CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 11 – 15 MAY 2020

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European Union

The EU Commission has adopted a second amendment to extend the scope of the State aid Temporary Framework adopted on 19 March 2020 to enable Member States to support the economy in the context of the coronavirus outbreak. This follows a first amendment adopted on 3 April 2020. The latest amendment complements the types of measures already covered by the Temporary Framework and existing State aid rules by setting out criteria based on which Member States can provide recapitalisations and subordinated debt to companies in need, whilst protecting the level playing field in the EU. The amended Temporary Framework will be in place until the end of December 2020. As solvency issues may materialise only at a later stage as the crisis evolves, for recapitalisation measures only the Commission has extended this period until the end of June 2021.

The Commission has also approved:

- an approximately EUR 322 million (HRK 2.450 million) Croatian scheme for loan guarantees and subsidised loans to micro companies and small

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and medium-sized enterprises (SMEs) affected by the outbreak;

- a French guarantee scheme for small and midsize companies with export activities that are affected by the outbreak;
- a EUR 1.5 million Latvian scheme to support companies active in the primary agricultural production sector affected by the outbreak;
- a Maltese aid scheme of EUR 11.5 million to support investments in the production of products that are relevant to the outbreak, including vaccines, ventilators and personal protective equipment; and
- a EUR 450 million scheme (approximately PLN 2 billion) to support the Polish economy in the context of the outbreak. The support measures available under the scheme will be co-financed by the EU structural funds (ESIF).

The schemes were approved under the State aid Temporary Framework adopted by the Commission on 19 March 2020, as amended on 3 April and 8 May 2020.

The EU Council has reached a political agreement on SURE, a temporary scheme to provide up to EUR 100 billion of loans to EU Member States. The instrument will enable Member States to request EU financial support to help finance sudden and severe increases of national public expenditure related to certain crisis response measures. SURE is one of the three safety nets for jobs and workers, businesses and Member States agreed by the Eurogroup on 9 April 2020. EU leaders endorsed the agreement on 23 April and called for the package to be operational by 1 June 2020. In order to provide Member States with financial assistance at favourable terms, the EU Commission will raise funds on international capital markets on behalf of the EU. SURE loans will be backed by the EU budget and guarantees provided by Member States. The total amount of guarantees will be EUR 25 billion. SURE will become available after all Member States have provided their guarantees. The instrument will then be operational until 31 December 2022. On a proposal from the Commission, the Council may decide to extend the period of availability of the instrument, each time for a further 6-month period, if the economic disturbances caused by the COVID-19 outbreak persist.

The European Systemic Risk Board (ESRB) has recommended that the European Securities and Markets Authority (ESMA) coordinate with national competent authorities in undertaking a focused piece of supervisory engagement with investment funds that have significant exposures to corporate debt and real estate assets. The objective of the exercise is to assess the current state of preparedness of these two fund segments to potential future redemption pressures, further declines in market liquidity or increased valuation uncertainty, while also considering any steps that could enhance that preparedness. ESMA has expressed its support for the initiative and also welcomed the ESRB's related public communication on the importance of the timely and effective use of liquidity management tools by investment funds with exposures to less liquid assets.

Guideline (EU) 2020/634 of the European Central Bank of 7 May 2020 amending Guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (ECB/2020/29) has been published in the Official Journal. The guideline sets out the additional collateral easing measures adopted by the ECB Governing

Council in response to the pandemic on 22 April 2020. These measures seek to mitigate the adverse impact on Eurosystem collateral availability of potential rating downgrades resulting from the economic fallout of the outbreak. Together with the measures adopted on 7 April 2020, the new measures are intended to ensure that Eurosystem counterparties remain able to maintain and mobilise sufficient collateral in order to be able to participate in Eurosystem liquidity-providing operations, and that the Eurosystem is in a position to support the provision of credit to the euro area economy.

France

An ordinance dated 7 May 2020 laying down various banking provisions has been published in the Official Journal. Article 2 of the ordinance seeks to provide greater legal certainty regarding the use by credit institutions and financing companies of dematerialised communication channels for the transmission of documents and the collection of consent of a legal entity or a natural person acting for professional purposes for the granting of State-guaranteed loans (as provided for by Amending Finance Law no. 2020-289 of 23 March 2020) and for maturity extensions of loans without penalties or additional costs (as provided for by the Commitment of the French Banking Federation (FBF) of 15 March 2020 regarding loans to companies). In particular, Article 2 provides that the use of a dematerialised communication channel in such conditions cannot constitute sufficient grounds for nullity in the event of a dispute. Article 2 also extends this measure to acts and formalities intended to preserve insurance, guarantees or sureties relating to loans subject to maturity extensions without penalties or additional costs (as provided for by the FBF commitment of 15 March 2020). The effect of these provisions will be limited in time to the duration of the state of health emergency. They are intended to apply retroactively.

Germany

The German Federal Financial Supervisory Authority (BaFin) has used its most recent addition to its coronavirus FAQs to announce that less significant institutions (LSIs) and other financial services institutions under the supervision of BaFin, including institutions subject to reporting requirements pursuant to Section 1a of the German Banking Act (Kreditwesengesetz) which are required to submit reports for the period 1 March 2020 to 31 December 2020, may benefit from a late submission of up to one month after the statutory reporting deadline for the reporting forms of the ITS on supervisory reporting and ITS on benchmarking or of up to two months after the statutory reporting deadline for the reports according to the guideline on funding plans, if the submitting institutions have difficulties with the timely submission of the reports due to the COVID 19 crisis. The reporting forms pursuant to Article 15 (liquidity cover ratio, LCR) and Article 16b (additional liquidity monitoring metrics, ALMM) of the ITS on reporting must be submitted in due time. Notwithstanding this rule, in principle only those institutions which are in a difficult situation due to the COVID-19 crisis should submit a late notification.

Luxembourg

The Luxembourg financial sector supervisory authority (CSSF) has issued a communiqué concerning measures to be taken by all entities subject to its supervision in the context of a possible return to the office in light of the easing of lockdown measures by the Luxembourg Government. The CSSF stresses that this not yet the end of the pandemic and that, given the number of staff directly employed in financial services, supervised entities have to remain extremely careful when considering allowing a return to the office, so as to contribute to keeping infections at a low rate and to ensure business continuity. In particular, the CSSF recommends that supervised entities should continue remote working arrangements (wherever possible), limit the return to the workplace to a minimum (e.g. when tasks cannot be performed remotely), and continue to organise and hold external meetings by video or audio conferencing rather than as physical meetings. The CSSF has further indicated that supervised entities should establish strict staff health protection guidelines in writing for cases where staff are allowed to return to the office, which should be discussed with and published to all staff and address the recommendations and parameters set out in the communiqué.

The CSSF has also issued a communiqué informing investment fund managers (IFMs) of the launch of a new online notification form for fund issues and large redemptions (IFM Notification Form), which follows the specific monitoring and notification process of significant developments and issues that had already been implemented by the CSSF on 10 March 2020 for the largest IFMs in view of the specific circumstances and risks to which these companies were exposed as a result of the prevailing market conditions. With the new IFM Notification Form, the CSSF is further extending the scope of the exercise to a wider number of IFMs and integrating the related notification process into its eDesk portal. All affected IFMs should have been specifically contacted by the CSSF and are now required to complete and submit the IFM Notification Form to the CSSF via the eDesk portal only if the following events occur:

- significant fund events/issues affecting Luxembourg and/or non-Luxembourg regulated and/or non-regulated funds (as applicable) managed by the relevant Luxembourg or non-Luxembourg based IFMs as a result of the current period of market turbulence (e.g. liquidity issues on the asset side, significant valuation challenges, etc.); and/or
- larger redemptions at the level of Luxembourg regulated UCIs, Part II UCIs and SIFs managed by the IFMs (i.e. daily net redemptions exceeding 5% of the NAV, net redemptions over a calendar week exceeding 15% of the NAV and/or application of gates/deferred redemptions).

In order to give IFMs sufficient time to prepare, the IFM Notification Form will apply from 2 June 2020 (and also replace the existing monitoring and notification process for larger IFMs that was established on 10 March 2020 as of that date), and the CSSF expects to be notified of significant fund events/issues or larger redemptions on a t+2 basis after the NAV date t. Further details on the IFM Notification Form, the scope of application and additional explanations to assist IFMs in filling in the notification are outlined in the dedicated section of the CSSF eDesk Portal and in the User Guide on the IFM Notification Form. Moreover, any additional technical questions regarding the eDesk Portal can be sent to the CSSF at edesk@cssf.lu and any other questions can also be sent to opc_prud_risk@cssf.lu.

In addition, the CSSF has updated its COVID-19 FAQs to indicate that:

- it is following the European Banking Authority (EBA) statement of 31 March 2020 on the postponement of the remittance dates in certain areas of supervisory reporting (i.e. ITS on supervisory reporting and ITS on benchmarking) that fall between March and the end of May 2020. The

CSSF has stressed that banks may therefore delay the submission of their supervisory data by one month for remittance dates between March 2020 and the end of May 2020 and that information on funding plans can be delayed by two months. The postponement of the remittance dates is not applicable for the reporting of the LCR and ALMM templates, as this supervisory information is deemed a priority for monitoring institutions' financial and prudential situation;

- with respect to specialised financial sector professionals (PFSs), an extension of the deadlines for the submission of the usual closing documents may, where appropriate, be exceptionally granted upon a reasoned request being sent to the CSSF. Furthermore, for the management letter and the audit report of the réviseur d'entreprises agréé (prepared pursuant to CSSF Regulation No. 12-02), an extension of up to three months following the initial date of the ordinary general meeting is possible. However, the CSSF encourages timely submissions where the submission can be made within the usual time limits without compromising the quality of the submitted documents and in line with the health rules to contain the spread of COVID-19; and
- the early warning reporting on large redemptions (UCITS), which is only relevant for a limited number of UCITS that have in the past been contacted directly by the CSSF, is now suspended until further notice following the introduction of the 'IFM Notification – Fund issues/Large redemptions'.

Meanwhile, the Luxembourg Law of 12 May 2020 on the extension of certain deadlines in the financial sector during the state of emergency has been published in the Official Journal and entered into force on 12 May 2020. The new law introduces a three-month extension for certain obligations which are not subject to harmonisation at EU level, to anticipate the difficulties that financial, fund and insurance sector entities may encounter in fulfilling their obligations in terms of the preparation and publication of periodic accounts and reports during the exceptional situation caused by the pandemic.

Netherlands

The Dutch Government has agreed that SMEs with relatively small financial needs (EUR 10,000 to EUR 50,000) may be eligible for a bridging loan of up to EUR 50,000 under the Small Corona Credit Guarantee Scheme (Klein Krediet Corona garantieregeling or KKC). The maximum duration of the scheme is five years. Loans will be provided by the banks and have an interest rate of up to 4%. Non-bank accredited financiers can also provide these loans. This scheme still has to be approved by the EU Commission. The scheme is available to enterprises that have a turnover in excess of EUR 50,000, were sufficiently profitable before the coronavirus crisis, and have been registered with the Chamber of Commerce since 1 January 2019.

Poland

The Polish Development Fund (PFR) is carrying out an issue of bonds of a total value of up to PLN 100 billion in connection with being authorised to carry out the government programme known as the 'Financial Shield of the Polish Development Fund for small and medium-size enterprises'. The Polish Financial Supervision Authority has announced that for the purpose of setting the solvency capital requirement (SCR) for the credit risk spread and the asset concentration risk according to the standard SCR formula, the PFR's bonds are regarded as equivalent to State Treasury bonds. In the risk submodules the PFR bonds are allocated risk factors ($stress_i$ and g_i respectively) equal to 0%.

Switzerland

The Swiss National Bank has expanded its COVID-19 refinancing facility, which will now also accept as collateral loan guarantees or credit default guarantees offered by cantons, provided these have been granted in order to cushion the economic impact of the pandemic, and joint and several guarantees provided for start-ups by the Federal Government in cooperation with the cantons.

United Kingdom

The Financial Conduct Authority (FCA) has provided an update following the Prime Minister's statement on 10 May, reiterating its previously published advice on the steps financial services firms should take and confirming that there is no change to those statements at this stage.

The FCA has also confirmed a series of temporary measures to help customers who hold insurance and premium finance products and who may be in financial difficulty because of coronavirus. Following a short consultation, the targeted measures being implemented require firms to consider what options they can provide to customers including:

- reassessing the risk profile of customers;
- considering whether there are other products they can offer which would better meet customers' needs and revise the cover accordingly; and
- waiving cancellation and other fees associated with adjusting customers' policies.

The measures will come into force on 18 May 2020. They will be reviewed in the next three months in the light of developments regarding coronavirus and may be revised if appropriate.

The FCA has issued a separate statement on how firms should handle post and paper documents. While it continues to expect firms to comply with the requirements for post and paper-based processes (both incoming and outgoing), the FCA acknowledges that in the current circumstances some firms may not be able to comply fully with them. Where this is the case, the FCA expects firms to notify it as soon as possible. The statement emphasises that firms should try to ensure that all customers are not disadvantaged because of delays and make particular efforts to contact customers who do not use online services.

Australia

The Australian Securities and Investments Commission (ASIC) has announced that it will further extend the deadline for both listed and unlisted entities to lodge financial reports under the Corporations Act by one month for certain balance dates up to and including 7 July 2020, in order to assist those entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19. This additional relief builds on the relief announced by ASIC on 9 April 2020 for unlisted entities with 31 December 2019 to 31 March 2020 year ends, and will extend deadlines for lodging financial reports for all listed and unlisted entities for balance dates to 7 July 2020 where the reporting deadline has not already passed. ASIC has indicated that a legislative instrument extending the financial reporting deadlines is expected to be registered on the Federal Register of Legislation by the end of next week.

Under the additional relief measures, unlisted entities will now be able to take one additional month to lodge financial reports for year ends from 31 December 2019 to 7 July 2020. Listed entities will also be able to take one additional month to report for full year and half-year financial reports for 21 February 2020 to 7 July 2020 balance dates. However, listed entities will be required to inform the market when they rely on the extended period for lodgement and explain the reasons for relying on the extended deadlines. ASIC has advised entities that, where possible, they should continue to lodge their financial reports within the normal statutory deadlines, considering the information needs of stakeholders, creditors and other users of their financial reports, or to meet borrowing covenants or other obligations. It has also clarified that ASX listed entities will still need to lodge their Appendix 4E (preliminary final report) under ASX Listing Rules by 31 August 2020 (for 30 June 2020 year ends). If the entity does not have audited accounts by that date, it will need to lodge unaudited accounts with its preliminary final report.

ASIC has also extended its ‘no action’ position to apply to public companies with financial year ends that fall between 31 December 2019 and 7 July 2020, in light of the social distancing measures and travel restrictions that continue to remain in place. Accordingly, these public companies will have up to seven months (rather than five months) after their respective financial year ends to hold an annual general meeting (AGM). For public companies with 1 June 2020 to 7 July 2020 financial year ends, the ‘no action’ position will also be applicable where holding their AGMs in January or February 2021 results in a failure to comply with the requirement to hold an AGM in the 2020 calendar year. However, ASIC has advised public companies who choose to delay their AGMs to refrain from holding their AGMs in the peak holiday period in late December 2020 and early January 2021. Moreover, for companies that have relied on ASIC’s extension of time for the lodgement of financial reports, ASIC’s ‘no-action’ position will allow additional time to distribute financial reports to members prior to the AGM. The ASIC has indicated that, for reporting periods ending after 7 July 2020, it will continue to monitor how market conditions and COVID-19 developments are affecting financial reporting and AGM obligations for balance dates after 7 July 2020. Further, to assist companies and responsible entities, ASIC has issued guidance setting out its views on the appropriate approach to calling and holding meetings using virtual technology and the requirements of the determination.

In addition, ASIC has published a letter to outline its expectations for all equity market participants to act appropriately to ensure Australia’s equity markets remain resilient. In particular, ASIC expects all equity market participants to take reasonable steps to ensure the number of trades matched from their orders:

- are capable of being handled by their internal processing and risk management systems and, if applicable, their clearing and settlement operations; and
- support the fair and orderly operation of Australian equity markets.

ASIC has also revoked its March 2020 directions issued under the ASIC Market Integrity Rules (Securities Markets) 2017 to nine large equity markets participants to limit the number of trades executed each day. The directions have been revoked due to:

- enhancements to trade processing made by market operators and the clearing and settlement facilities;
- the positive actions taken by these participants to reduce their number of executed trades, which has contributed to more efficient settlement preparation and reduced failure rates; and
- the stabilisation in overall trading activity.

The Australian Prudential Regulation Authority (APRA) has published the first fund-level statistics from its Early Release Initiative (ERI) data collection, revealing the number and value of the payments processed by each fund, as well as the time taken to make payments. The fund level data shows that of the 142 funds to make payments, 117 (82%) have made more than 90% of payments within five business days. Moreover, with very few exceptions, all payments have been made within 10 business days of receipt of applications from the Australian Tax Office (ATO). APRA has also published its second weekly industry-level data on the temporary early release of superannuation scheme. The data shows that trustees are processing 96% of payments within five business days. It also shows that, as of 3 May 2020, superannuation funds had issued early release payments to 830,000 members worth a total of AUD 6.3 billion. Further, the average payment was AUD 7,629 and the average payment processing time was 3.1 days after receiving the application from the ATO.

Hong Kong

The Securities and Futures Commission (SFC) has issued a circular to inform licenced corporations that it will defer the introduction of initial margin (IM) requirements for non-centrally cleared over-the-counter (OTC) derivative transactions by one year to provide them operational relief during the pandemic. In particular, the phase-in schedule for the IM requirements will apply as follows:

- from 1 September 2021 to 31 August 2022 – the exchange of IM by a licenced corporation is required in a one-year period where both the licenced corporation and the covered entity have an average aggregate notional amount (AANA) of non-centrally cleared OTC derivatives exceeding HKD 375 billion on a group basis; and
- on a permanent basis starting from 1 September 2022 and for each subsequent 12-month period – the exchange of IM by a licenced corporation is required in a one-year period where both the licenced corporation and the covered entity have an AANA of non-centrally cleared OTC derivatives exceeding HKD 60 billion on a group basis.

Subject to specified thresholds, IM requirements for non-centrally cleared OTC derivative transactions were originally to be phased in starting from 1 September 2020. The SFC's decision follows the Basel Committee on Banking Supervision (BCBS) and International Organization of Securities Commissions (IOSCO) announcement of 3 April 2020. The SFC has indicated that the Code of Conduct for Persons Licensed by or Registered with the SFC will be amended accordingly and gazetted in due course. The SFC has also clarified that the variation margin requirements will still become effective on 1 September 2020.

Singapore

The Singapore Government has gazetted the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) (Amendment) Regulations 2020, which amend the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020. The Amendment Regulations are intended to provide temporary relief under the COVID-19 (Temporary Measures) Act 2020 from the following actions for inability to perform scheduled contracts because of the pandemic, by incorporating a new 'Regulation 3A' into the Principal Regulations:

- the increase of any charges (however described) or interest rate for interest payable under a scheduled contract, except where:
  - the amount of the increase is specified in the contract or is to be calculated by reference to a formula or other matter set out in the contract;
  - the increase relates to a charge that is provided for or permitted in the contract, where such charge relates to recovery of expenses reasonably incurred by the other party to the contract (not being the party unable to perform the subject obligation) in the ordinary course of business; or
  - the party who was unable to perform the subject obligation under the contract agrees to the increase;
- the imposition of any new charges under a scheduled contract, except with the agreement of the party who was unable to perform the subject obligation under the contract;
- requiring that any part of a security deposit given pursuant to a scheduled contract be replaced by the party who was unable to perform the subject obligation under the contract, except with the agreement of that party;
- the withholding or forfeiture of any part of the booking fee or other consideration paid for an option mentioned in paragraph 1(i) of the Schedule to the Act; and
- the termination by the housing developer of an agreement mentioned in paragraph 1(j) of the Schedule to the Act.

The Amendment Regulations are effective from 13 May 2020. The Ministry of Law has clarified that the new Regulation 3A will not be applicable to anything done before 13 May 2020.

The Monetary Authority of Singapore (MAS), Singapore FinTech Association (SFA), AMTD Group and AMTD Foundation have announced the launch of a SGD 6 million 'MAS-SFA-AMTD FinTech Solidarity Grant' to support Singapore-based fintech firms during the pandemic. The grant complements the SGD 125 million support package announced by the MAS on 8 April 2020 to sustain and strengthen capabilities in the financial services and fintech sectors, and is intended to help fintech firms maintain their operations, and enable them to continue to innovate and grow. The grant comprises the following two components:

- a SGD 1.5 million Business Sustenance Grant (BSG) under which eligible Singapore-based fintech firms can receive a one-time grant of up to SGD 20,000 to cover day-to-day working capital expenditures. The BSG is fully funded by AMTD's contribution; and
- a SGD 4.5 million Business Growth Grant (BGG) under which eligible Singapore-based fintech firms can receive up to SGD 40,000 for their first proof of concept (POC) with financial institutions on the API Exchange (APIX) platform, and SGD 10,000 for each subsequent POC, subject to a total cap of SGD 80,000 per firm for the entire duration of the grant. In addition, the BGG will provide funding for the salaries of undergraduate interns, capped at SGD 1,000/month per intern. The BGG is jointly supported by the MAS and AMTD.

Applications for the grants will open on 18 May 2020 and will be available until 31 December 2021. Fintech firms can apply for both BSG and BGG if they fulfil the eligibility criteria for both grants. The SFA will administer and review the grant applications.

The MAS has also advised financial institutions that they should consider the emerging threats and vulnerabilities set out in the Financial Action Task Force (FATF) paper 'COVID-19-related money laundering and terrorist financing – risks and policy responses' to supplement the guidance and advisories provided by the MAS and other government agencies. The FATF's paper identifies challenges, good practices and policy responses to new money laundering and terrorist financing threats and vulnerabilities arising from the COVID-19 crisis. In particular, the paper focuses on:

- new threats and vulnerabilities stemming from COVID-19-related crime and impacts on money laundering and terrorist financing risks;
- the COVID-19 impact on anti-money laundering and counter terrorist financing efforts by governments and the private sector; and
- suggested risk mitigation measures in response to the pandemic.

The MAS, the Securities Industry Council (SIC) and the Singapore Exchange (SGX) have introduced temporary measures to allow, with immediate effect until 30 September 2020, listed issuers and parties involved in rights issues and take-over or merger transactions the option to electronically disseminate offer documents through publication on 'SGXNET' and their corporate websites. The temporary measures are intended to enable rights issues and take-over or merger transactions to take place while reducing the manpower needed to be physically present at workplaces to prepare, print and deliver a large number of offer documents. The regulators have clarified that there is no need to despatch hardcopy offer documents as required under the Securities and Futures Act, the Singapore Code on Take-overs and Mergers and the SGX Listing Rules during this period.

Under the temporary measures, issuers and parties who opt to disseminate their offer documents electronically will be required to send a hardcopy notification to shareholders with instructions on how they can access the electronic version of the offer documents. They will also be required to send the hardcopy application or acceptance forms to the shareholders. These requirements are intended to ensure that shareholders continue to be informed of these significant corporate actions by mail during this time and facilitate their participation in corporate actions. The regulators have encouraged parties undertaking rights issues or take-over or merger transactions to allow shareholders to apply and pay for the subscription of rights issues, accept offers and inspect documents through the internet.

The temporary measures have been effected through the introduction of the Securities and Futures (Offers of Investments) (Temporary Exemption from Sections 277(1)(c) and 305B(1)(b)) Regulations 2020 by the MAS for rights issues and the adoption of alternative arrangements by the SIC for takeover and merger transactions. The MAS has also issued guidelines to provide guidance to issuers and their professional advisers on the publication of an offer information statement and inclusion of cautionary statements in relation to offers of securities, securities-based derivatives contracts or units in collective investment schemes made in reliance on sections 277 or 305B of the Securities and Futures Act, read with the Securities and Futures (Offers of Investments) (Temporary Exemption from Sections 277(1)(c) and 305B(1)(b)) Regulations 2020.

United States

The Federal Reserve Board has announced additional information regarding borrower and collateral eligibility criteria for the Term Asset-Backed Securities Loan Facility (TALF). An updated Term Sheet and new FAQs provide new details with respect to the requirements that TALF borrowers and eligible ABS collateral need to satisfy. The facility was announced on 23 March as part of an initiative to support the flow of credit to US consumers and businesses. TALF will initially make up to USD 100 billion of loans available. Amongst other things, the Federal Reserve has clarified:

- the types of entities which can be TALF borrowers, which can now include certain investment funds;
- the different requirements for investment managers for TALF funds and managers of CLOs that are eligible ABS to be US businesses;
- the extent to which eligible ABS may be subject to a call right during the term of a TALF loan;
- requirements that underlying obligors, originators, arrangers and issuers (subject to certain exceptions) be US-organised entities;
- limitations on affiliated parties acting as borrower, manager, issuer and/or obligor;
- commercial requirements for CLOs specifically that both synchronise the requirements to current market practice and add restrictions that are not market – although an eligible CLO is required to be issued on or after 23 March 2020, at least 95% of its underlying loans are required to have been originated or refinanced on or after 1 January 2019; and
- a requirement that each TALF borrower attest that it is unable to secure adequate credit accommodations from other banking institutions and is not insolvent.

The Commodity Futures Trading Commission's (CFTC's) Divisions of Market Oversight (DMO), Swap Dealer and Intermediary Oversight (DSIO), and Clearing and Risk (DCR) have issued an advisory staff letter (20-17) to remind DCMs, FCMs, and DCOs that they are expected to prepare for the possibility that certain contracts may continue to experience extreme market volatility, low liquidity, and possibly negative pricing. The Divisions remind DCMs, FCMs, and DCOs of their obligations to assess changing market conditions and take appropriate actions in response as contracts approach expiration. DCMs, FCMs and DCOs are encouraged to regularly assess whether their risk controls and related mechanisms are reasonably designed, fit for purpose, and appropriately implemented. In addition, DCMs, FCMs, and DCOs are encouraged to ensure that their customers and members have appropriate information on the risks and technical elements of contracts and trading around upcoming expirations.

Nasdaq has temporarily modified its shareholder approval rules to provide a limited temporary exception for private issuances of 20% or more of the company's common stock or voting power at less than market price. The new rule, which is effective until 30 June 2020, also provides a limited temporary exception to shareholder approval rules relating to equity compensation plans.

RECENT CLIFFORD CHANCE BRIEFINGS

COVID-19 response bonds – what are the issues?

In February, Agricultural Development Bank of China issued bonds to combat the coronavirus outbreak. Since then, we have continued to work on many bond issues to raise additional funds specifically to meet the challenges of the coronavirus pandemic.

These include sovereign issues for the Republic of Indonesia, Republic of Guatemala and across Europe, and for a number of SSAs, supra-nationals and development banks.

This briefing discusses a number of issues raised on COVID-19 response bonds.

https://www.cliffordchance.com/insights/thought_leadership/coronavirus/financing-and-capital-markets/2020/05/covid-19-response-bonds--what-are-the-issues-.html

Court of Appeal – administrators of Debenhams and the UK Coronavirus Job Retention Scheme

On 6 May 2020, the Court of Appeal, In the Matter of Debenhams Retail Limited (in administration) [2020] EWCA Civ 600 published its reasons for upholding a first instance decision, that the administrators of Debenhams had adopted the employment contracts of 13,056 employees who are the subject of the Job Retention Scheme.

This briefing discusses the case.

https://www.cliffordchance.com/briefings/2020/05/court-of-appeal-administrators-of-debenhams-and-the-coronavirus-job-retention-scheme.html

C L I F F O R D

C H A N C E