 April 2020. The first data collection was due on 1 May 2020 for information as at 17 April 2020.

In addition, APRA has published its first industry-level data related to benefits paid to members through the Government's COVID-19 temporary early release of superannuation scheme. Under APRA's Early Release Initiative (ERI) data collection, superannuation trustees were asked to submit data on a weekly basis covering the number and value of early release benefits paid to superannuation members and the processing times of those payments. Data was submitted to APRA on 29 April 2020 for the week ending on 26 April 2020. The first ERI publication shows that in the first week of the scheme, superannuation trustees received 665,310 applications for early release, out of which 162,879 applications were processed by them, and paid members AUD 1.3 billion and the average benefit paid was AUD 8,002. The first publication also shows that, for applications paid in the first week of the scheme, trustees took an average of 1.6 days to make payments to eligible members after receipt of their applications from the Australian Tax Office. APRA has indicated that it intends to publish updated data every Monday, and will expand the publication to include fund-level data.

Meanwhile, the Australian Securities Exchange (ASX), in consultation with the Australian Securities and Investments Commission (ASIC), has updated its two class order waivers, 'Temporary Extra Placement Capacity Waiver' and 'Non-renounceable Offers Waiver'. The two class waivers were introduced on 31 March 2020 to implement temporary emergency capital raising measures, in order to help listed entities affected by the pandemic to raise urgently needed capital. The key amendments to the class waivers are intended to:

- expand the existing requirement that a listed entity that wishes to take advantage of the waiver must give a written notice to ASX that it intends to rely on the waiver and explain the circumstances in which it is doing so, to make it clear that the notice must been given to ASX before the entity undertakes the capital raising in question, the notice is not for release to the market, and the 'circumstances' to be notified to ASX in the notice include whether the capital raising is proposed to be made to raise urgently needed capital to address issues arising in relation to the COVID-19 health crisis and/or its economic impact or for some other purpose; and
- specify that ASX can withdraw the class waivers from an individual listed entity at any time and for any reason by giving the entity written notice to that effect, and prior to their scheduled expiry date of 31 July 2020 for all listed entities by a market notice to that effect.

The amendments took effect for capital raisings announced on or after 23 April 2020. In addition, regarding back-to-back trading halts, ASX has clarified that entities seeking two consecutive trading halts can only do so if the consecutive trading halt is for the purpose of considering, planning and executing a capital raising. If an entity simply requests a trading halt, ASX will only grant it a single trading halt for a maximum of up to two trading days, and it will not entertain a subsequent application from the entity for a second consecutive trading halt. Further, ASX has reminded listed entities that they must notify it immediately if they make a decision not to pay a dividend in respect of a period where they have:

- previously announced an intention to pay a dividend or distribution for that period; or
- paid a dividend or distribution in respect of the prior corresponding period.

Korea

The Korean Financial Services Commission (FSC) has announced a one-year postponement of the implementation of margin requirements for non-centrally cleared OTC derivative transactions to help ease compliance burdens on financial institutions. In particular, the requirements will apply:

- from 1 September 2021 for financial institutions with non-centrally cleared derivatives of KRW 70 trillion or more; and
- from 1 September 2022 for financial institutions with non-centrally cleared derivatives of KRW 10 trillion or more and less than KRW 70 trillion.

The FSC's decision follows the Basel Committee on Banking Supervision (BCBS) and International Organization of Securities Commissions (IOSCO) announcement of 3 April.

Singapore

The Singapore Government has gazetted the Securities and Futures (Reporting of Derivatives Contracts) (Amendment No. 2) Regulations 2020, which amend the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013. Upon the enactment of the amendment regulations, the reporting commencement date for commodity, equity and foreign exchange derivatives contracts traded or booked in Singapore by specified persons that are not licensed banks or approved merchant banks will be deferred by one year to 1 October 2021. In addition, commodity, equity and foreign exchange derivatives contracts traded or booked in Singapore will continue to be treated as excluded contracts (as referred to in regulation 4(a) of the principal regulations) for the purposes of calculating the aggregate gross notional amount of the specified derivatives contracts to which a person is a party and which are booked in Singapore or traded in Singapore for the year ending on the last day of any quarter that is on or after 1 April 2019 but before 1 April 2021 (previously, 1 April 2020). The amendment regulations are effective from 28 April 2020.

The Monetary Authority of Singapore (MAS), the Association of Banks in Singapore (ABS) and the Finance Houses Association of Singapore (FHAS) have announced a second package of measures to provide additional support for individuals facing financial difficulties due to the pandemic. On 31 March 2020, the MAS and the financial industry announced the first industry support package to help individuals and businesses affected by the pandemic. The latest package of measures is intended to extend the scope of relief for individuals to other types of loan commitments and allow them to continue to have access to affordable basic banking services. In particular, the new measures are intended to:

- ease cashflow by extending loan tenure for debt consolidation plans (DCPs) for up to five years, as well as by deferring repayment for commercial and industrial property loans, mortgage equity withdrawal loans, as well as renovation and student loans, and motor vehicle loans and hire-purchase agreements, subject to assessment;

- reduce debt obligations by refinancing investment property loans, without being subject to the total debt servicing ratio and mortgage servicing ratio under the MAS' property loan rules; and
- ensure access to basic banking services by providing waiver of fall-below service fees and failed General Interbank Recurring Order (GIRO) deduction charges for retail bank accounts.

Similar to the first industry support package, the second set of relief measures for individuals will be provided by financial institutions on an opt-in basis. Under the new measures, individuals will not be required to demonstrate the impact of COVID-19 to obtain these reliefs, and their credit scores will not be affected when they take up payment deferments. Moreover, individuals can opt to extend the loan tenure by up to the corresponding deferment period to ease monthly instalments when they resume regular repayments. Applications for the new relief measures will start from 6 May 2020, except for the loan tenure extensions for DCPs which will be open for application from 18 May 2020.

The MAS has also published a new set of frequently asked questions (FAQs) on offers of units in collective investment schemes (CIS), including real estate investment trusts (REITs). The FAQs are intended to provide clarification and additional guidance on the regulatory requirements that managers of funds and REITs are expected to comply with under the Securities and Futures Act (SFA) during the COVID-19 pandemic. In particular, the FAQs provide clarification and guidance on whether:

- a REIT can refinance existing borrowings, from the same bank or a different bank, without counting such refinancing towards its aggregate leverage limit;
- a REIT will be required to submit an online notification to the MAS to obtain 'Restricted Scheme' status before making an offer of units to accredited investors and other persons under section 305 of the SFA;
- fund managers will be allowed to apply swing pricing as a liquidity risk management tool for authorised schemes, subject to the scheme's prospectus containing the requisite disclosures;
- subject to compliance with conditions stated in the FAQs, fund managers can apply a swing factor exceeding the maximum swing factor disclosed in a fund's prospectus;
- the fund manager will be required to inform the MAS and existing participants at least one month before any significant change takes place unless the significant change cannot be determined by the responsible person of the fund at least one month in advance;
- subject to compliance with conditions stated in the FAQs, the responsible person for a fund should inform the MAS and investors of temporary transfers of investment advisory/management functions to its overseas affiliates for business continuity purposes and update the fund's prospectus as soon as possible;
- authorised schemes can increase their cash holdings and borrow to meet increased redemption requests during COVID-19 pandemic; and

- a fund manager can change the settlement period of redemption requests from T+4 as disclosed in the prospectus to T+7 as allowed under the CIS Code if the fund's constituent document and prospectus provide the fund managers with the discretion to increase the settlement period under certain predefined circumstances.

United States

The Federal Deposit Insurance Corporation and the Federal Reserve Board have announced two extensions to upcoming resolution plan deadlines. In particular, the agencies have extended:

- the submission date by 90 days, to 29 September 2020, for the resolution plans from Barclays, Credit Suisse, Deutsche Bank, and UBS – these plans are required to remediate certain weaknesses previously identified by the agencies; and
- the submission date by 90 days, to 29 September 2021, for the targeted resolution plans from the large foreign and domestic banks in Category II and Category III of the agencies' large bank regulatory framework.

Targeted resolution plans for the eight global systemically important banking organisations will remain due by 1 July 2021. The agencies will monitor conditions and may adjust this deadline if warranted.

The federal bank regulatory agencies have also announced an interim final rule that modifies the agencies' Liquidity Coverage Ratio (LCR) rule to support banking organisations' participation in the Federal Reserve's Money Market Mutual Fund Liquidity Facility and the Paycheck Protection Program Liquidity Facility. In particular, the interim final rule facilitates participation in these facilities by neutralising the LCR impact associated with the non-recourse funding provided by these facilities. The rule does not otherwise alter the LCR or its calibration. The LCR rule requires large banks to hold a buffer of high-quality liquid assets so that they can meet their short-term liquidity needs. The two facilities were established by the Federal Reserve to support the economy in light of the disruptions caused by COVID-19. The rule is effective immediately and comments will be accepted for 30 days after publication in the Federal Register.

The Federal Reserve has published a set of frequently asked questions (FAQs) about the Main Street Lending Program, including the Main Street New Loan Facility (MSNLF), the Main Street Priority Loan Facility (MSPLF), and the Main Street Expanded Loan Facility (MSELF). Amongst other things, the FAQs indicate that the Federal Reserve received feedback from potential participants that quickly implementing new systems to issue loans based on SOFR would require diverting resources from challenges related to the pandemic and acknowledge that, although financial institutions are transitioning to more robust reference rates, LIBOR remains the most common base rate used in business lending. The FAQs therefore state that, consistent with the recommendations of the Alternative Reference Rates Committee, eligible lenders and eligible borrowers should include fallback contract language to be used should LIBOR become unavailable during the term of the loan. The Federal Reserve will periodically update these FAQs.

The US Securities and Exchange Commission (SEC) staff has issued a set of FAQs to address how filing deadline extensions under SEC Executive Order

34-88465 impact offerings using shelf registration statements on Form S-3 or Form F-3. Amongst other things, the FAQs address the following:

- takedowns from already effective short form registration statements – although Section 10(a)(3) of the '33 Act may permit registrants relying on the Order to conduct a takedown from an already effective Form S-3 (or Form F-3) registration statement using a prospectus that contains information older than sixteen months in the event that updated information cannot be furnished without unreasonable effort or expense, registrants and their legal advisers will need to determine when it is appropriate to update the prospectus;
- date for evaluating short form registration statement eligibility – when a registrant properly relies on the Order, the due date for filing the Form 10-K (or Form 20-F) is extended and the registrant must reassess its eligibility to use Form S-3 (or Form F-3) when it files its Form 10-K (or Form 20-F); and
- new short form registration statement filings – a registrant may file a new Form S-3 (or Form F-3) registration statement between the original due date of a required filing and the due date as extended by the Order, even if the registrant has not yet filed the required periodic report prior to the filing of the registration statement. The staff will consider the registrant to be current and timely in its Exchange Act reporting if the Form 8-K (or Form 6-K) disclosing reliance on the Order is properly furnished.

RECENT CLIFFORD CHANCE BRIEFINGS

Fiduciary duties in Latin America – best practices for boards of directors in times of coronavirus

The sudden and wide-ranging impact of COVID-19 has resulted in companies and boards of directors facing unprecedented situations and challenges. The pressure on boards of directors and companies is higher than ever. Accordingly, directors should be mindful of their fiduciary duties and act in a manner consistent with such duties.

The nature of a director's fiduciary duties has not changed as a result of COVID-19 – fiduciary duties exist whether or not a company is facing a crisis, financial distress, or any other circumstances – but, in many board rooms across the Latin America region, directors are asking if exercise of their fiduciary duties should change in light of the current circumstances.

As the Delaware Supreme Court has stated on many occasions, '[t]here is no single blueprint that a board must follow to fulfill its duties' and the same principle applies in Latin America. There are, however, certain guidelines that directors should follow.

This briefing highlights what these fiduciary duties entail, as well as best practices that directors of Latin American-based companies can adopt to comply with their fiduciary duties and help their companies navigate the challenging environment.

https://www.cliffordchance.com/briefings/2020/04/fiduciary-duties-in-latin-america--best-practices-for-boards-of-.html

Guarantee scheme in Spain

Governments and central banks around the world have approved different measures to provide financial support to businesses in order to mitigate the economic impact of the coronavirus outbreak. This support includes measures to ensure the continued flow of credit to business, through guaranteed or subsidised loans or central bank asset purchase programmes.

This briefing discusses the Spanish government's measures.

https://www.cliffordchance.com/briefings/2020/03/covid-19-_-spanish-guarantee-scheme.html

Spain coronavirus – insolvency measures

Until now, the impact of the coronavirus health crisis on insolvency proceedings had been dealt with in a very limited way in Spanish legislation, by means of a measure set out in Spanish Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to address the economic and social impact of COVID-19 (RDL 8/2020) permitting the debtor to defer its duty to apply for insolvency while the State of Emergency is in force and, as a consequence of this rule, providing protection for the debtor against an application for insolvency filed by its creditors, until two months after the State of Emergency ends.

This briefing discusses the Spanish measures.

https://www.cliffordchance.com/briefings/2020/04/spain-coronavirus--insolvency-measures.html

The US legal framework supporting the validity of electronic signatures

International businesses have been adopting technology in many aspects of their transactions to efficiently use their time and resources. This includes seeking to execute documents using electronic signatures.

This briefing is for parties to agreements with US-based counterparties proposing to use electronic signatures, giving an overview of the legal regime applicable in the United States, generally, and in Delaware and New York, in particular. In addition, the briefing paper provides practical guidance regarding the use of electronic signatures in the United States.

https://www.cliffordchance.com/briefings/2020/05/coronavirus--the-u-s--legal-framework-supporting-the-validity-of.html

Strategic considerations for Brazilian companies during challenging market conditions

The economic challenges and market volatility resulting from the coronavirus outbreak have led to heightened risk for companies across a broad range of sectors.

This briefing sets out some practical considerations that Brazilian companies may wish to consider at this time, particularly if a potential restructuring is under consideration.

https://www.cliffordchance.com/briefings/2020/03/strategic-considerations-for-brazilian-companies-during-challeng0.html