

## INTERNATIONAL REGULATORY UPDATE 29 JUNE – 3 JULY 2020

- EU Commission consults on review of consumer credit agreement rules
- EU Commission publishes Interchange Fee Regulation impact report
- ECB consults on supervisory approach to consolidation in banking sector
- BRRD: EBA publishes discussion paper on enhanced supervisory powers
- CRR: EBA publishes final guidelines on treatment of structural FX positions
- FSB consults on evaluation of too-big-to-fail reforms for systemically important banks
- UK and Switzerland announce intention to conclude bilateral financial services agreement
- Brexit: Financial services (miscellaneous amendments) SI made
- Sustainable finance: CFRF publishes guide to address climate-related financial risks
- Sustainable finance: PRA publishes Dear CEO letter on firms' climate-related financial risk approaches
- BaFin extends General Administrative Act regarding general prior approval to reduce eligible liabilities instruments
- Luxembourg MiFID third country firm regime: CSSF national equivalence decisions and clarifications on third country regime published
- Bank of Spain maintains countercyclical capital buffer at 0%
- CNMV partially revises code of good governance for listed companies
- Swiss Federal Council adopts report and guidelines on sustainability in financial sector
- PBoC, HKMA and AMCM announce launch of Wealth Management Connect in China's Greater Bay Area
- HKMA publishes white paper on green and sustainable banking
- SFC publishes review of SEHK's performance in regulating listing matters

*Clifford Chance's International Regulatory Update is a weekly digest of significant (non-Coronavirus-related) regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.*

To request a subscription to our Alerter: Finance Industry service, please email [Online Services](#).

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](mailto:firstname.lastname@cliffordchance.com)

Clifford Chance LLP,  
10 Upper Bank Street,  
London, E14 5JJ, UK  
[www.cliffordchance.com](http://www.cliffordchance.com)

- **SFC publishes revised financial return form under Securities and Futures (Financial Resources) Rules**
- **Bank of Japan publishes review document regarding developments in overseas credit investment and lending by Japanese financial institutions**
- **Korean Government approves revisions to Financial Investment Services and Capital Markets Act**
- **MAS consults on environmental risk management guidelines for financial institutions**
- **ASX consults on CHES replacement implementation timetable**
- **Recent Clifford Chance briefings: UK Corporate Insolvency and Governance Act, New Volcker Rule amendments, and more. Follow this link to the briefings section.**

## **EU Commission consults on review of consumer credit agreement rules**

The EU Commission has launched a [consultation](#) on four consumer policy initiatives that it intends to propose in 2020 and 2021. The four initiatives are:

- a new EU consumer agenda focusing on key areas of policy priority including consumer empowerment in the green and digital transitions, protecting vulnerable consumers, enforcement of consumers' rights, international cooperation and the impact of COVID-19;
- legislative proposals relating to empowering consumers in the green transition which will, among other things, aim to ensure information on green products is trustworthy and that consumers are protected against practices such as greenwashing and premature obsolescence;
- a review of the Directive on credit agreements for consumers (2008/48/EC) following its recent evaluation which highlighted several issues including its scope, information provision and creditworthiness assessment; and
- a review of the Directive on general product safety (2001/95/EC) in order to ensure it addresses challenges introduced by new technologies and online selling, guarantees the safety of non-food consumer products and provides effective enforcement and market surveillance.

The consultation seeks views on both the immediate response needed, in light of the impact of COVID-19 on consumer rights, and the long-term initiatives required to aid post-crisis recovery.

Comments are due by 6 October 2020.

## **EU Commission publishes Interchange Fee Regulation impact report**

The EU Commission has published a [report](#) on the application of the Interchange Fee Regulation (IFR) for card-based payment transactions.

The report builds on a study contracted out by the Commission to Ernst & Young and published in March 2020, and broadly concludes that the IFR has achieved positive results, such as reduced merchants' charges resulting in

improved services to consumers or lower consumer prices and enhanced market integration.

The report also notes, however, that further monitoring and data gathering over a longer period are necessary to comprehensively assess the impact of recent developments and possible limiting factors, and to decide on the necessity of a legislative proposal to review the IFR, including the maximum cap for interchange fees.

The report has been submitted to the EU Parliament and the Council, as required under Article 17.

### **ECB consults on supervisory approach to consolidation in banking sector**

The European Central Bank (ECB) has published a [guide](#) for consultation that aims to clarify its supervisory approach to consolidation projects involving euro area banks.

The ECB notes that consolidation may help banks achieve economies of scale, become more efficient and improve their capacity to face new challenges, but emphasises that consolidation projects should be based on a credible business and integration plan, improve the sustainability of the business model, and respect high standards of governance and risk management. The ECB proposes:

- not to penalise credible integration plans with higher capital requirements. The starting point for capital will be the weighted average of the two banks' Pillar 2 capital requirements and Pillar 2 guidance prior to consolidation;
- to look to the use of goodwill by banks for risk reduction and value-added investments; and
- to accept the temporary use of existing internal models, subject to a strong roll-out plan.

The ECB encourages parties envisaging consolidation to engage with it early on in the process to allow the ECB to provide preliminary feedback on such projects.

Comments on the guide are due by 1 October 2020. Following the end of the consultation, the ECB intends to publish the comments received together with a feedback statement.

### **BRRD: EBA publishes discussion paper on enhanced supervisory powers**

The European Banking Authority (EBA) has published a [discussion paper](#) (EBA/DP/2020/02) on the application of early intervention measures (EIMs) under the BRRD.

Without pre-empting the outcome of future legislation discussions on potential revisions to the BRRD, the paper seeks to highlight high-priority issues relating to the potential need to improve the set of EI triggers, provide preliminary views on how these issues could be addressed and an opportunity for stakeholders to provide early input.

Based on the results of the EBA's EIMs survey conducted among competent authorities in H1 2019, topics of the paper include:

- the interaction between EIMs and other supervisory powers, including overlap, sequencing, capability of existing EIMs to address crisis situations and the lack of a directly applicable legal basis for the ECB to apply EIMs;
- the disclosure and reputation risks related to possible obligations to disclose the application of EIMs to market participants; and
- the specification of EI triggers, including the Level 1 trigger relating to own funds requirement plus 1.5 percentage points under Article 27(1) and the Level 2 triggers relating to supervisory review and evaluation process (SREP) scores and the monitoring of key risk indicators (KRIs).

The EBA's initial overview suggests the majority of identified issues require changes to the relevant Level 1 legislation.

The deadline for comments is 25 September 2020.

## **CRR: EBA publishes final guidelines on treatment of structural FX positions**

The EBA has published its final [guidelines](#) on the treatment of structural FX positions under the Capital Requirements Regulation (CRR).

Article 352(2) of the CRR allows competent authorities to authorise, on an ad hoc basis, the exclusion of FX risk positions deliberately taken by firms to hedge against the adverse effect of exchange rates on capital ratios from the calculation of the net open currency positions where those positions are of a non-trading or structural nature. The guidelines note that the concept and specific application of Article 352(2) is subject to several interpretations across supervisory authorities and institutions, and has become particularly relevant as over the last few years institutions appear to have become increasingly interested in the application of the structural FX exclusion. Additionally, the EBA has observed that implementation of this provision has been uneven across jurisdictions, and there is a lack of clarity around what constitutes a structural position.

The guidelines set objective criteria that competent authorities should consider for the purpose of assessing whether the conditions set out in Article 352(2) for receiving the permission are met, while granting a balanced degree of flexibility. To harmonise practices among EU jurisdictions, several technical details have been included as part of the guidelines.

As the guidelines introduce a detailed regulatory framework around the structural FX provision, they will be applicable only from 1 January 2022 to give institutions enough time to comply with the new requirements.

## **FSB consults on evaluation of too-big-to-fail reforms for systemically important banks**

The Financial Stability Board (FSB) has launched a [consultation](#) on its evaluation of the efficacy of too-big-to-fail (TBTF) reforms for systemically important banks (SIBs). The reforms were endorsed by the G20 in the aftermath of the 2008 global financial crisis and have since been implemented across the FSB jurisdictions.

The key findings of the FSB's draft evaluation are:

- TBTF reforms have made SIBs more resilient, demonstrating greater capital and significant loss-absorbing capacity;
- many FSB jurisdictions have introduced comprehensive bank resolution regimes, providing authorities with a wider range of options for dealing with banks in stress;
- SIBs have lost domestic market share as a result of the reforms and market concentration has decreased;
- the supply of credit has not been materially affected by the changes in market structure;
- the resilience of central counterparties (CCPs) has become increasingly important (as a result of the requirement to use central clearing for standardised over-the-counter derivatives, which has turned bilateral direct exposures between SIBs into exposures to CCPs); and
- a conservative estimate of the probability and impact of financial crisis suggests the benefits of the reforms significantly outweigh the costs.

The FSB also identifies a number of gaps that need to be addressed, including:

- the resolvability of SIBs in the areas of TLAC implementation, resolution funding mechanisms, the valuation of bank assets in resolution, operational continuity and continuity of access to financial market infrastructure (especially CCPs) and cross-border coordination;
- the provision and availability of data and the level of transparency for market participants, public authorities, the FSB and standard setters;
- the application of the reforms to domestic SIBs; and
- the shift of credit intermediation to non-bank financial intermediaries.

Comments are due by 30 September 2020.

## **UK and Switzerland announce intention to conclude bilateral financial services agreement**

HM Treasury (HMT) and the Swiss Federal Department of Finance (FDF) have published a [joint statement](#) on their intention to conclude a bilateral international agreement on financial services.

The statement notes an intention by both parties to negotiate an agreement with a focus on the provision of services to wholesale and sophisticated clients in the fields of insurance, banking, asset management and capital markets (including market infrastructure), which will:

- establish outcomes-based mutual recognition, providing rights for the provision of relevant financial services from one jurisdiction into the other, and reducing regulatory frictions for cross-border activity;
- establish structures and appropriate safeguards to underpin these rights, including provisions for regulatory and supervisory cooperation; and
- create a clear, transparency and managed process in the event that recognition is withdrawn in the future or re-established after a withdrawal.

Next steps, including a process of negotiations, will be discussed at the next UK/Switzerland financial dialogue, which is due to be held on 8 September 2020.

The UK's Chancellor of the Exchequer, Rishi Sunak, also [announced](#) that the UK has found the Swiss stock markets to be equivalent and an intention for HMT to lay the necessary legislation as soon as the UK's equivalence powers come into force.

## **Brexit: Financial services (miscellaneous amendments) SI made**

The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 ([SI 2020/628](#)) have been made.

SI 2020/628 amends and revokes parts of retained EU law and UK domestic law dealing with cross-border activity within the EU and the functioning of EU institutions, and makes minor clarifications and corrections to the following financial services EU exit SIs:

- The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013;
- The Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013;
- The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
- The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
- The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018;
- The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018;
- The Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019;
- The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019;
- The Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019;
- The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019;
- The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019;
- The Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019;
- The Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019;
- The Proxy Advisors (Shareholders' Rights) Regulations 2019;
- The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019; and
- The Prospectus (Amendment etc.) (EU Exit) Regulations 2019.



## **Sustainable finance: CFRF publishes guide to address climate-related financial risks**

The Climate Financial Risk Forum (CFRF), jointly established in March 2019 by the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), has published a [guide](#) intended to help financial institutions understand the risks that arise from climate change and to provide support on how to integrate these risks into their strategy and decision-making processes.

The CFRF guide covers four key industry-produced chapters focused on:

- [risk management](#) – practical guidance on designing and implementing a governance approach for climate risks;
- [scenario analysis](#) – practical cases to assess climate-related financial risks;
- [disclosures](#) – recommendations on how to improve transparency on the impact of climate-related financial risks; and
- [innovation](#) – recommendations on how to align private sector capital to climate solutions.

## **Sustainable finance: PRA publishes Dear CEO letter on firms' climate-related financial risk approaches**

The PRA has published a [letter](#) addressed to the CEOs of all PRA-regulated firms providing feedback and clarifying expectations on timing in relation to their climate-related financial risk implementation plans.

In particular, the letter:

- builds on the expectations set out in the PRA's [supervisory statement](#) (SS3/19) on enhancing banks' and insurers' approaches to managing the financial risks from climate change;
- provides observations on good practice and identifies key gaps on climate disclosure, risk management, scenario analysis and innovation; and
- sets out next steps for implementation.

The PRA expects firms to embed climate-related financial risk plans into their business strategies by the end of 2021.

## **BaFin extends General Administrative Act regarding general prior approval to reduce eligible liabilities instruments**

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has [extended](#) the General Administrative Act (Allgemeinverfügung) of 26 June 2019 regarding the general approval to reduce eligible liabilities instruments until 28 December 2020. The extension of the General Administrative Act came into force on 27 June 2020.

In line with the CRR, as amended by Regulation 2019/876 (CRR2), institutions must obtain prior approval from the resolution authority if they intend to terminate, redeem, repay or repurchase eligible liabilities instruments prior to their contractual maturity. Under certain circumstances, the resolution authority may grant prior general approval for such measures. As the

settlement authority, BaFin may grant such general permission to institutions in advance. The General Administrative Act is addressed exclusively to institutions in respect of which BaFin is the competent resolution authority. Institutions that fall within the competence of the Single Resolution Board (SRB) are not affected by the General Administrative Act.

The extension of the General Administrative Act until 28 December 2020 is necessary in order to be able to react appropriately to any changes through regulatory technical standards. Under Art. 78 para 3 CRR2, the European Banking Authority (EBA) should have submitted regulatory technical standards to the EU Commission by 28 December 2019, which the Commission will then adopt in the form of a Delegated Regulation. It is not yet known when these regulatory technical standards will be available.

### **Luxembourg MiFID third country firm regime: CSSF national equivalence decisions and clarifications on third country regime published**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a number of new publications in relation to Luxembourg's MiFID third country firm regime.

A new CSSF [Regulation](#) No. 20-02 of 29 June 2020 on the equivalence of certain third countries in matters of supervision and authorisation rules for the purpose of providing investment services or carrying out investment activities and ancillary services by companies from third countries has been published in the Luxembourg official journal (Mémorial A) and entered into force on 5 July 2020. The new Regulation sets out the third countries for which the CSSF considers that the supervisory and authorisation rules applied by them are equivalent to those of the Luxembourg law of 5 April 1993 on the financial sector, as amended (FSL). This equivalence determination opens the possibility of an application for a firm of that third country to provide investment services or activities as well as ancillary services in Luxembourg to professional clients and eligible counterparties. These countries are Canada, Switzerland, United States, Japan, the special administrative region of Hong Kong of the Republic of China and Singapore.

In addition, a new CSSF [Circular](#) 20/743, dated 1 July 2020 and amending CSSF Circular 19/716 regarding the provision of investment services or the performance of investment activities and of ancillary services in accordance with Article 32-1 of FSL has been published and has entered into force. Amongst other things, the new Circular clarifies that Article 32-1 of the FSL only applies to services provided in Luxembourg ('fournis au Luxembourg'). It is presumed that the investment service is provided in Luxembourg ('fourni au Luxembourg') if one of the following conditions is met:

- the third country firm (TCF) has an establishment (for example, a branch) in Luxembourg;
- the TCF provides an investment service to a retail client established or located in Luxembourg;
- the place where the 'characteristic performance' of the service (the essential service for which payment is due) is performed in Luxembourg.

The Circular recognises that there may be particular situations where the TCF provides an investment service to a client, other than a retail client,



established or located in Luxembourg, and such service may be considered as not being rendered in Luxembourg.

### **Bank of Spain maintains countercyclical capital buffer at 0%**

The Bank of Spain has [decided](#) to maintain the value of the countercyclical capital buffer applicable to credit exposures in Spain at 0% in the third quarter of 2020.

### **CNMV partially revises code of good governance for listed companies**

The Spanish National Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has conducted a revision of the [Code](#) of Good Governance for Spanish Listed Companies, updating several recommendations of the code to adapt them to legal developments since its publication in 2015 and clarifying the scope of certain other recommendations.

The four pillars of the reform are:

- promoting the presence of women on boards of directors;
- increasing importance of non-financial information and sustainability;
- more emphasis on reputational and general non-financial risks; and
- clarification of aspects relating to the remuneration of directors.

### **Swiss Federal Council adopts report and guidelines on sustainability in financial sector**

The Swiss Federal Council has adopted a [report](#) and [guidelines](#) on sustainability in the financial sector. The aim is to make Switzerland a leading location for sustainable financial services. In order to achieve this, the Federal Council wants to shape the framework conditions in such a way that the competitiveness of Switzerland's financial centre is improved and that the financial sector can make an effective contribution to sustainability.

The framework conditions for the Swiss financial centre in the area of sustainability and sustainable growth have been identified as follows:

- information for market participants – environmental and climate information for financial products and companies, including financial institutions, should be made available to all market participants in a systematic and comparable way;
- quality of information – the chosen reporting standard is to be measured against the traceable and effective achievement of sustainability goals in accordance with the 2030 Agenda reference framework;
- quality of service – informed advice, a high level of training and further education in the sector as well as products that are efficiently and effectively geared to achieving sustainability goals are key factors on the supply side;
- innovation – in general, including in the three areas mentioned above, the use of digital business and analysis models plays a central role;

- risk pricing – financial risks from environmental and climate developments must be identified. This also includes the long-term perspective and developments during the transition and adaptation phase; and
- exportability – international developments, especially in the EU, must be closely monitored in order to identify at an early stage which steps are necessary to maintain competitiveness. Switzerland remains committed to the exportability of high-quality financial services, which makes the sustainability of Swiss financial services transparent in the international context.

The Federal Council's report on sustainability in the financial sector was prepared by a cross-departmental working group. The report examines thirteen measures for sustainability in the financial sector in detail, some of which are also being discussed in the EU, and focuses on environmental aspects. The measures primarily concern transparency, investment activities, training and further education, and risks. The guidelines have been prepared based on the report.

### **PBoC, HKMA and AMCM announce launch of Wealth Management Connect in China's Greater Bay Area**

The People's Bank of China (PBoC), the Hong Kong Monetary Authority (HKMA) and the Monetary Authority of Macao (AMCM) have jointly [announced](#) the launch of a cross-boundary wealth management connect pilot scheme (Wealth Management Connect) in the Guangdong-Hong Kong-Macao Greater Bay Area.

Amongst other things, the announcement sets out that:

- under the Wealth Management Connect, (i) individual residents of Mainland cities in the Greater Bay Area can invest in eligible wealth management products distributed by banks in Hong Kong and Macao by opening designated investment accounts with these banks ('Southbound Connect'), and (ii) individual residents of Hong Kong and Macao can invest in eligible wealth management products distributed by Mainland banks in the Greater Bay Area by opening designated investment accounts with these banks ('Northbound Connect');
- PBoC, HKMA, AMCM as well as other regulators concerned (including the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission, the State Administration of Foreign Exchange and the Hong Kong Securities and Futures Commission) will further agree on the investor eligibility criteria, mode of investment, scope of eligible products, investor protection, handling of disputes, etc. under the Northbound Connect and the Southbound Connect;
- cross-border remittance under the Wealth Management Connect will be made in a closed-loop through designated investment accounts so as to ensure that the relevant monies will be used only for investment under the Wealth Management Connect;
- cross-border remittance under the Wealth Management Connect will be made in RMB with foreign currency conversion made in offshore markets; and

- cross-border fund flows under the Wealth Management Connect will be subject to aggregate and individual investor quota management. The aggregate quota will be adjusted through a macro-prudential coefficient.

The date of the formal launch of the Wealth Management Connect and its implementation rules will be announced separately.

## **HKMA publishes white paper on green and sustainable banking**

The HKMA has published a [white paper](#) on green and sustainable banking. The white paper is intended, by providing some background on climate and environmental issues, to discuss the initial thinking of the HKMA regarding its supervisory approach to addressing climate-related issues and broader sustainability issues. The HKMA hopes that the white paper can enable authorised institutions to have a grasp of the issue and help shape a greener, better and more climate-resilient banking system. It also advises authorised institutions to prepare for the possible challenges arising from climate change, including the physical and transition impacts on their own operations and clients. The HKMA has indicated that it would appreciate further discussion with the banking industry about the thinking presented in the white paper before proceeding with a formal consultation of its supervisory requirements.

## **SFC publishes review of SEHK's performance in regulating listing matters**

The Securities and Futures Commission (SFC) has published a [report](#) summarising the key findings and recommendations of its 2019 review regarding the performance of the Stock Exchange of Hong Kong Limited (SEHK) in its regulation of listing matters in 2018. Based on its 2019 review, the SFC has made the following recommendations to the SEHK:

Listing Department personnel should not attend introductory meetings with prospective listing applicants alongside Hong Kong Exchanges and Clearing Limited (HKEX) business executives, which may give the impression that the Department is assisting the HKEX business side to win business or to service issuers and applicants;

- the SEHK should review its internal procedures to ensure that HKEX business executives do not and are not seen to pressurise the Department to respond more swiftly to particular applicants;
- the SEHK should promptly conduct a thorough and comprehensive study to clarify and develop written rules, practices, policies, guidelines and procedures that are necessary and appropriate to give effect to the 'Chinese Wall', taking into account the listing regulatory function's role as a public authority and its statutory duty under the Securities and Futures Ordinance (SFO);
- the Listing Committee should explore further avenues in addition to its review function and the existing oversight processes to ensure that the Department is exercising the delegated powers and carrying out the delegated functions as specified in the Listing Rules given that the proportion of the Department's decisions for which a review is sought in any given year is very small;
- the Listing Committee should review the decision-making process for pre-initial public offering (pre-IPO) consultations and consider whether it is

necessary to provide clearer guidelines for the Department and/or to the market as to when pre-IPO enquiries should be referred to the Committee;

- the SEHK should review the existing organisational structure and reporting lines for the listing regulatory function to enhance oversight by the HKEX Board, or its delegates, while maintaining the independence required to discharge the requirements of the SFO;
- the Department should amend its protocol that no further regulatory action is required when the relevant listing application has been withdrawn or terminated, in handling complaints against listing applicants; and
- the Department should continue to take steps to enhance the analysis of 'suitability' issues included in its reports to the Listing Committee and its recording of the related discussions at Listing Committee meetings.

### **SFC publishes revised financial return form under Securities and Futures (Financial Resources) Rules**

The SFC has published the [draft](#) of its revised form of the return required to be submitted by licensed corporations under section 56 of the Securities and Futures (Financial Resources) Rules.

The financial return form has been revised to collect additional data from licensed corporations to enable the SFC to identify risks in a timely manner, take prompt supervisory action and protect investors.

The SFC has clarified that, to allow time for licensed corporations to make necessary preparations, the revised form will only be used for accounting periods starting on or after 1 July 2021. The revised form may be subject to non-substantive amendments. The SFC has advised licensed corporations to familiarise themselves with the revised form, start gathering the newly required data and enhance their systems where necessary.

The SFC has also indicated that the final version of the revised form will be published in the Government Gazette in due course.

### **Bank of Japan publishes review document regarding developments in overseas credit investment and lending by Japanese financial institutions**

The Bank of Japan has published a [document](#) setting out its review regarding developments in overseas credit investment and lending by Japanese financial institutions.

The Bank of Japan has observed that, in recent years, the markets for leveraged loans and collateralised loan obligations (CLOs) have expanded in the United States and Europe and Japanese financial institutions have increased their holdings of such products. Since 2019, the Bank of Japan and the Financial Services Agency (FSA) have been conducting joint surveys to ascertain the current situation of such overseas credit investment and lending by Japanese financial institutions, ensure appropriate risk management by these institutions, and share a proper assessment of the financial stability implications of such investment and lending. Based on the findings from the first round of the survey, the review document is intended to outline the scale and characteristics of overseas credit investment and lending by major banks.

The Bank of Japan has indicated that the survey results have already been reflected in the assessment of financial system stability by financial authorities,

such as its financial system report released in October 2019 and April 2020, as well as the report on the vulnerabilities of leveraged loans and CLOs released by the Financial Stability Board (FSB) in December 2019. Moreover, the Bank of Japan and the FSA make use of the results in direct dialogue with financial institutions to encourage their efforts to strengthen risk management and in discussions with foreign financial authorities at international forums and bilateral meetings to share a proper assessment of Japan's financial system stability.

### **Korean Government approves revisions to Financial Investment Services and Capital Markets Act**

The Financial Services Commission (FSC) has [announced](#) that the revisions to the Financial Investment Services and Capital Markets Act (FSCMA) have been approved by the Korean Government. The revisions to the FSCMA are intended to:

- lower risks in the over-the-counter derivatives market;
- improve regulations on asset management and crowdfunding;
- allow discretionary investment businesses to operate as investment advisory businesses without going through a separate registration process;
- reduce inconvenience to investors by lifting the requirement to issue quarterly investment reports by discretionary investment businesses to them;
- extend the scope of businesses eligible to issue securities and raise funds through crowdfunding from start-ups within seven years of establishment to all small and mid-size enterprises;
- allow intermediaries to provide advice on business management after the completion of their function as intermediaries; and
- lift excessive regulations regarding the application of the Act on Corporate Governance of Financial Companies for crowdfunding intermediaries.

The FSC has indicated that the revisions to the FSCMA will be submitted to the National Assembly in July 2020.

### **MAS consults on environmental risk management guidelines for financial institutions**

The Monetary Authority of Singapore (MAS) has published a set of three consultation papers on its proposed guidelines on environmental risk management for [banks](#), [insurers](#) and [asset managers](#). The proposed guidelines are intended to enhance financial institutions' resilience to environmental risk and strengthen the financial sector's role in supporting the transition to an environmentally sustainable economy in Singapore and in the region. This is part of the MAS' Green Finance Action Plan to become a leading global centre for green finance.

The proposed guidelines, which were co-created with financial institutions and industry associations, set out the MAS' supervisory expectations for financial institutions in the following areas:

- governance and strategy – the MAS expects boards and senior management of financial institutions to incorporate environmental

considerations into their strategies, business plans and product offerings, and maintain effective oversight of the management of environmental risk;

- robust risk management – financial institutions will be required to put in place policies and processes to assess, monitor and manage their environmental risk; and
- disclosure of environmental risk – financial institutions will be required to make regular and meaningful disclosure of their environmental risks, so as to enhance market discipline by investors.

The MAS has indicated that it intends to provide a transition period of 12 months after the guidelines are issued for financial institutions to assess and implement the guidelines as appropriate.

Comments on the proposed guidelines are due by 7 August 2020.

### **ASX consults on CHES replacement implementation timetable**

The Australian Securities Exchange (ASX) has launched a [public consultation](#) on the Clearing House Electronic Subregister System (CHES) replacement revised implementation timetable. The consultation paper is intended to set out key project activities and milestones including system development and testing, user testing, technical accreditation, operational readiness, and operating rule amendments.

The revised timetable has been produced to provide additional time for the ongoing impact of the COVID-19 pandemic on all stakeholders, accommodate functionality changes requested by users, and have a longer period for ASX and CHES users to complete their respective development and readiness activities. The aggregate effect of these considerations produces a new go-live date of April 2022, twelve months beyond the original target go-live. ASX has indicated that it will confirm the go-live date as soon as possible after assessing the consultation feedback.

Comments on the consultation are due by 28 July 2020.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **UK Corporate Insolvency and Governance Act – Different Stakeholder Perspectives**

On 25 June, the Corporate Insolvency and Governance Act received Royal Assent to introduce reforms to the existing insolvency and companies legislation. The Act has been fast tracked through Parliament, taking just over a month from start to finish. Many of the provisions took effect from 26 June. Certain of the Act's temporary provisions have now been extended until the end of September 2020, and will have retrospective effect.

The Act introduces both temporary emergency measures and permanent measures. These measures have business rescue at their heart, and, together with government financial support, are aimed at limiting formal insolvencies and allowing business to 'bounce back' from the adverse financial circumstances caused by the COVID-19 pandemic. The Act provides distressed businesses and their directors with some welcome relief during these unprecedented times and provides further restructuring tools, with the



aim of preserving jobs and restoring the economic and productive capacity of the nation.

This briefing discusses how the changes will be played out in practice and affect different stakeholders.

<https://www.cliffordchance.com/briefings/2020/06/corporate-insolvency-and-governance-act-2020.html>

### **ZBP fallbacks clauses**

In July 2019 the Polish Bank Association (Związek Banków Polskich, ZBP) published its take on the fallback clauses relating to the EU Benchmarks Regulation (BMR). The project aims to propose model clauses for the entire banking sector regardless of whether specific banking procedures are covered by the BMR or not.

This briefing discusses the ZBP fallback clauses.

<https://www.cliffordchance.com/briefings/2020/06/zbp-fallbacks-clauses.html>

### **Newly adopted Volcker Rule amendments expand opportunities for banks to sponsor and invest in private credit funds**

On 25 June 2020, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Commodity Futures Trading Commission issued a final rule adopting several amendments to the regulations implementing Section 13 of the Bank Holding Company Act of 1956, commonly known as the Volcker Rule. Among the modifications to the Volcker Rule regulations included in the final rule was the exclusion of privately offered credit funds from the definition of ‘covered fund’ for purposes of the Volcker Rule’s restrictions on a banking entity’s interests and relationships with covered funds. The final rule will become effective on 1 October 2020.

This briefing discusses the newly adopted amendments to the Volcker Rule.

<https://www.cliffordchance.com/briefings/2020/07/newly-adopted-volcker-rule-amendments-expand-opportunities-for-b.html>

### **US Supreme Court rules SEC may seek limited disgorgement as equitable remedy**

On 22 June 2020, the US Supreme Court placed significant limits on the ability of the US Securities and Exchange Commission to maintain its longstanding practice of seeking disgorgement awards as part of an enforcement action for violation of the federal securities laws. In *Liu v. Securities and Exchange Commission*, the Supreme Court held that the SEC may continue to obtain disgorgement awards in civil enforcement actions, as long as those awards do not exceed the defendant’s net profits from the violation at issue, and are awarded to victims of the violation. The decision is the latest by the Supreme Court to clarify, and narrow, the scope of the SEC’s (once-seemingly broad) power to seek disgorgement awards.

This briefing discusses the decision.

<https://www.cliffordchance.com/briefings/2020/06/US-Supreme-Court-Rules-SEC-May-Seek-Limited-Disgorgement-as-Equitable-Remedy.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.

[www.cliffordchance.com](http://www.cliffordchance.com)

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

© Clifford Chance 2020

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,  
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to [nomorecontact@cliffordchance.com](mailto:nomorecontact@cliffordchance.com) or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.