

INTERNATIONAL REGULATORY UPDATE 14 - 18 SEPTEMBER 2020

- **Prospectus Regulation: Delegated Regulations published in Official Journal**
- **AMLD5: EU Commission reports on Member State legal arrangements**
- **EU Commission consults on effectiveness of ELTIFs**
- **ECB announces launch of new initiative to combat cybercrime and share cybersecurity intelligence**
- **Coronavirus: ECB to allow banks to exclude certain exposures from leverage ratio**
- **Coronavirus: ESMA renews temporary decision on notification of net short positions**
- **EBA seeks input on ESG disclosure practices**
- **AMLD5: Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 laid before Parliament**
- **UK regulators extend complaints scheme consultation**
- **UK regulators publish updated Regulatory Initiatives Grid**
- **FCA seeks views for improvements to consumer investments market**
- **CSSF issues communication regarding EBA opinion on market practices which may constitute obstacles to provision of payment initiation and account information services**
- **CSSF updates circular on technical modalities regarding application of law introducing centralised electronic data search register concerning IBAN accounts and safe-deposit boxes**
- **Ministry of Finance issues new guidelines on financial sanctions regulations**
- **Ministry of Finance publishes draft amendments to the Act on Investment Funds and Management of Alternative Investment Funds**
- **BRSA expands scope of credit rating requirements**
- **Australian Government launches consultation to implement further reforms to foreign investment review framework**
- **APRA and ACCC sign updated memorandum of understanding to strengthen information sharing and collaboration**
- **ASX revises temporary emergency capital raising measures**

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

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

London, E14 5JJ, UK
www.cliffordchance.com

- **China unveils new requirements for establishment of financial holding companies**
- **HKMA issues guideline on oversight of designated retail payment systems**
- **HKMA revises SPM module on margin and other risk mitigation standards for non-centrally cleared OTC derivatives transactions**
- **MAS issues guidelines to strengthen culture of responsibility and ethical behaviour in financial industry**
- **Recent Clifford Chance briefings: LIBOR and syndicated loans market, AIFMD2 and more. Follow this link to the briefings section.**

Prospectus Regulation: Delegated Regulations published in Official Journal

Two Commission Delegated Regulations, which amend and correct earlier Delegated Regulations supplementing the Prospectus Regulation, have been published in the Official Journal.

[Commission Delegated Regulation \(EU\) 2020/1272](#) amends and corrects Delegated Regulation 2020/979 with regard to regulatory technical standards (RTS) on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal.

[Commission Delegated Regulation \(EU\) 2020/1273](#) amends and corrects Delegated Regulation 2019/980 as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

The Delegated Regulations entered into force on 17 September 2020. Certain provisions apply from 21 July 2019.

AMLD5: EU Commission reports on Member State legal arrangements

The EU Commission has published a [report](#) assessing whether Member States have identified all trusts and similar legal arrangements governed under their laws and made them subject to the obligations of the Fifth Anti-Money Laundering Directive (AMLD5).

AMLD5 provides that Member States must identify those legal arrangements that have a structure or functions similar to trusts, and notify the Commission of the categories, characteristics, names and, where applicable, legal basis of such arrangements.

The Commission's report discusses:

- Member States' notifications to the Commission as at 27 April 2020;
- key features of trusts and other arrangements with a similar structure or function to trusts; and
- the submission of trustees and their equivalents to AMLD5 obligations.

EU Commission consults on effectiveness of ELTIFs

The EU Commission has published an [inception impact assessment](#) on the effectiveness of European long-term investment funds (ELTIFs).

ELTIFs aim to facilitate investment, through alternative investment funds (AIFs), in longer-term assets such as transport, social infrastructure projects, property and small firms.

In particular, the review aims to look at how ELTIFs are contributing to the Capital Markets Union (CMU) and the EU's goal of smart, sustainable and inclusive growth.

Comments are due by 14 October 2020.

ECB announces launch of new initiative to combat cybercrime and share cybersecurity intelligence

The European Central Bank's Euro Cyber Resilience Board for pan-European Financial Infrastructures (ECRB) has announced the launch of the [Cyber Information and Intelligence Sharing Initiative](#) (CIISI-EU), a scheme to raise awareness of cybersecurity threats, facilitate the sharing of information and intelligence and protect the financial system by preventing, detecting and responding to cyberattacks. Members of the CIISI-EU include European financial infrastructures, central banks, critical service providers, the European Union Agency for Cyber Security (ENISA) and Europol. Under the terms of the initiative:

- members will maintain threat intelligence (TI) feeds (visible only to the individual member) and share any information published on the TI feeds with other members through a central shared platform, where appropriate and permissible;
- a third party cyber threat intelligence provider will provide reports and guidance based on the information shared on the central platform;
- an alert mechanism will be established to notify members of new information placed on the platform which may be critical to their operations; and
- members and the third party cyber threat intelligence provider will attend regular group calls to share information.

Coronavirus: ECB to allow banks to exclude certain exposures from leverage ratio

The ECB has [announced](#) that euro area banks under its direct supervision will be permitted to exclude certain central bank exposures from their leverage ratios, following a decision by its Governing Council that the disruption caused by the coronavirus pandemic marks exceptional circumstances.

In exceptional circumstances, under Article 500b(2) of the Capital Requirements Regulation (CRR), as amended by the CRR 'quick fix', banks are permitted to exclude central bank exposures from their leverage ratio, including assets such as coins, banknotes and deposits held at the central bank. Globally systemically important banks (G-SIBs) and the subsidiaries of foreign G-SIBs can also receive relief under the total loss-absorbing capacity (TLAC) requirement. Banks may benefit from this measure until 27 June

2021, after which the ECB Banking Supervision may make the decision to extend.

Coronavirus: ESMA renews temporary decision on notification of net short positions

The European Securities and Markets Authority (ESMA) has [renewed](#) its decision to temporarily require holders of net short positions in shares traded on an EU regulated market to notify the relevant national competent authority if the position reaches or exceeds 0.1% of the issued share capital.

The temporary obligations on natural and legal persons do not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country or in relation to market making or stabilisation activities.

The measure applies from 18 September for three months and expires on 18 December 2020.

EBA seeks input on ESG disclosure practices

The European Banking Authority (EBA) has published an online [survey](#) to receive input from credit institutions on their practices and views on disclosure of information on environmental social governance (ESG) risks.

The survey forms part of the EBA's work to develop draft implementing technical standards (ITS) on Pillar 3 disclosure of prudential information on ESG risks by institutions and aims to support the EBA's wider efforts to develop a robust sustainable finance policy framework. It will also be used to monitor the short-term expectations specified in the EBA's [action plan on sustainable finance](#), including the request to identify metrics, including a green assets ratio, that provide transparency on how institutions are embedding climate change-related risk into the organisation.

Responses to the survey are due by 16 October 2020.

AMLD5: Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 laid before Parliament

HM Treasury has laid the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 ([SI 2020/991](#)) before Parliament. Among other purposes, the regulations are intended to update the UK's anti-money laundering legislation to implement changes in the EU framework.

SI 2020/991 amends the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) in order to implement amendments made by AMLD5.

The main changes are made in order to transpose AMLD5's provisions concerning the UK's register of express trusts, and in particular to expand the scope of the register and require that information on the register is made available in certain circumstances to those with a legitimate interest.

Further changes concern the following topics:

- correspondent banking;
- reporting of discrepancies in beneficial ownership information;
- customer due diligence on publicly listed companies;

- the use of confidential information;
- registration deadlines for some firms;
- directions to cryptoasset businesses; and
- deficiencies that will otherwise arise from these amendments at the end of the Transition Period.

UK regulators extend complaints scheme consultation

The Bank of England (BoE), Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have [extended](#) the closing date for responses to their [joint consultation](#) on a proposal to revise the scheme for handling complaints against them (CP20/11).

The closing date has been extended from 14 September to 12 October following correspondence from the Chair of the House of Commons Treasury Committee noting that the original eight-week period did not seem to be sufficient.

UK regulators publish updated Regulatory Initiatives Grid

The Financial Services Regulatory Initiatives Forum has published an updated version of the [Regulatory Initiatives Grid](#).

The Grid sets out the planned timetable for key initiatives in the regulatory landscape, including:

- the transition from LIBOR;
- the introduction of financial services legislation to prepare for the end of the EU withdrawal transition period;
- increased margining of OTC derivative contracts;
- achieving resolvability;
- strengthening operational resilience across sectors; and
- implementation of Basel 3.1 during 2021.

The updated version includes initiatives from the Information Commissioner's Office and The Pensions Regulator following their inclusion in the Forum, and reflects the expanded two-year horizon of the Grid. It also sets out stakeholder feedback on the first Grid published in May 2020.

The Forum, which seeks to strengthen coordination between members, includes representatives from the BoE, PRA, FCA, Payment Systems Regulator, the Competition and Markets Authority, the Information Commissioner's Office and The Pensions Regulator, with HM Treasury attending as an observer.

FCA seeks views for improvements to consumer investments market

The FCA has issued a [call for input](#) (CFI) to highlight areas where the consumer investment market is not working well for consumers and seeking views on changes the FCA could make to improve protections and outcomes in the market.

In issuing the CFI, the FCA aims to gather evidence on how its own rules and approach should address the harms in the market within the powers and

resources it has, and where other partners may need to do more to assist or where the FCA may ask the Government to consider additional powers. The FCA aims to regulate the market in a way that balances a consumer's freedom of choice with the need to protect consumers from harm, and that fosters the innovation and competition that new entrants bring to the market with the need to stop 'bad actors' thriving.

Amongst other things the CFI seeks views on:

- how the FCA can help the market offer a range of products and services that meet straightforward investment needs;
- how the FCA can make it easier for consumers to understand the risks of investment and the level of regulatory protection afforded to them when they invest, and how those consumers with financial resources to accept higher investment risk can do so in a way that ensures they understand the risk they are taking;
- further steps the FCA can take to ensure consumers who lose money because of an act or omission of a regulated firm are appropriately compensated and paid for fairly by those who caused the loss;
- how consumers can be better protected from scams; and
- how the FCA can facilitate effective competition and encourage firms to develop innovative products and services which help consumers to invest.

Comments to the CFI are due by 15 December 2020. The FCA will use the feedback it receives to shape its work over the next three years and forward on any relevant views or insights to the Government.

CSSF issues communication regarding EBA opinion on market practices which may constitute obstacles to provision of payment initiation and account information services

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [communication](#) regarding the EBA [opinion](#) (EBA/OP/2020/10) on market practices that may constitute obstacles to the provision of payment initiation and account information services within the meaning of Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 on payment services in the internal market with regard to RTS for strong customer authentication and common and secure open standards of communication (RTS on SCA and CSC).

Article 32(3) of the RTS on SCA and CSC specifies that account servicing payment service providers that have put in place a dedicated interface shall ensure that this interface does not create obstacles to the provision of payment initiation and account information services and provides a number of examples of what may constitute an obstacle.

The EBA opinion builds on the RTS on SCA and CSC specifying, amongst other things:

- when mandatory redirection is an obstacle to the provision of third party providers' (TPPs) services;

- that requiring re-authentication every 90 days for account information services is not an obstacle within the meaning of the RTS on SCA and CSC;
- the authentication procedures that account servicing payment service providers (ASPSPs) interfaces must support; and
- some obstacles identified on the market, including requiring multiple strong customer authentications (SCAs), the manual entry of the IBAN in the ASPSPs' domain or imposing additional checks of the consent given by the customer to the TPPs.

In its communication, the CSSF informs payment services providers (PSPs) that it shares the EBA's opinion regarding the interpretation of Article 32(3) of the RTS on SCA and CSC and that it will monitor compliance by relevant entities with Article 32(3) of the RTS on SCA and CSC in accordance with the views expressed in the EBA opinion. The CSSF acknowledges that the technical adaptations that may be required as a result of the EBA opinion on obstacles will take some time. Therefore, the CSSF expects any remaining issues to be resolved by 31 December 2020 at the latest.

CSSF updates circular on technical modalities regarding application of law introducing centralised electronic data search register concerning IBAN accounts and safe-deposit boxes

The CSSF has updated [CSSF Circular 20/747](#) on technical modalities relating to the application of the law of 25 March 2020 introducing a centralised electronic data search register concerning IBAN accounts and safe-deposit boxes.

The update makes changes to the enrolment process (e.g. all communication between the CSSF and the professional must at least be protected by a 'Mutual TLS' authentication system), the rules regarding the authentication of CSSF with the professionals' API (e.g. via a JWT token), the minimum sending frequency of the files required by the CSSF, the environments made available by the CSSF (e.g. the addition of a test environment) and the information to be provided to the CSSF as part of the MFT account creation requests. The update also amends the appendices to the circular regarding the structure, the format and security of the data to be provided by the professionals.

The CSSF has emphasised that the obligation to create the data files applies to payment accounts and bank accounts identified by an IBAN number existing on the date of the entry into force of the law (i.e. 26 March 2020) or closed or opened after this date. Such obligation further applies to safe-deposit boxes which were rented on 26 March 2020 or closed or rented following that date.

The CSSF has also published an accompanying [Q&A document](#). The Q&A clarifies certain aspects of the circular and should be read in conjunction with the consolidated version of the circular.

Ministry of Finance issues new guidelines on financial sanctions regulations

The Ministry of Finance has issued new [guidelines](#) on financial sanctions regulations, which are intended to explain how individuals, businesses and

financial institutions should deal with financial sanctions, i.e. those sanctions targeting suspect individuals or organisations (on the basis of EU sanctions regulations or Dutch domestic sanctions). The goal of the guidelines is also to clarify the implementation of these sanction measures. The guidelines consist of a general section, which provides an introduction to financial sanctions, followed by a list of frequently asked questions follows. The guidelines are not binding but serve as interpretations by the Ministry of Finance. The Ministry notes that assessments of the correct application of sanction measures will be made by the Dutch courts.

Ministry of Finance publishes draft amendments to the Act on Investment Funds and Management of Alternative Investment Funds

The Polish Ministry of Finance has published [draft amendments](#) to the Act on Investment Funds and Management of Alternative Investment Funds. The purpose of the amendments is to adjust Polish law to Directive (EU) 2019/1160 and Regulation (EU) 2019/1156 on cross-border distribution of collective investment undertakings.

Amongst other things, the draft proposes expanding the requirements concerning undertakings for collective investment in transferable securities (UCITS) with regard to ensuring solutions for investors managing alternative investment funds (AIFM) marketing participation units or shares in alternative investment funds (AIFs) among retail investors. Furthermore, the scope of data that UCITS and AIFMs must send to the regulatory authority before commencing cross-border marketing has been expanded.

The amendments also introduce standardised requirements concerning advertising information addressed to investors in UCITS and AIFs, and a standardised definition of the actions preceding marketing, and specify the terms on which AIFMs from the EU may take such actions.

The draft has been sent for public consultation.

BRSA expands scope of credit rating requirements

The Banking Regulation and Supervision Agency of Turkey (BRSA) has [introduced](#) a requirement to obtain and maintain a credit rating from authorised credit rating agencies, which is applicable to Turkish companies with an annual gross revenue equal to or above TRY 500,000,000. BRSA has specified that Turkish companies must duly obtain credit rating notes by no later than 30 June 2021 in order to be able to take out more loans from local banks. BRSA requires these ratings to be updated on an annual basis (and upon occurrence of certain material events) and a summary report in respect of the borrower must be prepared by authorised credit rating agencies.

With its resolution numbered 9133, BRSA has expanded the scope and coverage of this requirement. According to the new resolution, Turkish companies (other than banks and financial institutions) whose aggregate exposure to the Turkish banking sector (based on the data maintained at the risk centre of the Banks Association of Turkey) is equal to or above TRY 500,000,000 are also required to obtain credit ratings from authorised credit rating agencies by no later than 30 June 2021 in order to be able to borrow more from local banks. The new resolution specifies that the amount of the loan requested to be utilised by the Turkish borrower will be included in the calculation of its aggregate exposure to the Turkish banking sector.

With the new resolution, BRSA is seeking to improve financial transparency and corporate governance rules in the Turkish banking sector. Turkish companies that fall within the scope of the new regulation must obtain a credit rating note by no later than 30 June 2021.

Australian Government launches consultation to implement further reforms to foreign investment review framework

Following its [July 2020 public consultation](#) on the exposure draft of the Foreign Investment Reform (Protecting Australia's National Security) Bill 2020, the Australian Government has launched a [public consultation](#) on the exposure drafts of the Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 ([Draft Regulations](#)) and the Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 ([Draft Fees Regulations](#)), in order to implement further reforms to the Foreign Acquisitions and Takeovers Act 1975 announced on 5 June 2020.

The Draft Regulations include the remainder of the regulations, namely on the time limit of the call in power, streamlining measures (including the increased range of exemption certificates and the passive investor measure) and integrity and technical amendments. The Regulations also provide for the reinstatement of the monetary thresholds which have been reduced to nil, following the temporary measures announced by the Australian Treasury on 29 March 2020 in response to the coronavirus outbreak. The Australian Treasury has indicated that the Government is committed to extensive public consultation to inform the final design of the Regulations.

The Draft Fees Regulations are intended to establish a fairer and simpler framework for foreign investment fees by outlining the fees for particular actions or notices given or issued under the Foreign Acquisitions and Takeovers Act 2015, and will be applicable to the fees that become payable on or after 1 January 2021.

Comments on the consultation are due by 2 October 2020.

APRA and ACCC sign updated memorandum of understanding to strengthen information sharing and collaboration

The Australian Prudential Regulation Authority (APRA) and the Australian Competition and Consumer Commission (ACCC) have signed an [updated memorandum of understanding](#) (MoU) setting out a broader model of engagement, with a greater emphasis on proactive information sharing and collaboration between the two agencies.

In particular, under the MOU, each agency will:

- proactively provide relevant information and documents to the other, while also providing consulting support where one agency is considering or undertaking an activity that has an impact on the other agency's responsibilities;
- collaborate to improve regulatory outcomes, particularly in policy development, statistical collections and industry consultation; and

- seek to improve the efficiency of its interaction with the other agency and, in areas of common interest, the efficiency and effectiveness of interaction with industry participants.

The arrangements set out in the updated MoU will be implemented in accordance with relevant requirements under each agency's governing legislation. The regulators have indicated that they may, by agreement in writing, establish supplementary protocols and guidelines to operate under this MoU.

ASX revises temporary emergency capital raising measures

The Australian Securities Exchange (ASX) has announced [plans](#) to revise the temporary emergency capital raising measures developed to help listed entities affected by the COVID-19 pandemic. The measures were introduced on 31 March 2020 and are due to expire on 30 November 2020.

The revisions have been implemented through the publication of two replacement class waivers – the '[Temporary Extra Placement Capacity Class Waiver](#)' and the '[Non-renounceable Offers Class Waiver](#)'. The revisions are mainly intended to obligate any entity wishing to rely on the temporary measures to satisfy ASX that it is raising capital predominantly for the purpose of addressing the existing or potential future financial effect on the entity from the COVID-19 health crisis, and/or its economic impact, along with satisfying the other conditions set out in the class waivers. The replacement class waivers apply to all relevant capital raisings announced on or after 16 September 2020 and on or before 30 November 2020.

ASX has clarified that, where a capital raising appears to have inequitable features for existing security holders, it may still withhold the benefit of the class waivers for that capital raising, even if the capital raising is specifically COVID-19 related and urgently needed.

China unveils new requirements for establishment of financial holding companies

The State Council of the People's Republic of China has promulgated the '[Decision on Implementing the Market Entry Administration of Financial Holding Companies](#)' and the People's Bank of China (PBoC) has issued the '[Interim Measures on the Supervision and Administration of Financial Holding Companies](#)'.

The Decision and the Measures impose a new licencing regime for financial holding companies. Financial holding companies (FHCs) refers to companies in the form of limited liability companies or companies limited by shares which (a) control or have de facto control over two or more financial institutions of different types (each a group institution), and (b) only conduct equity investment management with no direct operation of commercial business.

Any non-financial enterprise, individual or recognised legal person which has two or more group institutions and meets the following conditions will be required to apply to the PBoC for the establishment of a FHC within 12 months of the implementation of the Decision and the Measures:

- if the group institutions include any commercial bank, the total assets of the group institutions are no less than RMB 500 billion, or the total assets of group institutions other than the commercial bank(s) are no less than RMB

100 billion, or the total assets managed by such group institutions are no less than RMB 500 billion;

- if the group institutions do not include any commercial bank, the total assets of group institutions are no less than RMB 100 billion, or the total assets managed by such group institutions are no less than RMB 500 billion; or
- other conditions recognised by PBoC based on the principle of prudence.

In addition, if a non-financial enterprise or recognised legal person which holds financial assets comprising no less than 85% of the total assets and meets the condition in the first or second bullet point above, such enterprise/legal person can also apply for the licence of FHC for itself or to establish a FHC to hold the relevant group institutions.

The establishment of FHCs is subject to eligibility conditions relating to shareholders, de facto controllers, corporate governance, risk management and internal control systems, etc. Among others, the minimum paid-in registered capital of a FHC shall be RMB 5 billion and not lower than 50% of the aggregate registered capital of the group institutions. In addition, a FHC should be able to continuously replenish capital for group institutions (and must provide the corresponding undertaking to regulators).

The effective date of both the Decision and the Measures is 1 November 2020.

HKMA issues guideline on oversight of designated retail payment systems

The Hong Kong Monetary Authority (HKMA) has issued a new [guideline](#) on oversight of designated retail payment systems (RPSs) to explain its interpretation of some of the oversight requirements under the Payment Systems and Stored Value Facilities Ordinance (PSSVFO), with a view to assisting system operators or settlement institutions of designated RPSs to understand and comply with these requirements.

The guideline sets out the high-level principles that the HKMA adopts in assessing the safety and efficiency of a designated RPS, its operating rules and compliance monitoring arrangements for the purpose of complying with the relevant statutory requirements. The HKMA has clarified that the guideline will not be applicable to clearing and settlement systems designated under the PSSVFO.

The HKMA requires system operators and settlement institutions of designated RPSs to familiarise themselves with the PSSVFO and comply with all obligations imposed on them in relation to designated RPSs, and to ensure that the requirements applying to designated RPSs are met on a continuing basis. The HKMA has indicated that it will monitor compliance with the PSSVFO requirements during its ongoing oversight of the designated RPSs.

The HKMA also expects prompt reporting by system operators and settlement institutions of designated RPSs of any potential inability to meet applicable statutory and/or regulatory requirements, or any breach of the operating rules of a designated RPS which may have a material impact on the safety or efficiency of the system.

HKMA revises SPM module on margin and other risk mitigation standards for non-centrally cleared OTC derivatives transactions

The Hong Kong Monetary Authority (HKMA) has issued a [revised version](#) of its supervisory policy manual (SPM) module titled 'CR-G-14: Non-centrally Cleared OTC Derivatives Transactions – Margin and Other Risk Mitigation Standards' as a statutory guideline under the Banking Ordinance. The SPM module has been revised mainly to:

- amend the phase-in schedule of initial margin requirements according to the announcement made by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) in April 2020;
- defer the remaining implementation phases of the risk mitigation standards to align with the updated initial margin implementation phase-in schedule;
- extend the exemption of non-centrally cleared single-stock options, equity basket options and equity index options from the margin requirements;
- provide clarification on the documentation, reporting, and notification requirements for authorised institutions adopting substituted compliance;
- update the list of the BCBS-IOSCO Working Group on Margin Requirements (WGMR) member jurisdictions deemed comparable under the HKMA's margin requirements and risk mitigation standards;
- clarify that genuine amendments made to existing derivatives contracts to give effect to benchmark reforms will not be considered as new contracts subject to the margin requirements;
- introduce new guidance on authorised institutions' derivatives transactions with leasing entities that are part of manufacturing groups; and
- update the guidance in relation to valuation with counterparties, portfolio reconciliation, dispute resolution, monitoring of model performance as well as collateral eligibility to enhance the consistency in implementing the margin requirements and risk mitigation standards.

The HKMA expects authorised institutions that are currently in scope of the margin requirements and risk mitigation standards but have not applied the provisions set out in the revised paragraphs of the SPM module to comply with these requirements from 1 September 2021. Early adoption of these requirements has also been allowed.

MAS issues guidelines to strengthen culture of responsibility and ethical behaviour in financial industry

The Monetary Authority of Singapore (MAS) has issued [guidelines](#) to strengthen accountability and standards of conduct across the financial industry. The guidelines, which have been introduced pursuant to the consultations in April 2018 and June 2019, are stated to be effective from 10 September 2021. The guidelines are intended to focus on the measures which financial institutions should put in place in order to promote the individual accountability of senior managers, strengthen oversight over material risk personnel and reinforce standards of proper conduct among all employees. Specifically, the guidelines set out the following five accountability and conduct outcomes that financial institutions have been advised to achieve:

- Outcome 1 – senior managers responsible for managing and conducting the FI's core functions are clearly identified;
- Outcome 2 – senior managers are fit and proper for their roles and held responsible for the actions of their employees and the conduct of the business under their purview;
- Outcome 3 – the financial institutions' governance framework supports senior managers' performance of their roles and responsibilities, with a clear and transparent management structure and reporting relationships;
- Outcome 4 – material risk personnel are fit and proper for their roles, and subject to effective risk governance, and appropriate incentive structures and standards of conduct; and
- Outcome 5 – the financial institution has a framework that promotes and sustains among all employees the desired conduct.

The objective of the guidelines is to assist financial institutions by providing a framework and best practices for strengthening accountability and standards of conduct, and is not intended to be exhaustive or prescriptive. The MAS expects financial institutions to review the measures set out in the specific guidance and identify those relevant to achieving the five outcomes, by making adaptations and enhancements based on the nature, size and complexity of their businesses. The MAS has also published a set of [frequently asked questions](#) to help financial institutions achieve the five outcomes set out in the guidelines.

In addition, the MAS has released an [information paper](#) on culture and conduct practices of financial institutions. The information paper is intended to encourage financial institutions to promote a culture of ethical behaviour by setting out outcomes which financial institutions should work towards in areas such as governance, hiring, communication channels, and performance management. The paper also covers examples of good practices gathered from a thematic survey and dialogue sessions conducted by the MAS with banks, insurers and capital market intermediaries.

The MAS has also published its [response](#) to the feedback received on its consultation paper issued in June 2019, which (along with its response to the feedback received on its consultation paper in April 2018) has been taken into account in the guidelines. In its response, the MAS has set out its responses to feedback received regarding the scope of the financial institutions required to apply the guidelines and regarding the proposed threshold headcount to distinguish smaller financial institutions which MAS would not ordinarily expect to adopt and apply the guidelines.

RECENT CLIFFORD CHANCE BRIEFINGS

ESMA seeks to shape AIFMD2

Asset managers across the EU have been aware of the possibility of 'AIFMD2' for some time, and have been watching carefully for signs of what changes it would bring to the current AIFMD framework.

This briefing reviews ESMA's recent indications of its desired areas of change.

<https://www.cliffordchance.com/briefings/2020/09/esma-seeks-to-shape-aifmd2.html>

LIBOR and the syndicated loans market – milestones and documentation

In the UK, regulators and the Working Group on Sterling Risk-Free Reference Rates (£RFR Working Group) have long been urging loan market participants to transition away from using LIBOR on transactions. Whilst, to date, such transition has been challenging for the loan markets, recent publications such as conventions for the use of SONIA and new LMA documentation will help generate impetus for transition.

This briefing looks at these publications and considerations for the loan markets in structuring transactions based on risk-free reference rates.

<https://www.cliffordchance.com/briefings/2020/09/libor-and-the-syndicated-loans-market--milestones-and-documenta.html>

CFTC issues enforcement guidance on evaluating corporate compliance programs

On 10 September 2020, the Division of Enforcement of the US Commodity Futures Trading Commission issued guidance for evaluating corporate compliance programs in connection with enforcement charging and penalty matters. Along with certain penalty guidance published by the Division of Enforcement in May 2020, it provides useful direction for companies operating in CFTC-regulated markets.

The Compliance Program Guidance underscores the importance of routine and proactive assessments of a company's control environment. Indeed, recent CFTC resolutions demonstrate the significant consequences of failing to prepare for or adequately respond to apparent violations or to investigations. In addition to the Compliance Program Guidance, CFTC market participants should familiarize themselves with CFTC enforcement advisories issued since 2017 concerning cooperation and self-reporting.

This briefing discusses the Compliance Program Guidance.

<https://www.cliffordchance.com/briefings/2020/09/cftc-issues-enforcement-guidance-on-evaluating-corporate-complia.html>

SEC amends Regulation S-K's requirements for business description, legal proceedings and risk factor disclosures

In late August 2020, the US Securities and Exchange Commission adopted amendments to Regulation S-K to modernise and update the requirements for business description, legal proceedings and risk factor disclosures. As amended, these disclosure requirements will be more principles-based and offer registrants additional flexibility in an effort to reduce duplicative or immaterial disclosures. These amendments will become effective 30 days after the final rules are published in the Federal Register.

This briefing discusses the amendments.

<https://www.cliffordchance.com/briefings/2020/09/SEC-Amends-Regulation-S-Ks-Requirements-for-Business-Description-Legal-Proceedings-and-Risk-Factor-Disclosures.html>

C L I F F O R D C H A N C E

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

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 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.