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EMIR: Delegated Regulations on fees, comparable compliance and tiering published in Official Journal

The following three Delegated Regulations relating to fees, tiering and comparable compliance for third country central counterparties (CCPs) under the European Market Infrastructure Regulation (EMIR) have been published in the Official Journal:

- Commission Delegated Regulation (EU) 2020/1302 on fees charged by the European Securities and Markets Authority (ESMA) to CCPs established in third countries;
- Commission Delegated Regulation (EU) 2020/1303 on the criteria that ESMA should take into account to determine whether a CCP established in a third country is systemically important or likely to become systemically important for the financial stability of the EU or one or more of its Member States; and
- Commission Delegated Regulation (EU) 2020/1304 on the minimum elements to be assessed by ESMA when assessing third-country CCPs' requests for comparable compliance and the modalities and conditions of that assessment.

All three Delegated Regulations entered into force on 22 September 2020.

EMIR: EU Commission adopts time-limited decision recognising equivalence of UK CCPs

The EU Commission has adopted a Decision determining, for a limited time, that the regulatory framework applicable to UK central counterparties (CCPs) is equivalent in accordance with EMIR.

The Decision will allow the European Securities and Markets Authority (ESMA) time to conduct a comprehensive review of the systemic importance of UK CCPs and their clearing services or activities to the EU and take any measures it deems appropriate to address financial stability risks in accordance with Article 25 of EMIR, including recommending to the EU Commission that a UK CCP should not be recognised or withdrawing its recognition.

The Decision will enter into force on the day following that of its publication in the Official Journal. In order to provide ESMA with sufficient time to review the systemic importance of UK CCPs, EU CCPs enough time to further develop their capacity to clear relevant trades and EU clearing members enough time to reduce their exposure to UK market infrastructures, the Decision will apply for 18 months from 1 January 2021 until 30 June 2022.

Digital finance: EU Commission publishes strategy and legislative proposals

The EU Commission has published a digital finance package, consisting of its digital finance strategy and a related set of legislative proposals.

The legislative measures comprise:

- a proposed regulation on markets in crypto-assets and amending Directive (EU) 2019/1937 and a proposed regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT). The two proposed regulations are intended to support innovation, provide legal certainty, instil consumer and investor protection and market integrity and ensure financial stability;
- a proposed regulation on digital operational resilience for the financial sector and amending Regulations (EC) 1060/2009, (EU) 648/2012, (EU) 600/2014 and (EU) 909/2014, which is intended to provide a comprehensive framework on digital operational resilience for EU financial entities; and
- a proposed directive amending Directives (EC) 2006/43, (EC) 2009/65, (EU) 2009/138, (EU) 2011/61, (EU) 2013/36, (EU) 2014/65, (EU) 2015/2366 and (EU) 2016/2341, which is intended to provide a temporary exemption for multilateral trading facilities and amend or clarify existing EU financial services directives.

The proposals follow the conclusion of a public consultation on policies to support digital finance, published in April 2020. The Commission has also published a summary of the consultation.

EU Commission sets out retail payments strategy

The EU Commission has published its retail payments strategy and a summary of responses to its April 2020 consultation.

The retail payments strategy is being presented alongside the digital finance strategy and the legislative proposals on a new EU framework for strengthening digital operational resilience and on crypto-assets. It focuses on the following four key pillars:

- increasingly digital and instant payment solutions with pan-European reach;
- innovative and competitive retail payments markets;
- efficient and interoperable retail payment systems and other support infrastructures; and
- efficient international payments, including remittances.

The Commission's consultation received 189 responses from market players and consumers across 23 Member States, with the majority coming from industry participants including companies and business organisations, business associations, and public authorities.

According to the Commission, the responses broadly illustrate:

- support for the usefulness of instant payments;
- a preference for digital payment solutions over paper-based payment instruments;
- low levels of difficulty with cross-border direct debits or credit transfers (so-called IBAN discrimination); and
- low levels of experience in using open banking services, such as payment initiation services (PIS) or account information services (AIS).

EMIR: EU Commission reports on central clearing exemption for pension scheme arrangements

The EU Commission has published its report to the Parliament and the Council assessing whether any viable technical solutions have been developed for the transfer by pension scheme arrangements (PSAs) of cash and non-cash collateral as variation margin (VM) and the need for any measures to facilitate those viable technical solutions under Article 85(2) of EMIR.

Under EMIR, a temporary exemption was granted to entities operating PSAs in relation to certain types of OTC derivatives from the central clearing obligation. This exemption was granted in order to take into account the specific features of the business model of PSAs, where requiring such entities to clear OTC derivative contracts centrally would lead to divesting a significant proportion of the assets for cash in order for them to meet the ongoing margin requirements of CCPs.

Under the Regulation amending EMIR as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (EMIR REFIT), the exemption has been extended until June 2021, with further potential extensions possible. Article 85 of EMIR REFIT requires the Commission to prepare yearly reports until the final extension of the exemption assessing whether viable technical solutions

have been developed for the transfer by PSAs of cash and non-cash collateral as VM.

The report finds that a suitable solution is not currently in place, although the Commission understands that facilitated access models are being used by a few PSAs. The Commission intends to explore this option further with stakeholders, including its cost for PSAs. The Commission will also review the results from the April 2020 European Securities and Markets Authority (ESMA) consultation on potential solutions and any other feasible alternatives to inform its decision with regard to the central clearing exemption.

Coronavirus: EBA phasing out loan repayments moratoria guidelines

The European Banking Authority (EBA) has published a press release announcing its intention to phase out its guidelines on legislative and non-legislative loan repayments in accordance with its end of September deadline.

The guidelines were published in April 2020 to address short-term liquidity challenges caused by the COVID-19 pandemic by ensuring banks would be able to grant payment holidays to customers while avoiding the automatic classification of exposures under the definition of forbearance or as defaulted under distressed restructuring.

The EBA does not consider a need to extend the measure and seeks a return to the practice that any rescheduling of loans should follow a case-by-case approach. To that end, the guidelines only apply to eligible payment moratoria announced and applied before 30 September 2020.

The EBA notes that banks can continue supporting customers with extended payment moratoria after that date and that such loans should be classified on a case-by-case basis according to the usual prudential framework.

EBA publishes opinion on definition of credit institution

The EBA has published an opinion addressed to the EU Commission on the definition of credit institution ahead of the upcoming review of the Capital Requirements Regulation (CRR) and Directive (CRD).

The EBA believes that clarifying the definition would be beneficial to developing a uniform single rulebook and deeper market integration of banking and financial services across the EU. It has suggested that aspects of the definition that would benefit from clarification are the notions of 'deposits', 'other repayable funds' and 'from the public'.

The opinion also recommends that changes to the regulatory perimeter be accompanied by an impact assessment, which the EBA is ready to assist with, and raises two additional points relating to:

- divergent approaches as to the scope of authorisation; and
- the kind of and extent to which commercial activities may be carried out by credit institutions.

Coronavirus: ECON Committee publishes draft report on proposed amendments to MiFID2

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published a draft report dated 18 September 2020 on the proposal for a Directive amending MiFID2 as regards information requirements, product

governance and position limits to help the recovery from the COVID-19 pandemic.

The draft report sets out the ECON Committee's suggested amendments to the EU Commission's proposed text, as well as an explanatory statement of the proposed changes, covering:

- disclosure of costs of charges;
- best-execution reports;
- product governance;
- ex-post information about costs and charges;
- professional investors;
- the loss reporting threshold;
- research; and
- the ancillary activity exemption.

ESAs launch survey on environmental and social financial product templates

The European Supervisory Authorities (ESAs) have published a survey on the layout of product templates pursuant to the Regulation on sustainability-related disclosures in the financial services (SFDR).

The ESAs propose to standardise the disclosure of information for financial products that promote environmental and/or social characteristics or have a sustainable objective. The ESAs believe that using such mandatory templates will improve comparability of different financial products across EU Member States. The templates are intended to be included in existing disclosures provided by:

- alternative investment fund managers (AIFMs);
- undertakings for collective investment in transferable securities (UCITSs);
- insurance undertakings;
- institutions for occupational retirement provision (IORPs); or
- providers of pan-European personal pensions products (PEPPs).

Comments are due by 16 October 2020.

Benchmarks Regulation: ESMA consults on fees for administrators

ESMA is consulting on its proposed technical advice to the EU Commission on supervisory fees to be paid by administrators that will be supervised by ESMA under the Benchmarks Regulation (BMR).

The BMR, as amended by the Omnibus Regulation, designates ESMA as the competent authority of administrators of critical benchmarks referred to under Article 20(1) and of third-country administrators recognised under Article 32. ESMA's new responsibilities will commence on 1 January 2022.

ESMA's proposal distinguishes between:

- a one-off recognition fee to be paid by third-country administrators applying for recognition;
- a one-off authorisation fee to be paid by administrators of critical benchmarks applying for authorisation;
- an annual supervisory fee to be paid by third-country administrators; and
- an annual supervisory fee to be paid by administrators of a critical benchmark.

Comments to the consultation are due by 6 November 2020. ESMA will publish a final report and submit its technical advice to the Commission by 31 January 2020.

ESMA consults on MiFIR reference data and transaction reporting

ESMA has launched a consultation reviewing the functioning of the transaction reporting regime under Article 26(20) of MiFIR. Transaction and reference data reporting under MiFID/MiFIR enable national competent authorities (NCAs) to monitor for abuses under the Market Abuse Regulation (MAR) and provide an insight into how firms and markets behave.

ESMA is seeking feedback on issues including:

- proposals for a possible extension of the scope of the traded on a trading venue (ToTV) concept;
- a revision of the scope of indices subject to the reporting obligation considering the more recent Benchmarks Regulation;
- proposals as to whether the specific data elements that should be reported under the transaction reporting obligation under MiFIR should be maintained, removed, replaced or further clarified; and
- proposals to ensure further alignment with the reporting regime under the European Market Infrastructure Regulation (EMIR).

Comments to the consultation are due by 20 November 2020. ESMA expects to submit its final report to the EU Commission in Q1 2021.

ESMA consults on OTF regime

ESMA has published a consultation paper seeking input on the functioning of the organised trading facility (OTF) regime in the EU.

The consultation relates to the report covering the functioning of OTFs the EU Commission is required to prepare under Article 90(1)(a) of MiFID2, and provides an overview of the OTF regime and discusses the definition of OTFs, the use of discretion in the execution of orders and the current practice concerning the use of matched principal trading.

It contains proposals aimed at clarifying the MiFID2 provisions relating to OTFs and multilateral systems to ensure efficient EU market structures and a more level playing field between all firms operating in the EU while reducing the level of complexity for market participants.

Comments are due by 25 November 2020.

ESMA proposes to help prevent and detect WHT reclaim schemes

ESMA has published the final report on its inquiry into Cum/EX, Cum/Cum and withholding tax (WHT) reclaim schemes. ESMA has proposed increased cooperation between NCAs for securities markets and tax authorities to assist in detecting WHT reclaim schemes.

According to the report, WHT schemes are primarily a tax related issue and so a response should be mainly sought within the boundaries of the tax legislative and supervisory framework. ESMA has identified measures adopted by various Member States to limit the risk of WHT reclaims schemes being pursued.

ESMA recommends legislative change to remove the limitations on NCAs exchanging information acquired from other NCAs with tax authorities, as well as the development of a common legal basis to ensure a consistent and convergent approach on the exchange of information directly acquired by NCAs in their supervisory activity with tax authorities. ESMA has also identified best practices extracted from the experience of those NCAs that carry out supervisory activity for WHT schemes.

The report also considers the schemes from the perspective of regulated firms' obligations under the MiFID2 legal framework, including the requirements for both investment firms and management body members to act with integrity.

ESMA publishes outcome of MAR review

ESMA has published its review of the Market Abuse Regulations (MAR), concluding that it works well and is fit for purpose. The report will be submitted to the EU Commission and is expected to feed into its review of MAR.

The report, the first in-depth review of the functioning of MAR since its implementation in 2016, sets out proposals for targeted amendments which cover:

- market soundings;
- benchmark provisions and the interplay between MAR and collective investment undertakings; and
- withholding tax reclaim schemes.

ESMA has concluded that it is necessary to perform further analysis on spot FX contracts once the revision of the FX Global Code has been finalised and has suggested providing additional guidance on areas including inside information and disclosure, and pre-hedging.

The report also addresses:

- buy-back programmes;
- insider lists;
- managers' transactions;
- establishment of an EU framework for cross-market order book surveillance;

- appropriateness of introducing common rules on the need for all Member States to provide administrative sanctions for insider dealing and market manipulation;
- cross border enforcement of sanctions; and
- retention period of personal data.

FSB confirms Regulatory Oversight Committee as international governance body for globally harmonised transaction identifiers

The Financial Stability Board (FSB) has confirmed the Regulatory Oversight Committee (ROC) of the Global Legal Entity Identifier System as the international governance body (IGB) for the globally harmonised identifiers used to track OTC derivatives transactions.

Globally harmonised identifiers and data elements can help authorities obtain a comprehensive global view of the OTC derivatives markets. Specifically:

- the unique transaction identifier (UTI) will identify individual transactions reported to trade repositories and allow authorities to follow their modifications;
- the critical data elements (CDE) will capture other important characteristics of the transactions; and
- reference to the legal entity identifier (LEI) in the harmonised derivatives identifiers and data elements will allow consistent monitoring of legal entities' trading activity, exposures and interconnectedness in the global OTC derivatives markets.

The ROC will be responsible for the governance of the UPI, the UTI and the CDE, which includes oversight of the UPI service provider designated by the FSB, the Derivatives Services Bureau (DSB). The ROC has been tasked with finalising oversight arrangements of the DSB.

The FSB will transfer governance of the harmonised derivatives identifiers and data elements to the ROC as of 1 October 2020.

IOSCO publishes final guidance on conflict of interests in debt capital raising

The Board of the International Organization of Securities Commissions (IOSCO) has published its final report on conflicts of interest and associated conduct risks during the debt capital raising process.

The final report is intended to help IOSCO members address potential conflicts of interest and associated conduct risks market intermediaries may face during the debt capital raising process. The guidance also seeks to address some specific concerns observed by certain regulators during the COVID-19 crisis that may affect the integrity of the capital raising process.

The report also explores the potential benefits and risks of blockchain technology in addressing conflicts of interest in the debt capital raising process. The report describes the key stages of the debt raising process and identifies where the role of intermediaries might give rise to conflicts of interest. The guidance comprises nine measures that address potential issues when issuers are preparing to raise debt finance, including the use of

risk management transactions, the quality of information available to investors, and the allocations process.

This follows the publication of a consultation report in December 2019, which comprised eight measures prior to the start of the COVID 19 pandemic. The final report includes an additional ninth measure that addresses specific concerns that emerged from the crisis.

FCA consults on regulation of international firms

The Financial Conduct Authority (FCA) has published a consultation paper (CP20/20) on its general approach to the authorisation and supervision of international firms operating in the UK.

In anticipation of an expected increase in firms applying for temporary permission or permanent authorisation to continue operating in the UK at the end of the transition period, the paper sets out guidance on the FCA's expectations for international firms seeking full UK authorisation under Part 4A of the Financial Services and Markets Act 2000 (FSMA).

The FCA is not proposing any changes to existing rules. Instead, views are sought on the specific challenges for international firms in meeting the threshold conditions set out in Schedule 6 to FSMA, including during the FCA's authorisation and on-going assessments and in mitigating risks of harm relevant for international firms.

Following the consultation, the FCA intends to publish a finalised document supplementing existing guidance.

The consultation closes on 27 November 2020.

Brexit: PRA publishes consultation on EU Exit Instruments

The Prudential Regulation Authority (PRA) has published a consultation paper on changes and new EU Exit Instruments to be made before the end of the transition period on 31 December 2020.

The consultation paper follows previous Bank of England (BoE) and PRA consultations on amending financial services legislation under the European Union (Withdrawal) Act 2018 and contains:

- an update on the BoE's and PRA's intended use of the temporary transitional power;
- proposed changes to existing BoE and PRA EU Exit Instruments, such as replacing references to 'exit day' with 'IP completion day' (end of the transition period);
- proposed changes to the PRA Rulebook and Binding Technical Standards (BTS) that will or are expected to be retained in UK law; and
- proposed changes to BTS by the BoE in its capacity as financial market infrastructure (FMI) competent authority.

The consultation closes on 17 November 2020.

PRA reports on supervision of proprietary trading

The PRA has published a review investigating whether the constraints on proprietary trading carried out by PRA-authorised deposit takers and

investment firms incorporated in the UK are sufficient. The review also addresses whether the ring-fencing regime, along with other tools available to the PRA, are sufficient to mitigate the risks proprietary trading poses to financial stability.

During the debates which preceded the Financial Services (Banking Reform) Act 2013, the UK Parliament took the view that there should be strong restrictions on proprietary risk taking within ring-fenced banks, but that a complete ban for all banks was not justified based on the available evidence. Instead, the PRA was required to review the case for further restrictions on proprietary trading within a year of the commencement of ring-fencing, taking into account the experience of other countries that had taken different approaches.

The report finds that the PRA's existing supervisory powers can and are being used to mitigate risks posed by proprietary trading in its various forms where appropriate, with different risks addressed using different tools, including capital requirements, disclosure, and supervisory expectations concerning controls. The report has been submitted to HM Treasury and laid before Parliament.

AMF sets out its requirements for digital asset service providers registration or licence

The Autorité des marchés financiers (AMF) has published a Q&A document setting out its requirements with respect to the digital asset service provider (DASP) registration or licence. The regime was created under the law of 22 May 2019, known as the 'PACTE Law'. The AMF notes that a registration as a DASP is mandatory for two types of services: the purchase and sale of digital assets in legal tender and the custody of digital assets for third parties. It also specifies the criteria according to which a foreign-based DASP is deemed to provide these services to clients resident or established in France and thus subject to the registration requirement.

The AMF has, until now, granted registrations to two DASPs, with about twenty applications being processed. Although several licensing applications have been submitted, no entity has been licensed to date.

BaFin provides temporary relief in calculation of leverage ratio for LSIs

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has announced that, from 22 September 2020 until 27 June 2021, it will allow less significant institutions (LSIs) under its direct supervision temporarily to exclude certain exposures to central banks from the calculation of the leverage ratio. A separate application is not required.

The measure is based on Article 500b of the Capital Requirements Regulation (CRR), which was created by the EU legislator for a limited period of time as a result of the COVID-19 pandemic in order to exclude certain exposures from the calculation of the leverage ratio. Exposures to the central bank that do not relate to the implementation of monetary policies may not be excluded. In accordance with Article 500b of the CRR, and after consulting the European Central Bank (ECB) as the central bank concerned and in coordination with the Deutsche Bundesbank, BaFin has declared that exceptional circumstances exist which justify this exclusion.

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 fourth quarter of 2020.

Banking Regulation and Supervision Agency of Turkey eases swap restrictions

On 12 April 2020, the Banking Regulation and Supervision Agency of Turkey (BRSA) had resolved with its decision numbered 8989 that:

- the total notional principal amount of local banks' FX swap, option, future, forward and other similar derivative contracts with foreign counterparties under which the Turkish bank will receive TRY at the maturity date (i.e. where the Turkish bank gives out TRY on the spot leg), was restricted so as not to exceed 1% of the relevant bank's regulatory capital; and
- in similar types of derivative trades where the Turkish bank will sell TRY and receive FX in exchange to a foreign counterparty at the maturity date (i.e. where the Turkish bank receives TRY on the spot leg), the total notional principle amount of local banks' exposure may not exceed 10% of the bank's regulatory capital for transactions with a maturity of 1 year or less; 2% of the bank's regulatory capital for transactions with a maturity of 30 days or less; and 1% of the bank's regulatory capital for transactions with a maturity of 7 days or less.

Upon further assessment of the markets, the BRSA has now announced new exposure limits with its resolution dated 25 September 2020 and numbered 9169, which provides that, as of 25 September 2020:

- the total notional principal amount of local banks' FX swap, option, future, forward and other similar derivative contracts with foreign counterparties under which the Turkish bank will receive TRY at the maturity date (i.e. where the Turkish bank gives out TRY on the spot leg), is restricted so as not to exceed 10% of the relevant bank's regulatory capital; and
- in similar types of derivative trades where the Turkish bank will sell TRY and receive FX in exchange to a foreign counterparty at the maturity date (i.e. where the Turkish bank receives TRY on the spot leg), the total notional principle amount of local banks' exposure may not exceed 20% of the bank's regulatory capital for transactions with a maturity of 1 year or less; 5% of the bank's regulatory capital for transactions with a maturity of 30 days or less; and 2% of the bank's regulatory capital for transactions with a maturity of 7 days or less.

With the new resolution, the BRSA is providing more flexibility and headroom to local banks on their swap and other derivative transactions to be entered into with foreign counterparties.

ASIC extends COVID-19 relief for certain capital raisings and financial advice

The Australian Securities and Investments Commission (ASIC) has announced the extension of temporary relief measures for capital raisings as well as financial advice relief related to the COVID-19 early release of

superannuation scheme due to the continuing uncertain impacts of the COVID-19 pandemic.

To formalise the extension of relief, ASIC has registered the ASIC Corporations (Amendment) Instrument 2020/862, which indicates that:

- the earlier amendment to the ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 will now be repealed on 1 January 2021 (instead of 2 October 2020);
- the ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289 will now be repealed on 1 January 2021 (instead of 2 October 2020); and
- the ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355 will now be repealed on 15 April 2021 (instead of 15 October 2020).

ASIC has also amended its no action position for superannuation trustees to extend it until 31 December 2020 in order to align with the extension of the COVID-19 early release of superannuation scheme. ASIC has indicated that it will continue to monitor the appropriateness of the temporary relief measures to provide timely and affordable advice for consumers.

China revises rules on protection of financial consumer rights

The People's Bank of China (PBoC) has issued the 'Implementation Measures of the People's Bank of China on the Protection of Financial Consumer Rights and Interests'. The Measures will take effect from 1 November 2020 and two financial consumer protection rules issued by PBoC in 2013 and 2016 will be abolished at the same time.

In addition to codifying the existing PBoC rules on protecting consumer rights and interests, the Measures include the following:

- scope of application – the Measures apply to PRC-incorporated banking financial institutions and non-banking payment institutions;
- reporting of data compromises – the Measures introduce a reporting duty on in-scope institutions for any data compromises. If any data compromise may endanger the personal and property safety of financial consumers, in-scope institutions shall immediately report such incidents to the competent PBoC branch and notify consumers. For other data compromises, in-scope institutions shall report to the competent PBoC branch within 72 hours of becoming aware;
- cross-border transfer of consumer financial information – the Measures do not impose restrictions on the export of consumer financial information. This issue is expected to be dealt with under other data protection legislation such as the PRC Cybersecurity Law (2016) as well as PBoC implementing measures to be promulgated separately; and
- legal liabilities – the Measures introduce a new section on legal liabilities to enforce the Measures, including fines and warnings for non-compliant in-scope institutions and responsible individuals.

With the implementation of the Measures, it will be necessary for multinational financial institutions to review their policies and procedures for dealing with retail investors, in particular to revisit client data protection rules and policies.

HKMA issues circular regarding remote on-boarding of corporate customers

Further to its circular dated 7 April 2020, the Hong Kong Monetary Authority (HKMA) has issued a circular to set out the key principles in relation to remote on-boarding of corporate customers. The circular reflects the regulatory expectations set out in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance and the guideline on anti-money laundering and counter-financing of terrorism for authorised institutions.

The HKMA notes that, unlike on-boarding of individual customers, a business relationship with a corporate is generally established through its representative(s) with appropriate authority to act on behalf of the corporate. Customer due diligence (CDD) is therefore more extensive compared with individuals. Amongst other things, the HKMA expects authorised institutions to:

- utilise means that are commensurate with the assessed money laundering and terrorist financing (ML/TF) risks, in order to complete all the CDD steps for a corporate customer on-boarded remotely;
- ensure that the processes adopted by them for remote onboarding are at least as robust as those performed when the customer is in front of their staff;
- put in place appropriate measures to guard against the impersonation risk of the corporate's representative(s);
- when designing on-boarding processes for corporates (including those conducted remotely), continue to differentiate the ML/TF risks of corporate customers in order to apply CDD measures and ongoing monitoring which are proportionate to the assessed ML/TF risks; and
- comply with other applicable legal and regulatory requirements in their conduct of businesses.

The HKMA has indicated that it will continue to work closely with the industry to promote the greater use of technology, including remote on-boarding initiatives, to enhance the efficiency of authorised institutions' CDD processes and improve customer experience.

HKMA revises guideline on anti-money laundering and counter-financing of terrorism for stored value facility licensees

The HKMA has revised its existing guideline on anti-money laundering and counter-financing of terrorism (AML/CFT) for stored value facility (SVF) licensees following consultation with the SVF industry. The amendments to the guideline are intended to:

- take into account the assessment made by the Financial Action Task Force (FATF) in its mutual evaluation of Hong Kong in 2019 and international developments in the regulatory regimes for SVF licensees; and
- update and address emerging money laundering and terrorist financing risks identified in some aspects of SVF licensee operations as the sector develops, while also retaining flexibility in customer due diligence (CDD) requirements consistent with the risk-based approach.

In particular, the key amendments to the guideline include:

- replacing the existing 'streamlined approach' to CDD with a 'tiered approach', featuring account limits and different functions for SVF products depending on whether or not the customer's identity has been verified and subject to the customer's choice; and
- providing guidance to facilitate adoption by SVF licensees of technology solutions for remote customer on-boarding, articulating the principles of identity authentication and identity matching.

The HKMA expects SVF licensees to review the amendments to the guideline and implement appropriate measures, consistent with the risk-based approach, to ensure compliance. The amendments to the guideline will take effect on 2 July 2021.

SFC issues circular to licensed corporations on review of internet trading cybersecurity

The Securities and Futures Commission (SFC) has issued a circular to licensed corporations announcing the publication of a report which summarises the key findings and observations of its 2019-20 thematic cybersecurity review of internet brokers.

The SFC recently conducted a thematic review of selected internet brokers which provide online trading services on desktop, mobile or designated website platforms with a focus on cybersecurity issues and vulnerabilities associated with mobile trading applications. The review found that most of the brokers were in compliance with the SFC's key regulatory requirements. Nevertheless, the SFC noted some deficiencies and instances of noncompliance in the protection of clients' internet trading accounts (including the implementation of two-factor authentication, data encryption and monitoring and surveillance to identify suspicious unauthorised transactions), infrastructure security and user access management as well as cybersecurity management and incident reporting.

To address these deficiencies and instances of noncompliance with the relevant regulatory standards, the circular, in conjunction with the report:

- elaborates on the regulatory expectations set out in the Guidelines for Reducing and Mitigating Hacking Risks Associated with Internet Trading (Cybersecurity Guidelines) that came into effect in July 2018; and
- provides guidance on specific system security controls which internet brokers have been advised to employ for their mobile trading applications as required under the Code of Conduct for Persons Licensed by or Registered with the SFC.

SFC launches consultation on anti-money laundering guidelines

The SFC has launched a public consultation on proposed amendments to its guidelines regarding anti-money laundering and counter-financing of terrorism (AML/CFT) for licensed corporations and prevention of money laundering and terrorist financing for associated entities. Amongst other things, the proposed amendments are intended to:

- facilitate the adoption of a risk-based approach to AML/CFT measures by the securities industry, with a view to providing further guidance to the

industry on implementing these measures in a risk-sensitive manner with reference to the guidance for a risk-based approach for the securities sector published by the Financial Action Task Force (FATF) on 26 October 2018;

- help licensed corporations address and improve certain areas identified in the latest FATF Mutual Evaluation Report of Hong Kong published on 4 September 2019;
- include additional measures to help mitigate risks associated with business arrangements such as cross-border correspondent relationships; and
- merge and rearrange some provisions to make the AML/CFT guidelines more cohesive and user-friendly.

Comments on the consultation are due by 18 December 2020.

MAS revises notice on risk based capital adequacy requirements for banks incorporated in Singapore

The Monetary Authority of Singapore (MAS) has revised its existing Notice 637 on risk based capital adequacy requirements for banks incorporated in Singapore. The notice has been revised mainly to:

- define 'regulatory loss allowance' which is recognised as 'Tier 2 Capital';
- revise the capital treatment for public sector entities; and
- implement other technical revisions to the credit and market risk framework.
- The amendments to MAS Notice 637 are effective from 1 October 2020.

Singapore Government announces commencement of certain provisions of Banking (Amendment) Act 2020

The Singapore Government has gazetted the Banking (Amendment) Act 2020 (Commencement) Notification 2020 to designate 1 October 2020 as the commencement date for the Banking (Amendment) Act 2020, except for sections 2, 3, 5, 11, 13 to 17, 19, 20, 21, 24, 26 to 32, 33(b) and (d), 34 to 43, 44(a), (b) and (d) and 45 to 68.

The provisions of the Banking (Amendment) Act 2020, to be operational from 1 October 2020, mainly relate to:

- amendments to the minimum capital requirements, leverage ratio requirements, and public disclosure requirements, and the introduction of stable funding requirements;
- amendments to the requirements relating to the publication and exhibition of audited balance-sheets;
- amendments relating to the requirement to inform the Monetary Authority of Singapore (MAS) of material adverse developments;
- specifying the consequences of non-compliance with any direction or notice issued to a bank under the Banking Act; and
- the imposition of additional requirements on credit card and charge card licensees, such as those relating to the appointment of directors and senior management, and control of shareholdings and voting power.

Consequential amendments have been made to certain notices and regulations as a result of the amendments to the Banking Act set out in the Banking (Amendment) Act 2020.

The amendments reflected in the notices and regulations are effective from 1 October 2020.

RECENT CLIFFORD CHANCE BRIEFINGS

Central bank digital currencies and stablecoins – how might they work in practice?

The payments landscape is changing rapidly. Central bank digital currencies (or CBDCs) and stablecoins have received growing attention, particularly around Facebook's announcement of its proposed global stablecoin 'Libra' in 2019 and the resulting regulatory backlash. Advocates hail them as the future for payments – an unmatched tool for financial inclusion and limiting financial crime, by linking payments to identity – while critics have concerns around regulatory standards and financial stability (in the case of global stablecoins) and whether the improvements are as impressive or distinct as supporters argue.

This briefing considers how adoption of a global stablecoin or a retail CBDC would look in practice, and exploring the legal structures that might be employed.

https://www.cliffordchance.com/briefings/2020/09/central-bank-digital-currencies-and-stablecoins--how-might-they-.html

Government extends emergency legislation providing flexibility and certainty to companies for holding general meetings until 30 December

On 24 September 2020, the Government enacted a statutory instrument extending the end of the relevant period under the Corporate Insolvency and Governance Act 2020 (CIGA) during which companies may benefit from certain flexibilities introduced by the CIGA in relation to the holding of general meetings from 30 September 2020 to 30 December 2020.

This extension will come as a relief to companies that are due to hold their AGMs, or indeed any other shareholder meeting, before the end of the year, allowing them to assess the likely circumstances (particularly relevant while COVID-19 cases in the UK are rising) and giving them the ability to choose to hold 'closed doors' meetings or virtual-only meetings.

This briefing discusses the extension.

https://www.cliffordchance.com/briefings/2020/09/government-extends-emergency-legislation-providing-flexibility-a.html