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

International Regulatory Group Contacts

[Marc Benzler](#) +49 69 7199 3304

[Caroline Dawson](#) +44 207006 4355

[Steven Gatti](#) +1 202 912 5095

[Owen Lysak](#) +44 207006 2904

[Lena Ng](#) +65 6410 2215

[Gareth Old](#) +1 212 878 8539

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use [firstname.lastname@cliffordchance.com](#)

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

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EU Council adopts new rules for crowdfunding platforms

The EU Council has adopted a [new framework](#) which aims to improve the way crowdfunding platforms operate across the EU. The new rules will cover crowdfunding campaigns of up to EUR five million over a twelve month period. Larger operations will be regulated by MiFID and the Prospectus Regulation.

The framework, which forms part of the Capital Markets Union's goals to provide easier access to new financing sources, is intended to remove barriers preventing crowdfunding platforms from providing cross-border services by harmonising the minimum requirements when operating in their home market and other EU countries. It also aims to increase legal certainty through common investor protection rules.

The Council intends the new rules to provide a high level of investor protection whilst taking into account compliance costs for providers by setting out common prudential, information and transparency requirements and including specific requirements for non-sophisticated investors.

The framework defines common authorisation and supervision rules for national competent authorities. Under it, the European Securities and Markets Authority (ESMA) will have an enhanced role to facilitate coordination and cooperation, through a binding dispute mediation mechanism and the development of technical standards.

EU Commission adopts delegated regulations on technical requirements for EU Climate Benchmarks and ESG disclosure requirements

The EU Commission has adopted three delegated regulations setting out the minimum technical requirements for EU Climate Benchmarks and environmental, social and governance (ESG) disclosure requirements for benchmark administrators.

The delegated regulations supplementing the Benchmarks Regulation set out:

- [what to include](#) in the benchmark statement about how ESG factors are reflected in each benchmark or, where applicable, family of benchmarks;
- the [minimum content](#) of the explanation of how the key elements of the benchmark methodology reflect ESG factors for each benchmark, with the exception of interest rate and foreign exchange benchmarks, as well as the standard format to be used; and
- the [minimum standards](#) that EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks should meet in order to be labelled as such, and the transparency requirements on the methodology for both benchmarks.

EU Climate Benchmarks help investors who wish to adopt climate-conscious investment strategies and make informed decisions. These delegated regulations aim to contribute to an increased level of transparency and comparability on the products offered.

The delegated regulations will enter into force 20 days following their publication in the Official Journal.

EU Commission adopts proposal for codified Cross-Border Payments Regulation

The EU Commission has adopted a legislative [proposal](#) to codify the Cross-Border Payments Regulation (CBPR).

The aim of the proposal is to undertake a codification of the CBPR via a new Regulation which will incorporate, and fully preserve the content of, the various acts incorporated under it, without making substantive changes.

[Annexes](#) to the proposal set out the regulations which will be repealed and replaced by the codified Regulation and a table setting out the correlation between the old and new numbers of the articles.

The Commission intends for the new Regulation to enter into force on 20 April 2021.

PRIIPs Regulation: ESAs report on results of consultation on proposed changes to KID

The European Supervisory Authorities (ESAs) have [written](#) to the EU Commission on the outcomes of their consultation on amendments to the Packaged Retail and Insurance-based Investment Products (PRIIPs)

Delegated Regulation concerning the presentation and content of the key information document (KID). Among other things, the consultation:

- proposed changes to the methodology for performance scenarios;
- proposed options to change the methodologies used to calculate costs and how these were presented in summary tables;
- considered possible changes in view of the exemption in Article 32 of the PRIIPs Regulation being due to expire and the possible use of the PRIIPs KID by undertakings for collective investment in transferable securities (UCITS) from 1 January 2022; and
- proposed amendments to the rules related to PRIIPs offering a range of options for investment.

Following the consultation, a draft final report containing regulatory technical standards (RTS) to amend the PRIIPs KID was submitted to the three Boards of Supervisors of the ESAs. While the Boards of the European Banking Authority (EBA) and ESMA adopted the report, it did not receive majority support from the Board of the European Insurance and Occupational Pensions Authority (EIOPA). Among other things, the EIOPA Board was concerned that a partial revision of the PRIIPs Delegated Regulation was not appropriate without a comprehensive review of the PRIIPs Regulation itself.

As the draft report and RTS were not adopted by the three ESA Boards, the ESAs have made the decision not to formally submit them to the EU Commission.

Brexit: ESMA urges market participants to finalise end of transition period preparations

ESMA has published a [press release](#) urging financial market participants to finalise preparations and implement contingency plans before the end of the transition period on 31 December 2020.

ESMA has also confirmed that the following withdrawal statements and memoranda of understanding (MoUs) remain valid:

- general opinion issued on 31 May 2017 on supporting supervisory convergence;
- three sector-specific opinions issued on 13 July 2017 on fostering consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and functions from the UK; and
- MoUs agreed on 1 February 2019 with the Financial Conduct Authority (FCA) and the EU national securities regulators covering cooperation and exchange of information, which will come into effect at the end of the transition period.

ESMA intends to continue reviewing its end of transition period statements.

MiFID2/MiFIR: ESMA publishes annual review report under RTS2

ESMA has published the MiFID2/MiFIR annual review [report](#) under Commission Delegated Regulation (EU) 2017/583 (RTS 2).

In the report, ESMA recommends a draft delegated regulation amending RTS 2 to adjust:

- the average daily number of trades (ADNT) threshold used for the quarterly liquidity assessment of bonds; and
- the trade percentile used to determine the pre-trade size specific to the financial instrument (SSTI) threshold for bonds.

As the first annual transparency calculations for other non-equity instruments (SFPs, interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives, CFDs, emission allowances and emission allowance derivatives) are yet to be published, ESMA considers an adjustment of the trade percentiles for these premature.

The report has been submitted to the EU Commission for endorsement.

BRRD: EBA consults on draft RTS and ITS on impracticability of contractual recognition of bail-in

The EBA has published a [consultation paper](#) (EBA/CP/2020/15) on draft RTS and draft implementing technical standards (ITS) on the impracticability of contractual recognition of write-down and conversion powers and related notifications under the Bank Recovery and Resolution Directive (BRRD).

The draft RTS specify:

- the conditions under which it would be legally or otherwise impracticable for an institution or entity to include the contractual term for the recognition of bail-in;
- the conditions for the resolution authority to require the inclusion of the contractual term; and
- the reasonable timeframe for the resolution authority to require the inclusion of the contractual term.

The draft ITS specify uniform formats and templates for the notification to resolution authorities of contracts meeting the conditions of impracticability defined in the draft RTS.

The consultation closes on 24 October 2020. A public hearing will take place via conference call on 30 September 2020 from 10:00 CET.

BRRD: EBA consults on draft RTS on calibrating MREL at resolution group level

The EBA has published a [consultation paper](#) (EBA/CP/2020/16) on draft RTS specifying the methodology to be used by resolution authorities to estimate the Pillar 2 (P2R) and combined buffer requirements (CBR) at resolution group level for the purposes of setting the minimum requirement for own funds and eligible liabilities requirement (MREL) under the BRRD.

The proposed approach aims to focus on resolution groups that are significantly different from the prudential group on which capital requirements have been set, and therefore seeks to capture resolution groups where an estimation of P2 and CBR is effectively needed by introducing a 5% materiality threshold.

The consultation closes on 24 October 2020. A public hearing will take place via conference call on 29 September 2020 from 10:00 CET.

CRR2: EBA consults on draft RTS on indirect exposures arising from derivatives

The EBA has published a [consultation paper](#) (EBA/CP/2020/14) on draft RTS on the determination of indirect exposures to underlying clients of derivatives and credit default derivatives under the revised Capital Requirements Regulation (CRR2).

The draft RTS, which build on the new Basel LEX Standard for measuring and controlling large exposures, propose a methodology and fallback approach for the calculation of:

- exposures for different categories of derivative contracts and credit derivative contracts with a single underlying debt or equity instrument, namely: options on debt and equity instruments, credit derivative contracts and other derivatives having as underlying a debt or equity instrument; and
- exposures stemming from contracts with multiple underlying reference names.

The consultation closes on 23 October 2020. A public hearing will take place via conference call on 6 October 2020 from 10:00 CET to 12:00 CET.

CRR2: EBA consults on guidelines on alternative treatment of tri-party repurchase agreements

The EBA has published a [consultation paper](#) (EBA/CP/2020/13) on draft guidelines specifying the conditions for the application of the alternative treatment of institutions' exposures related to tri-party repurchase agreements.

Among other things, the draft guidelines include:

- a set of elements that an institution and a tri-party agent should include in their service agreement for the use of the alternative treatment;
- a set of safeguards the tri-party agent has to put in place and for which the institution needs to verify the appropriateness for the use of the alternative treatment;
- how institutions should determine the limits to be applied by a tri-party agent with regard to the securities of a collateral issuer, as well as the general framework under which such limits can be revised; and
- a non-exhaustive list of circumstances that could lead the competent authority to raise material concerns and that would prevent the use of the alternative treatment by institutions, including a procedure for dealing with those material concerns.

The consultation closes on 22 October 2020. A public hearing will take place via conference call on 8 October 2020 from 10:00 CET to 12:00 CET.

Fundamental Review of the Trading Book: EBA consults on draft RTS on default probabilities and losses given default

The EBA has published a [consultation paper](#) (EBA/CP/2020/12) on draft RTS on default probabilities (DPs) and losses given default (LGDs) under the internal default risk model (DRC) as part of the Fundamental Review of the Trading Book (FRTB) under CRR2.

The draft RTS specify the requirements an institution's internal methodology or external sources are to fulfil for estimating DPs and LGDs, including:

- clarifications on internal ratings-based (IRB) permissions;
- that the use of any internal methodology to calculate PDs and LGDs under the DRC should meet all the requirements applied for the internal ratings-based (IRB) approach; and
- the requirements external sources are to fulfil for their use under the DRC, which reflect similar qualitative requirements as those applicable to an internal methodology.

The consultation closes on 22 October 2020. A public hearing will take place via conference call on 17 September 2020 from 15.30 to 17.30 CET.

EBA reports on benchmarking of EU remuneration practices

The EBA has published a [report](#) on benchmarking remunerations practices in EU banks for the financial years 2017 and 2018, together with high earners data for 2018. The main findings include:

- the number of high earners in EU banks receiving a remuneration over EUR 1 million increased from 4,861 in 2017 to 4,938 in 2018;
- the number of high earners in the UK increased by 44.09% from 2010 to 2018;
- the average ratio of variable to fixed remuneration for all high earners in the EEA increased from 127% in 2014 to 139% in 2018; and
- banks' remuneration practices were not sufficiently harmonised, either at a member state or an institutional level, mainly due to the differences in national implementation of the Capital Requirements Directive (CRD 4).

The EBA will continue to benchmark remuneration trends every two years and publish data on high earners annually to monitor developments.

ECB consults on publication of compounded €STR rates

The European Central Bank (ECB) has published a [consultation](#) on the publication of compounded term rates using the euro short-term rate (€STR).

Views are sought on whether the ECB should publish €STR compounded rates, and if so, the parameters that would be applied, such as:

- the rate compounding formula and index calculation methodology;
- the applicable day-count convention;
- how to resolve residual calendar discrepancies; and
- the publication policy, including the selection of maturities and the timing of daily publication.

The consultation closes on 11 September 2020.

ECB publishes good practices for banks' preparations for benchmark rate reforms

The ECB has published a [good practices report](#) following the results of its industry-wide assessment of banks' preparedness for the benchmark interest rate reforms.

According to the survey, banks are aware of the complexities of the reforms, but their preparedness leaves room for improvement and they are behind schedule in implementing risk mitigation measures. Further, banks have focused more on the transition from the euro overnight index average (EONIA) to the euro short-term rate (€STR) than on the risks associated with the reform of the euro interbank offered rate (EURIBOR), despite EURIBOR being the most frequently used benchmark rate for contracts in the euro area.

The good practices report therefore outlines how banks can best structure their benchmark-rate related governance, identify benchmark-rate related risks, and create action plans and documentation in relation to the reforms.

Sustainable finance: FSB reports on inclusion of climate-related risks in authorities' financial stability monitoring

The Financial Stability Board (FSB) has published a stocktake [report](#) summarising the key findings of financial authorities' experiences of including physical and transition climate risks as part of their financial stability monitoring.

The survey report, which draws on information provided by FSB member national authorities, international bodies and the private sector, finds that:

- three quarters of financial authorities consider, or are planning to consider, climate-related risks as part of their financial stability monitoring;
- the majority of financial authorities focus on the implications of changes in asset prices and credit quality;
- a minority of financial authorities consider the implications for underwriting, legal, liability and operational risks;
- consideration of climate-related credit and market risks faced by banks and insurers appears more advanced than that of other risks, or of risks faced by other types of financial institutions; and
- in some jurisdictions, climate-related risks are being integrated into microprudential supervision of banks and insurance firms.

The FSB intends to conduct further work by October 2020 to assess the channels through which physical and transition risks could impact the financial system.

FCA announces sixth regulatory sandbox cohort

The Financial Conduct Authority (FCA) has [announced](#) the 22 firms comprising the sixth cohort of its regulatory sandbox.

The firms selected to carry out sandbox tests represent sectors in which the FCA wishes to see more innovation, including propositions regarding green economy, accessibility and digital offerings created by the impact of COVID-19. Two successful applicants to this cohort have developed sustainable finance models. Examples of accepted propositions include financial

education platforms, safekeeping and transacting of digital assets using distributed ledger technology and a digitised motor finance proposition.

The FCA are also collaborating with key strategic partners and the industry to pilot a [digital sandbox](#) aimed at providing enhanced regulatory support for innovative firms tackling challenges caused by COVID-19.

FCA publishes feedback statement on intergenerational differences

The FCA has published the [feedback](#) to its discussion paper on intergenerational differences.

The feedback statement sets out why intergenerational difference is an important issue for the FCA, the financial services sector, and for the users of financial services that the FCA serves. It also establishes the FCA's key findings on areas where evolving consumer needs could be better met by financial services and project conclusions, including that:

- consumers need better support to manage increased responsibility and additional exposure to risk;
- consumers need more hybrid and flexible products to meet their evolving needs; and
- certain consumer segments cannot access lending products needed for their financial goals.

The FCA also found that consumers need access to better products to fund long-term care and that they may not have sufficient savings levels to meet future financial needs. These findings primarily relate to social policy issues which go beyond the remit of the FCA and are therefore for the government to lead on.

According to the statement, the FCA intends to provide appropriate support to consumers to meet immediate financial circumstances in the short term, and in the long term ensure that its regulatory and policy approach accommodates changing consumer needs across different generations.

FCA sends Dear CEO letter to debt advice firms

The FCA has written a ['Dear CEO' letter](#) to debt advice firms, setting out its views of the key risks which they pose to their consumers or the markets in which they operate.

The FCA has grouped firms with similar business models into one of 40 portfolios. The FCA is analysing each portfolio and developing strategies for supervision to monitor firms effectively and target firms posing the greatest risk of harm. This letter has been sent to firms in the debt advice firms portfolio. On 9 December 2019, the FCA extended the senior management and certification regime (SM&CR) to solo-regulated firms which encompasses firms providing debt advice. The FCA will use the SM&CR to hold appropriate individuals accountable for conduct and competence with the aim of reducing harm to customers and strengthening market integrity.

The letter outlines the FCA's expectations of debt advice firms, including how they should mitigate key risks, and describes its supervisory strategy and programme of work to ensure that firms meet these expectations. The FCA have identified five ways in which customers may be harmed and is prioritising its supervisory work on the following issues:

- no access to debt advice for consumers due to insufficient capacity in the sector;
- inadequate governance and controls over advice processes resulting in poor quality advice and consumers entering into adverse debt solutions, and firm fee structures leading to consumers paying excessive fees or administration charges;
- inaccurate regulatory reporting data and failure to abide by notification requirements, which impedes effective supervision from the FCA; and
- firms operating with insufficient prudential resources as is required by CONC 10 to enable them to remediate customers.

The FCA expects firms to review the areas of concern in the letter and consider whether changes can be made to reduce the risk harm to consumers and maintain integrity of the market.

HMT consults on increased regulation of financial product and cryptoasset promotions

HM Treasury (HMT) has launched two consultations on increasing the oversight of [financial promotions](#) issued by unauthorised firms, and bringing the promotion of certain types of [cryptoassets](#) under FCA regulation.

The aim of these consultations is to help combat misleading advertising or a lack of suitable information, which can expose potential investors to a level of risk they are not prepared for.

The government's view is that the requirement for an authorised firm to approve the financial promotion of an unauthorised firm does not operate as a strong enough safeguard to ensure such financial promotions are compliant with FCA rules. HMT proposes to establish a regulatory 'gateway', which a firm must pass through before it is able to approve the financial promotions of unauthorised firms. Any firm wishing to approve the financial promotions of unauthorised firms would first need to obtain the consent of the FCA. It is hoped that this would enable the FCA to have better oversight of those firms and help ensure such financial promotions are clear, fair, and not misleading.

HMT has also launched a consultation on its proposals to expand the perimeter of the financial promotions regime to include certain types of cryptoasset, by defining relevant cryptoassets as controlled investments. This would ensure that cryptoasset promotions are held to the same standards for fairness, clarity and accuracy that apply to traditional financial services promotions.

Comments on both consultations are due by 25 October 2020.

HM Treasury launches independent fintech strategic review

HM Treasury has published the [terms of reference](#) for a new independent review into the UK's fintech sector, which was first announced in the March Budget 2020.

The strategic review, which will be led by Ron Kalifa OBE, will identify priority areas of focus for industry, regulators and policy makers to foster innovation, support growing firms and promote the integration of new technologies across

UK financial services. It will also seek to provide recommendations on five key workstreams:

- skills and talent;
- investment;
- national connectivity;
- policy; and
- international attractiveness.

The review is expected to report to HMT with its findings at the beginning of 2021.

HMT publishes policy paper on proposed changes to FCA's cancellation of authorisation process

HM Treasury has published a [policy statement](#) setting out the government's intention to streamline the FCA's process for cancelling the authorisation of firms no longer carrying out FCA-regulated activities and removing them from the Financial Services Register. The changes will permit the FCA to follow a shorter and less onerous process for de-authorising firms that are suspected of no longer carrying out regulated activities in instances where the firm has:

- not paid fees that it is required to pay under FCA rules;
- not filed a return as required under the FCA's reporting requirements;
- failed to keep up to date its core information requirements; or
- repeatedly failed to respond to FCA correspondence.

HMT notes that, while the government is not conducting a formal consultation on these changes, it would welcome any views. It intends to take the measures forward when Parliamentary time allows.

HM Treasury publishes policy statement on extending transitional period for third country benchmarks

HM Treasury has published a [policy statement](#) setting out its rationale for extending the transitional period for third country benchmarks under the UK Benchmarks Regulation from 31 December 2022 to 31 December 2025.

In September 2019, the transitional period was extended for third country benchmarks in the UK from end-2019 to end-2022 through the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019, to provide additional time for third country benchmark administrators to apply to the Financial Conduct Authority (FCA). According to the policy statement only a limited number of third country benchmarks or administrators have come through the current access routes.

In June 2020, the UK Government published a written statement (HCWS309) on financial services reform stating, among other things, that they intend to ensure continued market access to third country benchmarks until end-2025.

In this policy statement, HM Treasury states its intention to bring this measure forward at the next legislative opportunity and to consider changes to the third country benchmarks regime for the UK.

PRA consults on simplified obligations for recovery planning

The Prudential Regulation Authority (PRA) has launched a [consultation](#) on draft proposals to allow certain firms to benefit from simplified obligations for recovery planning, as required under the BRRD. In particular, the PRA is seeking feedback on draft amendments to supervisory statement (SS) 9/17, 'Recovery Planning', to specify that:

- global systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs) are not eligible for simplified obligations;
- credit institutions with a quantitative score of under 60 basis points and which do not provide critical functions are likely to be eligible for simplified obligations;
- non-GSII or non-O-SII investment firms will be assessed for simplified obligations eligibility using the qualitative assessment process set out in Commission Delegated Regulation (EU) 2019/348; and
- firms eligible for simplified obligations will be required to submit at least two scenarios in their recovery plan (rather than at least four for G-SIIs and O-SIIs, or at least three for all other firms) and those with shorter and less complex recovery plans will not be expected to submit a consolidated information template.

Comments are due by 23 October 2020. The PRA intends to publish its final policy and to notify firms that are eligible for simplified obligations in the second quarter of 2020.

PRA consults on supervisory approach to new and growing non-systemic UK banks

The PRA has launched a [consultation](#) (CP9/20) on its proposed approach to supervising new and growing non-systemic UK banks.

The PRA intends to clarify its current supervisory approach, propose changes to the calculation of the PRA buffer for new banks and set expectations in relation to solvent wind down plans.

In CP9/20 the PRA proposes to:

- create a new supervisory statement 'Non-systemic UK Banks: The Prudential Regulation Authority's approach to new and growing banks';
- amend the supervisory statement 'The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation Process (SREP)' (SS31/15) by adding a reference to the new supervisory statement in paragraph 5.25 of Pillar 2 capital policy; and
- reference the new supervisory statement in paragraph 9.45 of the Statement of Policy 'The PRA's methodologies for setting Pillar 2 capital'.

The new [draft supervisory statement](#) covers:

- expectations of new and growing banks;
- capital expectations of new and growing banks;
- orderly exit and recovery and resolvability; and
- the PRA's approach once banks are established.

Comments are due by 14 October 2020.

PRA reports on first year of Enforcement Decision Making Committee

The PRA has published a [report](#) on the cases dealt with by the Bank of England's (BoE's) Enforcement Decision Making Committee (EDMC) during its first year of operation. The EDMC was established in August 2018 to decide contested enforcement cases across all regulatory areas where the BoE has enforcement powers. The report provides detail on, among other things:

- how often the EDMC has met;
- the number of matters seen in respect of the prudential regulation, financial market infrastructure, resolution, and Scottish and Northern Irish banknote regimes;
- the number of statutory notices dealt with;
- whether the EDMC's decisions have been subject to subsequent successful challenges; and
- whether there were instances where a member was unable to hear a matter due to actual or perceived conflict.

PRA updates supervisory statement on significant risk transfer

The PRA has published a policy statement (PS17/20) setting out its final policy on significant risk transfer (SRT) transactions following the March 2020 occasional [consultation](#) (CP3/20) on minor amendments to its rules and policies.

The PRA, which did not receive responses to this particular chapter of the consultation, has updated the paragraph 2.8 of the [supervisory statement](#) (SS9/13) to clarify that non-sequential amortisation features constitute complex features in SRT transactions.

SS9/13 is effective from 22 July 2020.

Decree on temporary lowering of control threshold for foreign investment in French companies published

In April 2020, a French decree (No. 2019-1590) and Ministerial Order, both dated 31 December 2019, amending France's foreign investment regime entered into force.

A further [decree](#) (No. 2020-892) and [Ministerial Order](#), both dated 22 July 2020, have now been published in the Official Journal. These amend the procedures applicable to investments made in French companies active in strategic sectors by non-EU/EEA investors, where the French target's shares are listed on a regulated market.

The decree states that, until 31 December 2020, the ownership threshold that triggers an approval requirement for non-EU/EEA investors will be lowered from 25% to 10%.

The decree will not apply to investments made within ten working days of the decree's publication. The Ministerial Order sets out the provisions regarding the implementation of the decree.

BaFin publishes notification form for submission of netting notices

The German Federal Financial Supervisory Authority (BaFin) has [published](#) a notification form for the submission of netting notices.

As of 1 October 2020, less significant institutions (LSIs) (non-CRR credit institutions for which the EU Capital Requirements Regulation (CRR) applies pursuant to section 1a of the German Banking Act (KWG) and institutions pursuant to Article 4 para 1 no. 3, CRR (as amended by CRR2)) must use the notification form when submitting netting notices to BaFin. The notification form can be used with immediate effect. As before, the German Central Bank will receive a copy of the notification.

BaFin intends to ensure that the procedure for LSIs is aligned as closely as possible with the European Central Bank (ECB) notification procedure for significant institutions (SIs). Accordingly, BaFin requests that institutions submit the required confirmations via the notification form, which seeks to reduce the scope of the examination in the recognition process. Further, contrary to the draft submitted for consultation, the indication of the contracting party is no longer part of the notification form.

General questions regarding implementation can be sent to the central address (Nettinganzeigen@bafin.de) at BaFin. Institution-specific questions and netting notifications should continue to be addressed to the responsible institution advisors.

CSSF regulation on definition of essential services under NIS Directive published

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new [regulation](#) (Regulation 20-04) on the definition of essential services under the law of 28 May 2019, which transposed Directive (EU) 2016/1148 on security of network and information systems (the NIS Directive) into Luxembourg law.

As required under the NIS Directive, the regulation provides a list of services which the CSSF considers essential for maintaining critical societal and/or economic activities. The following services have been identified as essential in this context:

- for credit institutions:
 - custodian bank functions;
 - deposit management;
 - granting of credit;
 - investment services; and
 - payment services; and
- for financial market infrastructures: admission to trading of financial instruments on a regulated market or multilateral trading facility (MFT) trading platforms.

The regulation was published in the Luxembourg official journal (Mémorial A) on 16 July 2020 and will enter into force on 1 August 2020.

CNMV publishes consultation on advertising of investment products and services

The Spanish Securities Market Commission, Comisión Nacional del Mercado de Valores (CNMV), has published a consultation on a [draft circular](#) on the regulation and control of advertising of investment products and services.

The draft circular seeks to develop Order EHA 1717/2010 and sets out regulations on the procedures and controls relating to self-regulatory systems, the content and format of advertising messages, as well as the cessation or rectification of certain advertising activities by the CNMV.

The circular shall apply to all entities supervised by the CNMV performing advertising activities on investment products and services, to entities operating in Spain on a cross-border basis and to other entities in principle not subject to the supervision of the CNMV that carry out, on their own initiative or engage third parties to carry out, advertising activities aimed at investors resident in Spain.

The consultation closes on 11 September 2020.

CBIRC releases the Provisional Rules on Internet Loans of Commercial Banks

The China Banking and Insurance Regulatory Commission (CBIRC) has released the [Provisional Rules](#) on Internet Loans of Commercial Banks prescribing the regulatory requirements on PRC financial institutions for their internet loan business.

Among other things, the Provisional Rules provide the following key rules:

- internet loans refers to personal loans or working capital loans extended by commercial banks based on internet and mobile telecommunications technology, for which the loan application, risk evaluation and other core business operations of the loans (such as credit approval, contract execution, drawdown and post-loan management) are carried out online;
- for each client, the maximum amount of internet loans is RMB 200,000 which CBIRC may adjust from time to time according to business operations and risk level. Internet loans may not be used for the purchase of real property, payment for mortgage loans or investment in financial instruments, fixed assets or equities;
- commercial banks may not cooperate with institutions which are not licensed to carry out a lending business to co-extend internet loans, or provide funding to such unqualified institutions for their extension of internet loans; and
- commercial banks should submit business plans and risk control measures in respect of its internet loan business to CBIRC within 10 working days after launching their first internet loan product. CBIRC may order a bank to rectify or suspend its internet loan business in the event of non-compliance with the relevant regulations.

It should be noted that the above rules also apply to the internet loan business of consumer finance companies and auto finance companies by reference.

The Provisional Rules provide for a two year transitional period for related financial institutions to remediate their existing internet loan business, and

requires them to submit business plans, risk control measures and remediation plans within one month upon the issuance of the Provisional Rules (i.e. by 12 August 2020).

CSRC consults on proposed measures for administrative penalties against violations of securities and futures laws

The China Securities Regulatory Commission (CSRC) has published for consultation [proposed measures](#) for administrative penalties against violations of securities and futures laws. The draft measures cover cases where individuals, legal persons or other organisations violate securities and futures laws and regulations, including the PRC Securities Law, the PRC Securities Investment Fund Law and the Administrative Regulations on Futures Trading.

Among other things, the measures specify that:

- CSRC must send at least two officials for any investigation, who should present law enforcement badges and documents. Otherwise, entities or individuals being investigated have the right to refuse investigation;
- with the exception of evidence gathered in an investigation, evidence obtained from cross-border cooperation arrangements established by CSRC can be used as the basis for administrative penalties. CSRC has cooperation arrangements with 64 jurisdictions, including the UK, Hong Kong, the US (restricted to accounting and auditing), Germany and Singapore;
- during the law enforcement process, CSRC may prevent individuals suspected of committing violations or criminal offences from leaving the PRC if their departure would make it difficult to impose administrative penalties upon them. CSRC was granted the power to restrict departure under the newly amended PRC Securities Law and the proposed measures clarify the circumstances under which it can use this power;
- CSRC may choose not to impose any penalties if the offence is minor and without serious consequence; and
- CSRC may close a case if the violation falls beyond the time limit of the administrative penalties. The measures do not set any special rules on the statutory limit, which is two years under the PRC Administrative Penalty Law (2018).

The measures are expected to increase the transparency of, and clarify the legal basis for, the law enforcement activities and practices of CSRC and its local offices.

Comments on the consultation are due by 16 August 2020.

CSRC and PBOC launch connect scheme between CIBM and exchange bond market

The CSRC and the People's Bank of China (PBOC) have jointly [announced](#) the launch of a connect scheme between the China Interbank Bond Market (CIBM) and China's exchange bond market (EBM) in Bulletin [2020] No. 7 on 19 July 2020.

Key highlights of Bulletin 7 include that:

- the scheme aims to enable eligible investors of CIBM and EBM to trade bonds on both markets through the connect channel to be established by

the relevant market infrastructure (including the electronic trading platform);

- the scheme will adopt a nominee holding arrangement. The respective bond depository institution of CIBM and EBM shall open an account with the other bond depository institution to hold the bonds acquired by investors as a nominee holder. The records kept by each nominee holder will be conclusive evidence of the lawful ownership interest in the bonds under such nominee holding arrangement; and
- after the launch, banks in China (including foreign-invested banks) can trade bonds on EBM by opening exchange accounts directly and/or through the scheme.

From a policy perspective, the scheme is primarily intended to increase the level of bank participation in the EBM. For international investors, the scheme may also open up opportunities for participation in the EBM (which was previously only possible for R/QFIIs). For example, international investors may consider:

- trading certain types of fixed income instruments such as asset-backed securities that are only available in the EBM; and
- moving liquidity between the CIBM and EBM, e.g., acquiring CIBM-traded interest rate bonds (such as government/treasury bonds and development bank bonds) through the scheme, which can then be used as collateral for other trades conducted on the EBM.

ACRA consults on proposed amendments to Companies Act

The Accounting and Corporate Regulatory Authority (ACRA) has launched a [public consultation](#) on [proposed amendments](#) to the Companies Act.

The ACRA set up a Companies Act Working Group (CAWG) in January 2018 to review several areas of the Act, as part of its efforts to ensure Singapore's corporate laws and regulatory framework stay competitive. The CAWG reviewed 56 issues and recommended 36 legislative reforms, covering the following areas:

- dematerialisation of shares and facilitating digitalisation;
- review of company types and refinements to financial reporting criteria;
- matters relating to directors and company secretaries;
- safeguarding shareholders' interests;
- share capital and financial assistance; and
- updating outdated provisions.

The ACRA also reviewed existing regulatory processes and requirements in the Act, in order to streamline filing and regulatory obligations and update outdated regulatory requirements. The proposed legislative changes include the following:

- granting the Registrar power to exempt a company from all of the requirements in the accounting standards, require the company to comply with other accounting standards instead, as well as update changes in

appointments of directors and secretaries to enhance the accuracy of information in the registers of directors and secretaries;

- granting the Minister the power to exempt classes of companies from compliance with any or all of the requirements in the accounting standards and require the classes of companies to comply with other accounting standards instead;
- allowing foreign companies preparing financial statements in accordance with accounting standards that are substantially similar to Singapore's accounting standards to file these financial statements with the ACRA, so as to reduce compliance costs;
- allowing foreign companies with insignificant operations in Singapore to file unaudited branch accounts, instead of an audited statement of assets, liabilities and profit and loss in respect of the foreign company's operations in Singapore;
- removing the requirements for public companies limited by shares to hold statutory meetings and their directors to forward a statutory report to members prior to the meeting; and
- clarifying the date that the Registrar strikes a company off the register, or restores the company's name to the register, such that it coincides with the date indicated in ACRA's 'BizFile+ system' instead of the date published in the Gazette.

Comments on the CAWG's recommendations and the proposed amendments are due by 17 August 2020.

RECENT CLIFFORD CHANCE BRIEFINGS

New executive order adds clarity to US export control changes towards Hong Kong

On 14 July 2020, the Trump Administration released Executive Order 13936, which implements the policy changes announced in late June 2020 regarding Hong Kong's treatment by the United States for export control purposes. President Trump explained in a press conference that the Order ends 'US preferential treatment for Hong Kong. Hong Kong will now be treated the same as mainland China: no special privileges, no special economic treatment, and no export of sensitive technologies.'

This briefing discusses the new Order.

<https://www.cliffordchance.com/briefings/2020/07/new-executive-order-adds-clarity-to-u-s--export-control-changes-.html>

DOJ and SEC revise FCPA resource guide, incorporating second circuit's ruling in US v. Hoskins

On 3 July 2020, the US Department of Justice (DOJ) and Securities Exchange Commission (SEC) released the second edition of the Foreign Corrupt Practices Act (FCPA) resource guide, the first substantive update to the resource guide since it was originally published in 2012. The second edition maintains the structure of the first edition while incorporating policies and guidance issued in the intervening eight years, addressing significant court decisions in FCPA cases, clarifying issue that have arisen in practice, and

providing additional examples and case studies. Since its original publication, the resource guide has provided valuable guidance for practitioners, particularly in light of the relatively sparse case law interpreting provisions of the FCPA. The second edition answers certain lingering questions and also signals the direction DOJ and SEC intend to take with respect to FCPA enforcement.

This briefing discusses the second edition.

<https://www.cliffordchance.com/briefings/2020/07/DOJ-and-SEC-Revise-FCPA-Resource-Guide-Incorporating-Second-Circuit-Ruling-in-US-v-Hoskins.html>

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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