

INTERNATIONAL REGULATORY UPDATE 27 APRIL – 01 MAY 2020

- **Benchmarks:** ESMA issues no action letter on new ESG disclosure requirements
- **MiFID2/MiFIR:** ESMA publishes annual bonds and SIs calculations and new bond liquidity data
- **Sustainable Finance:** Basel Committee publishes stocktake report on climate-related financial risk initiatives
- **Basel Committee reports on banks' implementation of principles for effective risk data aggregation and reporting**
- **BIS and Saudi G20 Presidency launch TechSprint for regulatory and supervisory challenges**
- **Brexit: BoE, PRA and FCA publish statements on extended use of temporary transitional powers**
- **Brexit: HMT announces intention to legislate on trade repository registration under SFTR**
- **FCA publishes business plan guidance for lending firms**
- **BaFin publishes revised MaComp**
- **CSSF-CODERES issue circular on raising of 2020 ex-ante contributions to Single Resolution Fund**
- **HKEX extends consultation period for corporate weighted voting rights beneficiaries consultation**
- **SFC issues circular to commodity futures brokers on managing financial and operational risks under extreme market conditions**
- **SFC issues circular to management companies and intermediaries regarding futures-based ETFs**
- **SFC and Competition Commission sign MoU to strengthen cooperation on competition issues in securities and futures industry**
- **Japan Fair Trade Commission publishes interim report on digital advertising**
- **Ministry of Finance announces implementation of new foreign direct investment regulations from 8 May 2020**
- **FSC and FSS finalise measures to improve regulatory framework for private equity funds**

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- **Recent Clifford Chance briefing: France's foreign investment regime.**
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Benchmarks: ESMA issues no action letter on new ESG disclosure requirements

The European Securities and Markets Authority (ESMA) has issued a [no action letter](#) in relation to low carbon benchmarks requirements, with a view to promoting coordinated action by national competent authorities (NCAs) regarding the new environmental, social and governance (ESG) disclosure requirements for benchmark administrators under the Benchmarks Regulation.

ESMA acknowledges the difficulties encountered by administrators in fulfilling the new requirements prior to the application of the related Delegated Acts. The new requirements are due to apply on 30 April 2020 and require benchmark administrators to include details of how ESG factors are reflected in their methodology documents and benchmark statements. ESMA considers that it is necessary for NCAs to address the absence of the Delegated Acts through consistent risk-based supervisory and enforcement practices. In particular, ESMA has stated that NCAs should not prioritise supervisory or enforcement action against administrators regarding these new requirements until the Delegated Acts apply. It has also issued an [opinion](#) to the EU Commission on the need for prompt adoption of the relevant Delegated Acts.

MiFID2/MiFIR: ESMA publishes annual bonds and SIs calculations and new bond liquidity data

ESMA has [published](#) the annual transparency calculations of the large in scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds, the systematic internaliser (SI) calculations for equity, equity-like instruments and bonds, and new bond liquidity data.

The transparency requirements based on the results of the annual calculations of the LIS and SSTI thresholds for bonds apply from 1 June 2020 until 31 May 2021.

The SI calculations results are for instruments for which trading venues submitted data for at least 95% of all trading days over the six-month observation period. The data publications also incorporate OTC trading to the extent it was reported to ESMA and data for instruments no longer available for trading on EU trading venues at the end of December. The publication of the data for the SI calculations for derivatives and other instruments has been delayed until August 2020.

The transparency requirements for bonds deemed liquid on 30 April apply from 16 May to 15 August 2020.

Sustainable Finance: Basel Committee publishes stocktake report on climate-related financial risk initiatives

The Basel Committee on Banking Supervision (BCBS) has published a stocktake report on its members' existing regulatory and supervisory initiatives on climate-related financial risks.

The [survey report](#), prepared by the Committee's high-level Task Force on Climate-related Financial Risks (TCFR) before the COVID19 outbreak, suggests that members are:

- undertaking work on the measurement of climate-related financial risks;
- raising awareness of such risks with banks and external stakeholders and requiring them to disclose information on climate-related financial risks; and
- issuing more principles-based guidance on climate-related financial risks.

Committee members also indicated that their participation in the work of the Network for Greening the Financial System (NGFS) continues to be a priority.

Basel Committee reports on banks' implementation of principles for effective risk data aggregation and reporting

The BCBS has published a [progress report](#) on banks' implementation of the principles for effective risk data aggregation and risk reporting (BCBS 239) as of end-2018.

The report finds that none of the 34 G-SIBs designated during 2011-2019 are fully compliant with BCBS 239 in terms of data architecture, but that tangible progress has been made in areas such as governance, risk data aggregation capabilities and report practices. It also notes that challenges identified in past progress reports persist and sets out the following recommendations in addition to those identified in the June 2018 progress report:

- banks should closely monitor and make appropriate modifications to their BCBS 239 implementation programmes; and
- supervisors should continue to communicate with banks and inform them if supervisory expectations evolve.

The report is based on the results of a self-assessment survey by authorities with supervisory responsibility for G-SIBs and was completed before the onset of the COVID-19 pandemic.

The BCBS will continue to monitor G-SIBs' progress in adopting BCBS 239.

BIS and Saudi G20 Presidency launch TechSprint for regulatory and supervisory challenges

The Bank for International Settlements (BIS) Innovation Hub and the Saudi Arabian G20 Presidency have launched a [TechSprint](#), calling for innovative technological solutions to a range of operational problems in the areas of financial regulatory compliance (regtech) and supervision (suptech). In particular they are seeking suggested solutions aimed at:

- enabling regulators to easily prepare and transmit machine-readable and -executable regulation to their regulated entities in order to allow regulatory data to be easily mined and reported, to lower the regulatory burden, improve data quality and increase compliance;
- improving the monitoring and reporting of suspicious activity in the cryptoasset space (particularly around fiat-to-crypto conversion gateways) through the use of artificial intelligence, machine learning, data visualisation tools and other technologies; and

- facilitating dynamic information sharing for supervisors and regulators in response to crises that impact global financial stability (such as the coronavirus outbreak).

Firms are invited to participate in the TechSprint through the cloud-based APIX platform. Registration closes on 20 May 2020.

Brexit: BoE, PRA and FCA publish statements on extended use of temporary transitional powers

The Bank of England (BoE) and Prudential Regulation Authority (PRA) have published a [joint statement](#) on HM Treasury's intention to retain the regulators' temporary transitional power (TTP) for a period of two years from the end of the transition period.

The BoE and PRA intend to use the TTP after the transition period as previously communicated in relation to exit day, granting general transitional relief on a broad basis, with key exceptions as identified, for 15 months after the end of the transition period (i.e. ending on 31 March 2022). Specific uses of the TTP, in particular those relating to some of the new requirements on firms entering the temporary permission regime, are expected to remain as previously published.

The Financial Conduct Authority (FCA) has also updated its [statement](#) on the TTP to confirm its intention to take the same approach as the BoE and PRA. The FCA also states that in specific areas where transitional relief will not be granted until 31 March 2022, regulated entities will be expected to comply with the changes to their regulatory obligations by the end of the transition period on 31 December 2020.

Updated transitional directions and guidance, including details on the application of the TTP in relation to new EU legislative requirements that become applicable during the transition period, will be published in due course.

Brexit: HMT announces intention to legislate on trade repository registration under SFTR

HM Treasury (HMT) has published a [statement](#) setting out its intention to legislate to enable trade repositories to register with the Financial Conduct Authority (FCA) to operate post-transition period in relation to functions under the UK Securities Financing Transactions Regulation (SFTR).

HMT notes that it intends to bring forward similar legislation to the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1318) prior to the end of the transition period, and that further information on registration will follow from the FCA.

FCA publishes business plan guidance for lending firms

The FCA has published [guidance](#) for lending firms making applications for authorisation.

If a lending firm is applying for authorisation, the firm is required to complete a business plan. The FCA has published a [sample business plan](#) and guidance on what key areas the business plan is required to cover.

The guidance also provides information specific to different types of lending firm.

BaFin publishes revised MaComp

The German Federal Financial Supervisory Authority (BaFin) has revised its [Circular](#) on the Minimum Requirements for the Compliance Function and Additional Requirements Governing Rules of Conduct, Organisation and Transparency (MaComp).

In particular, the update revises module BT 7 on suitability testing. The module, implementing the European Securities and Markets Authority (ESMA) guidelines on the suitability test of 2012, has been adjusted to the new ESMA guidelines (ESMA 35-43-869).

In addition, a new module BT 15 on the requirements for the product information sheet will be included, the content of which was previously largely contained in the separate PIB circular (Circular (WA) 4/2013). Among other things, the new module includes an extension of the validity of the declaration of conformity from previously one to three years under BT 15.1 No. 3. This declaration is generally an audit certificate issued by an auditor and is used in relation to information sheets from third-party providers.

The statements on back feeding information to manufacturers in module BT 5 on product governance will also be adapted.

CSSF-CODERES issue circular on raising of 2020 ex-ante contributions to Single Resolution Fund

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), and the Luxembourg Resolution Board (Conseil de Résolution, CODERES) have issued [circular 20/10](#) dated 24 April 2020 providing information on the raising of the 2020 ex-ante contributions to the Single Resolution Fund (SRF).

The circular is addressed to all credit institutions established in Luxembourg and subject to Regulation (EU) 806/2014, with the exception of Luxembourg branches of credit institutions established outside the EU. Luxembourg branches of credit institutions which have their head office in another Member State of the EU are covered by their head office.

The circular indicates that the 2020 ex-ante contributions to the SRF are due by 5 June 2020. The corresponding individual invoices will be distributed by the CSSF in the coming days. Relevant credit institutions have to transfer the requested amounts to an account of the Fonds de résolution Luxembourg, which will in turn transfer the collected amounts to the SRF.

The circular provides technical details on the computation of the contribution amount and informs relevant credit institutions of a substantial increase in most cases of the contribution compared to the 2019 ex-ante contribution.

The circular further indicates that the conditions concerning irrevocable payment commitments (IPCs) remain unchanged compared to the 2019 contribution cycle. Credit institutions that intend to apply for IPCs in 2020 need to send the completed application form by 14 May 2020 (via e-mail) to the CSSF and by 21 May 2020 as physical package by registered mail to the Single Resolution Board.

HKEX extends consultation period for corporate weighted voting rights beneficiaries consultation

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has [extended](#) the consultation period on its proposal to allow corporate entities to benefit from weighted voting rights, which was originally scheduled to end on 1 May 2020, until 31 May 2020. The consultation period has been extended in response to the requests received for the extension from a number of stakeholders who are in the process of preparing their responses. The SEHK launched the consultation, which is intended to address risks that are particular to corporate WVR (such as the risk of an ‘evergreen’ WVR structure) in order to maintain an appropriate level of investor protection, in January 2020.

SFC issues circular to commodity futures brokers on managing financial and operational risks under extreme market conditions

In light of the volatility in overseas crude oil futures markets, the Securities and Futures Commission (SFC) has [reminded](#) all commodity futures brokers vigilantly to control their risk exposures and maintain sufficient resources to deal with the challenges posed by extreme market conditions. Amongst other things, the SFC urges commodity futures brokers to:

- monitor and address individual clients’ concentration risks in a timely manner;
- set clients’ trading limits and position limits to ensure that they are commensurate with the client’s financial strength and settlement history, as well as the firm’s financial resources;
- set margin requirements for clients considering requirements set out in the circular, as well as collecting sufficient margin from clients during holidays and weekends;
- reassess their clients’ financial capability to bear the potential losses arising from trading in crude oil futures, and not open new positions for those clients who are unable to bear these losses or do not fully understand crude oil futures contracts;
- closely monitor changes in market conditions and margin requirements set by clearing houses or clearing agents and rigorously assess their impact on the firm’s risk exposures, cash flow and liquid capital; and
- diligently supervise their operations to mitigate operational risks and safeguard client assets, as well as establishing and maintaining policies and procedures to ensure the proper management of risks to which firms and their clients are exposed.

SFC issues circular to management companies and intermediaries regarding futures-based ETFs

In view of the volatility in overseas crude oil futures markets, the SFC has issued a [circular](#) to remind all management companies of SFC-authorized futures-based exchange-traded funds (ETFs) to remain vigilant so that in extreme market conditions the funds can be managed in the best interests of investors. In particular, the SFC reminds managers to:

- ensure that the relevant margin obligations are and will be fulfilled in a timely manner for ETFs that invest in futures (in particular, futures-based ETFs);
- closely monitor the market movements of the underlying investments of ETFs and ensure that there are proper contingency plans in place to respond to extreme market movements;
- ensure that any actions taken or to be taken by the managers must be permitted under the ETF's constitutive documents, and comply with the applicable laws and regulatory requirements. The managers should also consult the relevant trustee or custodian of the ETF before taking such actions, as well as promptly and efficiently communicating these actions to investors of the ETF; and
- give early alerts to the SFC of any untoward circumstances relating to the ETFs under their management.

The SFC also reminds intermediaries that futures-based ETFs are derivative products and when providing trading services to clients in derivative products, they should ensure compliance with the requirements under the Code of Conduct for Persons Licensed by or Registered with the SFC. Where there has been solicitation or recommendation, intermediaries should also comply with the suitability obligations under the Code of Conduct.

SFC and Competition Commission sign MoU to strengthen cooperation on competition issues in securities and futures industry

The SFC and the Competition Commission have signed a [memorandum of understanding](#) (MoU) to enhance cooperation and the exchange of information between the two agencies, particularly on competition issues relating to the securities and futures industry.

Under the terms of the MoU, the two agencies agree to notify and consult each other on issues which may have a significant implication for the other agency, including the development of policies and guidelines. Where appropriate and permitted by law, the two agencies will also share information pertaining to the other agency's functions or objectives regarding relevant market players in the securities and futures industry.

Further, the MoU establishes a platform for the two agencies to engage in other forms of technical cooperation, including staff training and secondments, as well as to explore further opportunities for collaboration.

Japan Fair Trade Commission publishes interim report on digital advertising

The Japan Fair Trade Commission (JFTC) has [published](#) an interim report regarding digital advertising, which is part of a series of fact-finding surveys regarding trade practices on digital platforms.

The interim report shows the results of specific surveys regarding trade practices regarding business to business in the digital advertising sector and users (consumers) of search services and social media. According to the interim report, the JFTC held hearings with 30 ad-tech related companies and five digital platform operators, and sent questionnaires to companies (to which

317 companies responded) and consumers (2,000 people responded to each of the questions regarding search services and social media).

The JFTC has indicated that it will conduct further fact-finding surveys in order to understand:

- the situation surrounding trade practices on digital platforms and organise its thoughts on the Anti-Monopoly Act and competition policy in Japan; and
- the situation of use of information from the viewpoint of whether collection of personal information or the use of such information by digital platform operators could be seen as abuse of a superior bargaining position.

Ministry of Finance announces implementation of new foreign direct investment regulations from 8 May 2020

The Ministry of Finance (MOF) has [announced](#) the implementation of the amended Foreign Exchange and Foreign Trade Act (FEFTA), and other relevant rules and regulations to the FEFTA. The amended FEFTA enacted in November 2019 provides the new tightened foreign direct investment (FDI) regulations, in particular expanding the scope of prior notification for pre-transaction approval. Under the new FDI regulations, the threshold for prior notification for pre-transaction approval with regard to the acquisition of shares in Japanese listed companies in certain business sectors will be lowered from 10% to 1%. Moreover, prior notification will also be required to become a board member of an investee company, and proposing the transfer or disposition of an investee company's business activities in such business sectors.

The new FDI regulations will take effect from 8 May 2020. Therefore, they will actually apply to investments which close on or after 7 June 2020.

FSC and FSS finalise measures to improve regulatory framework for private equity funds

The Financial Services Commission (FSC) and the Financial Supervisory Service (FSS) have [announced](#) finalised measures to improve the regulatory framework for private equity funds. The final measures are intended to establish market discipline and introduce a minimum necessary level of regulations to protect investors and prevent system risks, while ensuring the autonomy of private equity funds.

The finalised measures are based on the plans regarding the improvement of the regulatory framework for hedge funds introduced on 14 February 2020, and take into account opinions from experts and stakeholders. Amongst other things, the final measures include the following key provisions:

- strengthening risk management based on market discipline – the Korean Government intends to work to establish a foundation in which different market participants and players can provide a supervisory role and 'checks and balances' against one another;
- improving investor protection – the FSC intends to address vulnerabilities in the structure of funds with a minimum necessary level of regulatory measures to improve investor protection; and
- strengthening supervision and inspection – the financial regulators will seek to enhance the supervision and inspection of the private equity fund market.

The regulators have indicated that the Government intends to implement the measures requiring no amendments to the existing law swiftly. For the measures that require amendments to existing laws, the Government will make use of administrative guidance prior to the amendments becoming effective. Moreover, the amendments will be announced for public opinion within the second quarter of 2020.

RECENT CLIFFORD CHANCE BRIEFING

France amends its foreign investment regime

Recent amendments to the French foreign investment control regime have brought significant changes.

In particular, from 1 April 2020, the ownership threshold that triggers an approval requirement for non-EU/EEA investors has been lowered from 33.33% to 25%. All entities and persons in a chain of control are considered as a 'foreign investor' over a target legal entity governed by French law. In addition, the scope of 'strategic sectors' has been extended to activities in relation to (i) political and general information press services, (ii) agricultural products contributing to national food security objectives, (iii) quantum technologies and (iv) energy storage. The measures have also amended the applicable timeframe of the review process and specified the information required for a filing.

This briefing analyses the effects of the French regime changes on M&A activity and on the timeline for foreign investment approval in France.

<https://www.cliffordchance.com/briefings/2020/02/france-amends-its-foreign-investment-regime.html>

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