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BRRD2: EU Commission publishes notice on interpretation

The EU Commission has published a notice in the form of a Q&A on the interpretation of certain legal provisions in the revised bank resolution framework (BRRD2).

With the aim of facilitating Member State transposition and implementation, the notice provides answers to questions raised by national authorities concerning the interpretation of BRRD provisions and their interaction with SRMR, CRR and CRD, such as:

- the power to prohibit certain distributions;
- the powers to suspend payment or delivery obligations;
- the selling of subordinated eligible liabilities to retail clients;
- the minimum requirement for own funds and eligible liabilities;

- the bail-in tool;
- the contractual recognition of bail-in;
- the write down or conversion of capital instruments and eligible liabilities;
- the exclusion of certain contractual terms in early intervention and resolution;
- the contractual recognition of resolution stay powers; and
- the national option to consider a participant an indirect participant on the ground of systemic risk.

The EU Commission intends to adopt a communication providing answers to questions raised by the European Supervisory Authorities (ESAs) concerning BRRD in due course.

EMIR: ESMA to recognise three UK CCPs from January 2021

The European Securities and Markets Authority (ESMA) has announced that three central counterparties (CCPs) established in the UK will be recognised as third country CCPs (TC-CCPs) from 1 January 2021. ICE Clear Europe Limited, LCH Limited and LME Clear Limited will be eligible to provide their services in the EU after the end of the transition period on 31 December 2020.

Based on applications submitted by the three UK CCPs, ESMA conducted tiering and recognition assessments, including consulting the relevant authorities in accordance with EMIR. LME Clear Limited has been assessed as a Tier 1 CCP, and ICE Clear Limited and LCH Limited have both been assessed as Tier 2 CCPs.

Furthermore, ESMA has adopted decisions recognising the three CCPs as TC-CCPs under EMIR. In line with ESMA's September 2020 equivalence decision, the recognition decisions will only take effect on the day following the end of the transition period and continue to apply while the equivalence decision remains in force, until 30 June 2022, allowing ESMA time to comprehensively review the systemic importance of UK CCPs and their clearing services to the EU, and take any appropriate measures to address financial stability risks.

Benchmarks Regulation: ESMA updates regulatory technical standards

ESMA has published its final report containing new sets of draft regulatory technical standards (RTS) under the Benchmarks Regulation.

The final draft RTS include provisions aiming to ensure that:

- the governance arrangements of administrators are sufficiently robust;
- the potential manipulation of benchmarks is minimised, through additional rules regarding the methodology of calculation and controls to ensure the integrity of the data; and
- common criteria are used across different Member States for the assessment of the mandatory administration of critical benchmarks and the compliance statement for non-significant benchmarks.

Brexit: ESMA updates impact statements for MiFID2/MiFIR and Benchmarks Regulation

ESMA has published updated statements on its approach to the application of key provisions of MiFID2/MiFIR and the Benchmarks Regulation (BMR) in relation to Brexit. The updated statements reflect the entry into force of the Withdrawal Agreement and replace previous statements issued in March 2019 and October 2019.

Credit rating agencies: ESMA publishes guidelines on internal control

ESMA has published a final report setting out guidelines on the framework and function of credit rating agencies' (CRAs') internal controls.

The Credit Rating Agencies Regulation sets out a number of requirements relating to the internal control systems that CRAs must have in place in order to prevent or mitigate any potential conflicts of interest that could impact the independence of their credit rating activities.

The guidelines, structured into two parts, are intended to establish ESMA's views on the components and characteristics that should be:

- present in a CRA to demonstrate a strong framework for internal controls (IC framework); and
- evidenced by a CRA in order to demonstrate the effectiveness of internal control functions within such a framework (IC functions).

Alongside the guidelines, ESMA has published feedback on the responses received to its December 2019 consultation.

The guidelines apply from 1 July 2021.

MiFID2/MiFIR: ESMA publishes draft RTS and ITS for third-country firms

ESMA has published a final report setting out draft regulatory and implementing technical standards (RTS and ITS) on the provision of investment services and activities by third-country firms under MiFID2 and MiFIR.

The final report concerns changes to reporting requirements introduced by the Investment Firms Regulation (EU) No 2019/2033 (IFR) and the Investment Firms Directive (EU) 2019/2034 (IFD). It sets out consultation responses, including the opinion of the Securities and Markets Stakeholder Group (SMSG) and the following draft rules:

- draft RTS specifying the information for registration of third-country firms and the information to be reported annually to ESMA by registered third-country firms;
- draft ITS on the format of applications for registration and the format of the information to be reported annually; and
- draft ITS on the format of the information to be reported annually to national competent authorities (NCAs) by branches of authorised third-country firms.

The draft RTS and ITS have been submitted to the EU Commission for adoption.

MiFID2/MiFIR Review: ESMA publishes final report on transparency for non-equity and derivatives trading obligation

ESMA has published a final review report on the transparency regime for non-equity instruments and the trading obligation for derivatives.

The report follows a consultation published in March 2020 and complements the RTS 2 annual review report and the review report on equity transparency, both published in July 2020. It sets out recommendations aimed at improving the current regime, including:

- deleting the specific waiver and deferral respectively for orders and transactions above the size-specific to the instrument (SSTI) threshold;
- streamlining the deferral regime with a simplified system based on volume masking and full publication after two weeks, and by removing the supplementary deferral options left to NCAs;
- conferring power on ESMA to take a decision with respect to the suspension of transparency;
- the possibility to suspend on short notice the application of the derivative trading obligation; and
- complementing the criteria used to grant equivalence to third-country trading venues for the purpose of the derivative trading obligation with conditions relating to transparency and non-discriminatory access.

ESMA has submitted the report to the EU Commission, inviting it to translate the recommendations into legislative proposals. ESMA intends to publish proposed amendments to Level 2 in due course.

MiFID: ESMA publishes guidance on annex to opinion determining third-country trading venues for the purpose of transparency

ESMA has issued guidance on the annex to its opinion determining third-country trading venues for the purpose of transparency under MiFIR.

In July 2020, ESMA issued an opinion on the treatment of transactions in financial instruments traded on third-country trading venues that are subject to transparency provisions similar to the post-trade transparency requirements applicable to EU trading venues as set out in Article 6 and Article 10 of MiFIR.

ESMA's guidance concerns an annex to the opinion that lists venues which meet the relevant criteria defined in the opinion.

ESMA publishes 2021 work programme

ESMA has published its 2021 work programme.

ESMA's planned activities in 2021 are intended to respond to the challenges faced by the EU, its citizens and capital markets, including developing a large retail investor base to support the Capital Markets Union (CMU), promoting sustainable finance and long-term oriented markets, dealing with the opportunities and risks posed by digitalisation, strengthening the EU's role in global capital markets and ensuring a proportionate approach to regulation.

Additionally, the amendment of ESMA's founding Regulation enhanced its role in direct supervision, supervisory convergence, investor protection, relations with third countries, sustainability and technological innovation. In 2021, ESMA's focus will be largely on the execution of the tasks corresponding to these new responsibilities, and preparing for its new direct supervision mandates of benchmarks and data service providers that will begin in 2022.

CRD5 systemic risk buffer: EBA publishes final guidelines on sectoral exposure subsets

The European Banking Authority (EBA) has published a set of guidelines on the appropriate subsets of sectoral exposures to which a competent or designated authority may apply a systemic risk buffer (SyRB), following the entry into force of the fifth Capital Requirements Directive (CRD5).

The guidelines set out the following recommendations:

- a suggested common framework of dimensions and sub-dimensions from which the relevant authority can define a subset of exposures;
- criteria for assessing the systemic relevance of risks stemming from a given subset of sectoral exposures; and
- coordination and cooperation between competent authorities and designated authorities, in order to avoid the risk of overlaps, amongst other pitfalls.

The guidelines apply from 29 December 2020.

EBA publishes 2021 work programme

The EBA has published its work programme package for 2021, which describes and summarises the main objectives, priorities and deliverables of the EBA in the forthcoming years.

The EBA's work is defined under the following six strategic areas:

- supporting deployment of the risk reduction package and the implementation of effective resolution tools;
- reviewing and upgrading the EU-wide EBA stress testing framework;
- becoming an integrated EU data hub, using the enhanced technical capability for performing flexible and comprehensive analyses;
- contributing to the sound development of financial innovation and operational resilience in the financial sector;
- building the infrastructure in the EU to lead, coordinate and monitor anti-money laundering/countering the financing of terrorism supervision; and
- providing the policies for factoring in and managing ESG risks.

The EBA also intends to focus on establishing a culture of sound and effective governance and good conduct in financial institutions and addressing the aftermath of COVID-19.

Brexit: Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020 enter into force

HM Government has made the Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1055). The SI is intended to ensure a coherent and functioning financial services equivalence framework in the UK and adds to the temporary and transitional regime for equivalence with EEA states before the end of the transition period.

The SI makes provision for UK regulators to establish cooperation arrangements with the relevant regulatory authority or authorities for an EEA state and to take regulatory decisions concerning EEA firms or products before the end of the transition period, for certain provisions of the following retained EU law financial services regimes:

- the Benchmarks Regulation (BMR);
- the Credit Rating Agencies Regulation (CRAR);
- the Central Securities Depositories Regulation (CSDR);
- the European Market Infrastructure Regulation (EMIR);
- MiFIR;
- the Prospectus Regulation; and
- the Regulation on Securities Financing Transactions (SFTR).

An explanatory memorandum has been published alongside the regulations. The regulations are not linked to the ongoing UK-EU negotiations on a free trade agreement and were made on 29 September 2020 following Parliament's approval of a draft version of the regulations. The regulations entered into force on 30 September 2020.

Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020

Brexit: Draft State Aid (Revocations and Amendments) (EU Exit) Regulations laid before Parliament

HM Government has laid the draft State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 before Parliament, together with a draft explanatory memorandum. The draft regulations are intended to disapply EU State aid law (as otherwise retained by the European Union (Withdrawal) Act 2018) in order to ensure that EU State aid law does not form part of UK domestic law after the end of the transition period.

HM Government's stated policy is that the UK will follow World Trade Organisation (WTO) subsidy rules from the end of the transition period and will adhere to any international obligations on subsidies agreed under free trade agreements. The present draft regulations supersede earlier draft State aid regulations which would have transferred the EU Commission's enforcement functions to the Competition and Markets Authority (CMA), as well as making substantial corrections to deficient retained law, in order to give effect to the continued application of State aid law in the UK in event of a no-deal Brexit. The earlier draft regulations were withdrawn in February 2020 following the conclusion of the Withdrawal Agreement.

The draft regulations are subject to approval by resolution in each House of Parliament.

Brexit: BoE and PRA publish guidance on temporary transitional power

The Bank of England (BoE) and Prudential Regulation Authority (PRA) have published a new webpage on their use of the temporary transitional power (TTP) and general guidance on their transitional direction.

The webpage on the TTP, which allows the UK's regulators to delay or phase-in onshoring changes to UK regulatory requirements after the end of the transition period on 31 December 2020 until 31 March 2022, sets out information for firms and financial market infrastructures (FMIs) on:

- the application of the TTP;
- exceptions where the TTP will not be used; and
- the interaction between the TTP and other transitional or saving provisions, including the temporary recognition and permission regimes, the financial services contract regime and the use of credit ratings.

The BoE and the PRA have also published general guidance documents on the transitional directions to accompany the draft transitional directions currently the subject of a consultation published on 22 September 2020. The documents explain:

- the general effect of the transitional directions;
- how firms and FMIs should interpret their regulatory obligations which applied immediately before the end of the transition period; and
- exceptions to the general approach.

The BoE and PRA intend to make final directions before the end of the transition period.

Brexit: FCA publishes updated handbook and details on use of Temporary Transitional Power

The Financial Conduct Authority (FCA) has published an updated version of its handbook setting out the rules that will apply at the end of the transition period. It has also published details on how it intends to use the TTP.

The updated handbook includes a time travel function, which allows users to view past, present and future versions, including a version of the handbook that sets out changes made through the onshoring process that will apply from the end of the transition period on 31 December 2020.

The FCA has also published a user guide on navigating the handbook and other legislative provisions after the end of the transition period in light of the instruments and directions made by the FCA and HM Treasury.

The further details on the TTP, which the FCA intends to apply on a broad basis from the end of the transition period until 31 March 2022, are set out in new webpages on:

- onshoring and the TTP, which includes more detail on the list of exceptions where the FCA expects firms to prepare to comply with changed obligations from the end of the transition period;

- transitional directions, setting out the legal effect of the TTP; and
- previous TTP statements and publications, including draft transitional directions.

Coronavirus: FCA extends temporary measures for firms

The FCA has extended its March 2020 COVID-19 measure on 10% depreciation notifications, with some amendments, until 30 March 2021. This will be of interest to firms providing portfolio management services or holding retail client accounts that include positions in leveraged financial instruments or contingent liability transactions.

The FCA will not take action for breach of COBS 16A.4.3 EU for services offered to retail investors from 1 October 2020 provided that the firm has:

- issued at least one notification in the current reporting period, indicating to retail clients that their portfolio or position has decreased in value by at least 10%;
- informed these clients that they may not receive similar notifications should their portfolio or position values further decrease by 10% in the current reporting period;
- referred these clients to non-personalised communications, perhaps made available on public channels, that outline general updates on market conditions (these could contextualise potential drops in portfolio or position value to help consumers meet their objectives, rather than making impulse decisions about their investments); and
- reminded clients how to check their portfolio value, and how to get in touch with the firm.

The FCA has stressed that firms must still pay due regard to the interests of their customers and treat them fairly. They must pay due regard to the information needs of their clients and communicate information to them in a way which is clear, fair and not misleading.

The FCA is also amending its extension of the previous flexibility regarding professional investors. For services offered to professional investors, from 1 October 2020 it will not take action for breach of COBS 16A.4.3 EU provided that firms have allowed professional clients to opt-in to receiving notifications.

Coronavirus: FCA writes Dear CEO letters on client assets

The FCA has written two Dear CEO letters to firms which hold client money or custody assets as part of their business to remind them of their obligations under the client assets sourcebook (CASS).

The letters, one for firms holding client assets relating to investment business, debt management or claims management and one for firms holding client money relating to insurance distribution, highlight the areas that the FCA considers important to maintaining adequate client assets arrangements in the current environment.

The FCA would like firms to review their client assets arrangements in the specific areas set out in the letters, considering the current economic environment and the continued impact of COVID-19. Where deficiencies are identified, firms should take immediate action to rectify them. The FCA

expects firms to notify it of any material concerns identified while reviewing the adequacy of their client assets arrangements.

The FCA has also detailed its position on queries it has received on CASS compliance on its webpage.

FCA publishes annual report on regulatory perimeter

The FCA has published its second annual perimeter report. The perimeter is decided through legislation and determines which activities require authorisation and what level of protection consumers can expect for the financial services and products they purchase.

The FCA has provided updates on the issues discussed in the first annual perimeter report, including the issuing of a temporary product intervention in January 2020 to ban the mass-marketing of speculative illiquid debt securities and preference shares to retail investors for twelve months. The FCA is currently consulting on proposals to make this ban permanent.

The report identifies where others, such as big tech firms, can do more to protect consumers in areas on the edge of the perimeter. It also sets out other areas where progress has been made or where there is continued harm to consumers and market users around the perimeter, particularly in light of the COVID-19 pandemic.

The report will form the basis of a formal discussion with the Economic Secretary to the Treasury (EST) in late 2020, the outputs of which will be published, which aims to help improve transparency around the actions being taken on the perimeter.

BaFin adopts EBA guidelines for determination of tranche maturity

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has published a circular (04/2020 (BA)) stating that, as of 1 October 2020, it has incorporated the EBA guidelines (EBA/GL/2020/04) on the determination of the weighted average maturity of contractual payments due under the tranche of a securitisation transaction into its administrative practice in accordance with Article 257(1)(a) of the CRR.

CSSF issues circular adopting EBA guidelines on management and disclosure of non-performing and forborne exposures

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued circular 20/751 dated 25 September 2020 to inform all credit institutions under its supervision that it complies with and applies the EBA guidelines on management of non-performing and forborne exposures (EBA/GL/2018/06) and the EBA guidelines on disclosure of non-performing and forborne exposures (EBA/GL/2018/10).

The CSSF stresses that over the past decades the level of non-performing loans and forborne exposures remained very contained in Luxembourg. However, in the context of the coronavirus pandemic, which may affect the economic activity of borrowers, the CSSF expects credit institutions to endorse and apply the sound and robust credit risk management and consumer protection standard laid down in the EBA guidelines in a manner

proportionate to the institution's exposure to borrowers' deteriorating credit standing.

The CSSF further clarifies that the EBA guidelines complement the provisions of CSSF Regulation 15-02, which requires credit institutions to use effective systems for identifying and managing problematic credits and for making adequate value adjustments and provisions.

The CSSF circular contains further details on its scope of application, the proportionality principle and the Luxembourg implementing measures and framework as well as CSSF expectations of credit institutions.

The new circular is of direct application.

Polish Financial Supervision Authority publishes report on 'How to do Fintech in Poland'

The Office of the Polish Financial Supervision Authority has, together with the FinTech Poland Foundation and the Polish Investment and Trade Agency, and supported by partners, prepared a report entitled 'How to do Fintech in Poland'. The publication is directed mainly at foreign entities and presents Poland as a favourable place in which to implement and develop projects in the field of innovative financial services. The report sets out Poland's commercial and commercial capital, the maturity and innovativeness of the financial sector, the regulatory framework and Poland's competitive edge.

APRA issues letter to authorised deposit-taking institutions regarding review of treatment of loans impacted by COVID-19

The Australian Prudential Regulation Authority (APRA) has issued a letter to authorised deposit-taking institutions (ADIs) setting out the findings from its review of ADIs' comprehensive plans for the assessment and management of loans with repayment deferrals, as well as best practices identified through the review.

APRA acknowledges that preparation and submission of these plans represents a significant milestone in the transition of borrowers who have been provided a repayment deferral, back to making repayments where possible. However, it believes that successful implementation of these plans remains a critical risk for both ADIs and borrowers.

APRA therefore expects ADIs to exercise appropriate governance and monitoring over all aspects of the plan's implementation, in order to identify and respond to any material issues that may arise. ADIs have also been advised immediately to share any such issues with APRA and the Australian Securities and Investments Commission (ASIC). Moreover, APRA encourages ADIs to consider the areas of better practice that have been identified through its review of all the submitted plans, which relate to: (a) governance and oversight, (b) customer engagement and contact strategies, (c) credit assessment processes, and (d) credit management and resourcing.

In addition, ASIC notes that some plans included reference to borrowers accessing their superannuation as an option that could potentially be considered if borrowers are unable to resume repayments. In this regard, ADIs have been advised to have appropriate controls in place to ensure that if they are informing borrowers about their ability to access superannuation, they

are not providing unlicensed financial product advice and are ensuring compliance with requirements for giving financial product advice.

ASIC publishes report regarding conflicts of interest within debt capital raising process

ASIC has published a report entitled 'Report 668: Allocations in debt capital market transactions', which summarises the key findings and observations of its thematic surveillance of market practices in debt capital market (DCM) transactions from 2018 to 2020. Report 668 also sets out better practice guidelines for Australian financial services (AFS) licensees and follows the publication on 21 September 2020 of the International Organization of Securities Commissions' (IOSCO's) final report on conflicts of interest and associated conduct risks during the debt capital raising process.

During the course of its thematic surveillance of market practices in DCM transactions, ASIC:

- found that some licensees have overly generic arrangements to manage conflicts of interest and that there were mixed approaches for identifying and managing inside information;
- observed instances in which inflated bids were not identified as such in bookbuild information, as well as instances of 'light touch' or reactive oversight;
- identified differing methods for disclosing the interest of joint lead managers to investors; and
- noted that investors are seeking more meaningful post-transaction information on how securities were allocated.

Based on its findings and observations, ASIC expects AFS licensees to:

- identify and manage potential conflicts of interest when making allocation recommendations;
- have effective policies and procedures for identifying and managing confidential and market-sensitive information;
- have processes to ensure that information provided to issuers and investors (including updates) is accurate and not misleading or deceptive; and
- have active and effective supervision and monitoring for DCM transactions.

ASIC has indicated that the better practice guidelines outlined in Report 668 are consistent with the measures set out in the IOSCO final report.

ASIC remakes class orders regarding notification requirements for unlicensed carried over instrument lenders and credit disclosure obligations

Following its July 2020 public consultation on remaking class orders on unlicensed carried over instrument (COI) lenders and credit disclosure obligations, ASIC has remade the following two class orders to preserve their effect beyond their respective sunset dates:

- ASIC Class Order [CO 10/381] relating to notification requirements for unlicensed COI lenders has been remade into a new ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument

2020/834 – the new instrument continues to impose an obligation on unlicensed COI lenders to notify ASIC when they become an unlicensed COI lender; and

- ASIC Class Order [10/1230] relating to credit disclosure obligations (which is due to end on 1 April 2021) has been remade into a new ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 – the new instrument continues relief allowing credit providers to give pre-contractual disclosure in the same manner as they give other disclosure documents under regulation 28L of the National Consumer Credit Protection Regulations 2010.

The new instruments are scheduled for commencement one day after their registration in the Federal Register of Legislation.

China releases official regulations to consolidate QFII and RQFII regimes

The China Securities Regulatory Commission (CSRC), the People's Bank of China (PBoC), and the State Administration of Foreign Exchange (SAFE) have jointly promulgated the 'Measures for the Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors (QFII) and RMB Qualified Foreign Institutional Investors (RQFII)', together with a set of implementing rules. The measures and implementing rules consolidate and combine the QFII and RQFII regimes. The following major developments are worth noting:

- consolidating and combining QFII and RQFII regimes – the measures and the implementing rules officially consolidate and combine the QFII and RQFII regimes by setting out unified rules applicable to all QFIIs and RQFIIs (collectively QFIs). While the PRC regulators continue expressly to encourage QFIs to invest by using Renminbi, there will be no restrictions on the currency used provided that such currency is exchangeable in China;
- wider investment scope – securities admitted on the National Equities Exchange and Quotations, private investment funds, financial futures, commodity futures, options, bond repurchase transactions, securities lending and margin trading, and securities lending to securities finance companies will become available under the new QFI regime;
- simplified market access process – the eligibility requirements in the existing QFII and RQFII rules will be relaxed by removing quantified criteria, with the application process being further streamlined; and
- relaxing custodian management – a QFI custodian's qualification will be subject only to a post-filing requirement and the data reporting requirement will be reduced.

The effective date of both the measures and the implementing rules is 1 November 2020. Further implementing rules and regulatory guidance will be issued by the relevant PRC regulators in the coming months, in order to attract further investment into China's financial markets.

SFC issues circular on electronic dissemination of investment product documents

The Securities and Futures Commission (SFC) has issued a circular to provide guidance on the post-sale dissemination of documents in electronic form to issuers of investment products authorised by the SFC under Part IV of the Securities and Futures Ordinance (SFC-authorised products) and intermediaries who hold investment products on behalf of their clients.

In view of the increasing use of electronic media, the SFC is allowing issuers and intermediaries that disseminate paper product documents such as offering documents, notices, announcements and financial reports, to disseminate electronic copies of these documents or notify investors electronically that the documents are available. However, prior to adopting e-dissemination arrangements, issuers and intermediaries will be required to ensure that they have in place proper transitional arrangements with respect to the following areas:

- updates to constitutive documents;
- compliance with client agreements;
- prior one-month transition notice to investors;
- arrangements on fees to be charged for investors opting to receive paper form documents; and
- procedures on how investors may choose to change means of delivery.

The SFC also expects e-dissemination to comply with general principles of timely delivery, ensuring proper control and systems being in place and maintaining proper communication records.

Further, the SFC has updated its set of frequently asked questions (FAQs) on post authorisation compliance issues of SFC-authorised unit trusts and mutual funds by adding Questions 23 to 28 under Section 2 (other post authorisation compliance issues) of the FAQs, with a view to provide further guidance on the electronic dissemination of fund documents.

SFC updates guidance on provision of trade documents to clients through intermediaries' websites

The SFC has issued a circular to provide updated guidance on the provision of specified documents to clients by access through intermediaries' websites (Access Service) for complying with the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (CNR).

The SFC reiterates its policy position, previously explained in its July 2010 circular, that it regards Access Service to be acceptable for the purpose of section 17 of the CNR provided that (a) the intermediaries have obtained positive, revocable consent from the clients to such means of service of documents, and (b) there are adequate operational safeguards to ensure adequate notice and access is given to the clients.

The updated guidance set out in the annex to the circular is mainly intended to:

- introduce new ways in which consent to the Access Service could be obtained from new and existing clients;

- provide further guidance on the disclosure of access arrangements;
- clarify that other forms of effective electronic communications, in addition to email, may be used for notifying clients of the posting of trade documents on the website; and
- extend the minimum online retrieval period to two years for monthly statements of account and three months for other trade documents.

The SFC also requires intermediaries that currently provide Access Service for the purpose of complying with the CNR to align the minimum online retrieval period of their posted trade documents with those specified in paragraph 15 of the annex to the circular within one year from the date of issuance of the circular.

The circular replaces the SFC's July 2010 circular and its annex with its updated list of operational safeguards for acceptable use of the Access Service for complying with the CNR.

Further, in consequence to the updated guidance, the SFC has updated its FAQs on CNR by updating the answer to Question 1 of the FAQs.

Financial Advisers (Amendment) Regulations 2020 gazetted

The Singapore Government has gazetted the Financial Advisers (Amendment) Regulations 2020, which amend the Financial Advisers Regulations. In particular, the amendments:

- extend the temporary exemptions in Division 2, Part VI of the principal regulations to 36 months after 8 October 2018, for persons who provide financial advisory services in respect of specified OTC derivatives contracts or specified investment products, and their representatives; and
- extend the deadline to 36 months after 8 October 2018 for the submission of notice in Form 26 to notify that a person who is exempt from holding a financial adviser's licence under section 23(1)(a), (b), (c), (d) or (e) of the Financial Advisors Act, had carried on a business of providing a financial advisory service specified in paragraph 1 or 2 of the Second Schedule to the Financial Advisers Act in respect of any specified investment product immediately before 8 October 2018.

The amendment regulations have been effective since 30 September 2020.

MAS revises notice on publication of financial statements

The Monetary Authority of Singapore (MAS) has revised its existing Notice 607 relating to the publication of financial statements in consequence to the amendments to the Banking Act set out in the Banking (Amendment) Act 2020. In particular, revisions to the MAS Notice 607 have been made mainly to:

- require a bank incorporated outside Singapore to publish, in addition to its latest audited annual balance-sheet and profit and loss account as required under the Companies Act, a statement as to whether its home country requires its head office to confer lower priority to depositors of the foreign offices of the bank, vis-à-vis the home country depositors, in the repayment of deposits in the event of receivership, winding up proceedings or equivalent proceedings of the bank;

- set out requirements for banks to publish their 'notification statements' within five months after the close of the financial year to which the notification statement relate or within such period as the MAS may approve; and
- oblige a bank to publish notes to the financial statements that relate to events or changes in policies that the bank has reasonable grounds to believe have or is likely to have, an adverse impact on the financial condition of the bank.

The amendments to the MAS Notice 607 have been effective since 1 October 2020.

Coronavirus: Singapore Government announces refinements to alternative arrangements for meetings

Following the commencement on 29 September 2020 of Section 12 of the COVID-19 (Temporary Measures) (Amendment No. 2) Act 2020 (the Amendment Act), which seeks to amend Section 27 of the COVID-19 (Temporary measures) Act, the Ministry of Law has gazetted the following amendment orders, which amend the legislation enabling entities to hold meetings via electronic means (Meetings Orders). The following Meetings Orders came into effect on 29 September 2020:

- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) (Amendment No. 3) Order 2020;
- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings) (Bankruptcy) (Amendment) Order 2020;
- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings) (Corporate Insolvency) (Amendment) Order 2020;
- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Charities, Co-operative Societies and Mutual Benefit Organisations) (Amendment) Order 2020;
- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Management Corporations, Subsidiary Management Corporations and Collective Sale Committees) (Amendment) Order 2020;
- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for National Council of Social Service) (Amendment No. 2) Order 2020;
- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Registered Societies) (Amendment) Order 2020;
- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Trade Unions) (Amendment) Order 2020; and
- COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Town Councils) (Amendment) Order 2020.

The amendment orders are intended to extend the applicability of Meetings Orders until 30 June 2021 to give entities the option to hold virtual meetings, even where the entities are permitted under safe distancing regulations to hold physical meetings. However, existing provisions in the Meetings Orders which allow for meetings to be deferred to a date no later than 30 September 2020 will not be extended to 30 June 2021. Deferral provisions in the Meetings

Orders for certain types of entities have also been extended to permit deferrals to a date no later than 31 December 2020, with a view to providing these entities with a further grace period to overcome practical difficulties in organising meetings. Further, other refinements to the Meeting Orders have been made to facilitate greater convenience and engagement for virtual meetings, including real-time electronic voting and Q&A as well as use of virtual annual general meeting platforms and other electronic means to accept submissions for matter which attendees wish to raise at the meeting.

Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2020 gazetted

The Singapore Government has gazetted the Securities and Futures (Licensing and Conduct of Business) (Amendment) Regulations 2020, which amends certain provisions under the Securities and Futures (Licensing and Conduct of Business) Regulations (Principal Regulations).

The amendments to the Principal Regulations have been made mainly to:

- extend the deadline for certain regulatory submissions by certain banks, finance companies and persons;
- clarify that regulations 29 (suitability of custodian) and 37 (computation for trust accounts and custody accounts) that were in force immediately before 8 October 2018 continue to apply until 8 October 2021 to certain banks, finance companies and persons;
- specify that regulation 44 (priority of customers' order) does not apply to a CMS licence holder or its representative if a transaction is entered into in accordance to the business rules or practices of a recognised market operator;
- specify that regulation 39(1)(da) (books of holder of CMS licence) additionally apply to banks and licensed finance companies;
- extend the exemption from licensing and representative notification requirements under regulation 57 and 59 by one year to 8 October 2020 for corporations which were carrying on business in dealing in specified OTC derivatives contracts immediately before 8 October 2018, and their representatives;
- extend the exemption from representative notification requirements under regulation 59 by one year to 8 October 2021 for representatives of banks which were carrying on business in dealing in specified FX contracts immediately before 8 October 2018;
- extend the exemption from regulations 54(1) (requirements for banks and licensed finance companies and their representatives) and 54B(1) (requirements for banks and licensed finance companies which deal in non-centrally cleared derivatives contracts with certain investors) by one year to 8 October 2021 certain banks and finance companies;
- extend the exemption from Division 2 of Part V of the SFA (customer assets) and Parts III and IV of the Principal Regulations (customer's moneys and assets and conduct of business) by one year to 8 October 2021 for CMS licence holders who were carrying on business in dealing in specified OTC derivatives contracts immediately before 8 October 2018;

- extend the exemption from certain regulations specified in regulation 62(c) by one year to 8 October 2021 for CMS licence holders in respect of any regulated activity (other than dealing in specified OTC derivatives contracts) immediately before 8 October 2018;
- extend the exemption from certain regulations specified in regulation 63 to 8 October 2021 for banks and licensed finance companies who were carrying on business in any regulated activity (other than dealing in specified contracts or specified OTC derivatives contracts) immediately before 8 October 2020; and
- include a new licensing exemption for dealing in OTC derivatives contracts where such contracts are options in respect of any note, bond or Treasury bill.

The Amendment Regulations have been effective since 30 September 2020.

Securities and Futures (Offers of Investments) (Temporary Exemption from Sections 277(1)(c) and 305B(1)(b)) (Amendment) Regulations 2020 gazetted

The Singapore Government has gazetted the Securities and Futures (Offers of Investments) (Temporary Exemption from Sections 277(1)(c) and 305B(1)(b)) (Amendment) Regulations 2020.

Sections 277 and 305B of the Securities and Futures Act (Cap. 289) provide for exemptions from prospectus requirements otherwise applicable to an offer of securities or securities-based derivatives contracts (in the case of section 277) or units in a collective investment scheme (in the case of section 305B) where the offer is made using an offer information statement. The Securities and Futures (Offers of Investments) (Temporary Exemption from Sections 277(1)(c) and 305B(1)(b)) Regulations 2020 provide exemptions from the conditions provided under Sections 277 and 305B of the Act where the offer of securities, securities-based derivatives contracts or units in a collective investment scheme is made in a physical document, but these exemptions are only applicable to offers made during the period starting 6 May 2020 and ending (and including) 30 September 2020.

Since 29 September 2020 the Regulations (as amended by the Amendment Regulations) have extended the applicability of the exemptions in the Regulations until 30 June 2021.

DIFC's DFSA sends Dear SEO letter to authorised firms on LIBOR transition

The Dubai Financial Services Authority (DFSA), the financial services regulator of the Dubai International Financial Centre (DIFC), has written a 'Dear SEO' letter to all DFSA authorised firms, urging them to consider how the imminent discontinuation of London Interbank Offered Rate (LIBOR) and its replacement by alternative reference rates would impact their business and to implement measurable timelines and targets to transition away from the use of LIBORs in order to avoid a 'cliff-edge' event at the end-of-2021 deadline.

The DFSA has also published a Markets Brief on 'LIBOR Transition for DIFC-issued Debentures' addressed to issuers of DIFC-listed debentures, reminding issuers to consider whether there is any relevant information about LIBOR transition impact that they should disclose in prospectuses or by way of a market announcement.

Although a number of regional financial services regulators have formed working groups to discuss potential issues with benchmark reforms, the DFSA is the first regional regulator to have formally mandated its regulated firms to take affirmative actions on LIBOR transition.

The five broad action items in relation to LIBOR transition which the DFSA expects authorised firms to plan for are to:

- deal with existing IBOR-referencing securities or products with maturities or rolling over arrangements beyond the end of 2021 LIBOR phase-out deadline;
- negotiate with counterparties and include conversion clauses in legacy contracts referencing IBORs;
- measure own exposures, and adapt to new valuation methods;
- adapt internal and third-party managed systems, processes and documentation to factor in the transition; and
- conduct appropriate awareness and outreach with the firm's clients on the impact of the transition.

The 'Dear SEO' letter further states that the DFSA is planning to engage with authorised firms on an individual basis in the coming months to ensure progress, and that the DFSA will follow up shortly with a questionnaire for authorised firms to complete in order to elicit areas of potential concern and highlight key areas where there is a need for more transition preparation.

RECENT CLIFFORD CHANCE BRIEFINGS

Agreement in principle for the Japan-UK trade deal – a focus on tech and the digital economy

The UK and Japan have reached agreement in principle on the UK-Japan Comprehensive Economic Partnership Agreement (UKJCEPA). The UKJCEPA is expected to be largely based on the existing Japan-EU EPA (JEEPA) but there will be some notable differences.

The agreement has been hailed as 'historic' by the UK government and represents the UK's first major post-Brexit trade deal. In Japan, the UKJCEPA has been welcomed as ensuring post-Brexit trade continuity with the UK. Japan and the UK have each enjoyed improved access to each other's markets since the JEEPA came into force in February 2019, but once the Brexit transition period ends on 31 December 2020 so too do the benefits enjoyed by both parties under the JEEPA.

While we must wait for the full text of the UKJCEPA (expected in October) to understand exactly what has been agreed, announcements by both governments offer some strong indications on what to expect.

This briefing discusses the agreement.

https://www.cliffordchance.com/briefings/2020/09/agreement-in-principle-for-the-japan-uk-trade-deal--a-focus-on-t.html

Brexit and Capital Markets – 31 December 2020 Considerations

From 31 December 2020 (when the Brexit transition period ends), if there is no Brexit trade deal for financial services, no concessions and no equivalence determinations, the United Kingdom will be treated like any other 'third country'.

This briefing highlights the key implications, based on the situation envisaged in the current UK SIs prepared for such a No Deal contingency.

https://www.cliffordchance.com/briefings/2020/10/brexit-and-capital-markets---31-december-2020-considerations.html

German restructuring law reform – draft bill promotes a more efficient restructuring culture

The draft bill for the implementation of the European Directive on preventive restructuring frameworks (Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019) has been a hotly anticipated piece of legislation in the German restructuring community for quite some time. However, the wait is now over. The German Ministry of Justice and Consumer Protection recently published its draft bill, which has the potential to open a new chapter for the German market by allowing for the implementation of innovative and efficient pre-insolvency restructuring measures in Germany.

The draft bill for the development of restructuring and insolvency law includes a new policy for the stabilisation and restructuring of businesses, which will bring about a new era for pre-insolvency restructurings in Germany by reshaping the fundamentals of the German investment landscape and considerably improving framework conditions for creditors.

This briefing discusses the draft bill.

https://www.cliffordchance.com/briefings/2020/09/reform-of-german-restructuring-law.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.

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