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Securitisation: EBA publishes report on significant risk transfer

The European Banking Authority (EBA) has published a report on significant risk transfer (SRT) in securitisation transactions. The report includes a set of recommendations to the EU Commission on harmonising practices and processes applicable to assessing SRT.

The report's recommendations are focussed on the following three areas:

- assessment of structural features of securitisation transactions. The report's suggestions on this topic include that securitisations exhibiting certain structural features should not be eligible for SRT recognition;
- quantitative tests for measuring SRT. The report recommends amendments to the existing tests as well as the introduction of additional tests relating to commensurate risk transfer (CRT); and
- supervisory process for assessing SRT in individual transactions. Recommendations on this topic are intended to address the risk of inconsistent outcomes in assessment processes. The report suggests a common supervisory dual-track process, whereby 'qualifying securitisations' would follow a distinctive fast track, whereas competent

authorities could apply a longer and more in-depth process to assessing 'non-qualifying securitisations'.

The report also suggests amendments to the Capital Requirements Regulation (CRR) intended to improve the SRT framework.

Recommendation on identifying legal entities published in Official Journal

A Recommendation of the European Systemic Risk Board (ESRB) on identifying legal entities (LEIs) has been published in the Official Journal.

The Recommendation aims to contribute to the prevention and mitigation of systemic risks to financial stability in the EU through the establishment of systemic use of the legal entity identifier (LEI) by entities engaged in financial transactions.

To achieve this, the ESRB recommends the introduction of an EU framework on the use of the LEI. Pending the introduction of any such framework, the ESRB recommends that relevant authorities

- require or continue to require all legal entities involved in financial transactions under their supervisory remit to have an LEI;
- when drafting, imposing or amending financial reporting obligations to include or continue to include obligations to identify by way of an LEI the legal entity subject to the reporting obligation and any other entity about which information must be reported and which has an LEI; and
- to identify, or continue to identify, by way of its LEI, any legal entity about which they publicly disclose information and which has an LEI.

EU Commission consults on amendments to DAC to include cryptoassets and e-money

The EU Commission has published an inception impact assessment on a proposed Council Directive to amend Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC) in order to expand the exchange of information framework to include cryptoassets and e-money.

The existing provisions of DAC require financial intermediaries to report to tax administrations and Member States to exchange information, but these obligations does not include reporting on cryptoassets and e-money, as they and their relevant intermediaries are not fully covered by the Directive. The EU Commission is proposing to address that gap to ensure adequate tax transparency and proper taxation. The proposal also includes amendments to address other inefficiencies identified in DAC, including its limited provisions on sanctions.

Comments are due by 21 December 2020.

EU Commission consults on climate change technical screening criteria

The EU Commission has published for consultation a draft Delegated Regulation supplementing the Taxonomy Regulation covering the first two sets of technical screening criteria for determining:

- the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation and climate change adaption; and
- whether that economic activity causes no significant harm to any of the other environmental objectives.

Comments on the consultation are due by 18 December 2020. The EU Commission intends to adopt the Delegated Regulation before 31 December 2020.

Coronavirus: EU Parliament adopts MiFID2 Quick Fix amendments

The EU Parliament has adopted amendments to the EU Commission's proposal for a directive amending MiFID2 as regards information requirements, product governance and position limits (MiFID2 Quick Fix) and a decision to enter trilogue negotiations.

The amendments set out in MiFID2 Quick Fix, which forms part of the Capital Markets Recovery Package aimed at facilitating the EU's economic recovery from the COVID-19 pandemic, are intended to simplify information requirements and support the growth of euro-denominated derivatives markets.

Trilogue meetings between the Commission, Parliament and Council are expected to start in the first week of December.

Working group on euro risk-free rates consults on EURIBOR fallback trigger events and €STR-based fallback rates

The working group on euro risk-free rates has launched two consultations on the events that would trigger a EURIBOR fallback and which €STR-based rates would be most appropriate in the event of a fallback scenario.

The first consultation covers the working group's proposed EURIBOR fallback trigger events. The working group has identified a generic set of potential permanent EURIBOR fallback trigger events that market participants could consider including in fallback provisions in their contracts and financial instruments referencing EURIBOR.

The second consultation considers the most appropriate EURIBOR fallback provisions for cash products. The consultation covers:

- the most appropriate EURIBOR fallback rate based on a €STR-based term structure methodology for each financial product assessed against a list of key criteria, and a spread adjustment methodology used to avoid potential value transfer if a fallback is triggered; and
- the market conventions which should be used to calculate the compounded term rate based on the €STR.

Comments on both consultations are due by 15 January 2021.

The European Central Bank (ECB) intends to publish summaries of the feedback in cooperation with the European Securities and Markets Authority (ESMA) for the consultation on EURIBOR fallback trigger events, and the EU Commission for the consultation on €STR-based EURIBOR fallback rates.

The working group intends to consider the feedback received at its meeting on 18 February 2021 and to publish its final recommendations by the end of Q1 2021.

Benchmarks Regulation: ECON Committee adopts report on proposed amendments

The EU Parliament's Economic and Monetary Affairs (ECON) Committee has adopted a report on the EU Commission's proposed amendments to the Benchmarks Regulation (BMR) regarding the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation (2020/0154(COD)). The ECON Committee has also decided to open interinstitutional negotiations on the proposed amendments.

Separately, a collection of fourteen trade associations have published a joint paper requesting that the BMR third-country benchmarks regime transition period be extended to end-2025.

EMIR: ESAs publish draft RTS adapting implementation timelines for intragroup transactions, equity options and novations to EU counterparties

The Joint Committee of the European Supervisory Authorities (ESAs) has published a final report presenting draft regulatory technical standards (RTS) under the European Market Infrastructure Regulation (EMIR) that proposes amendments to Commission Delegated Regulation (EU) 2016/2251 on risk mitigation techniques for OTC derivatives not cleared by a central counterparty (CCP) (bilateral margining).

The draft RTS propose amendments to:

- extend the temporary exemption for intragroup transactions by 18 months;
- extend the temporary exemption for single-stock equity options or index options (equity options) for three years in order to avoid undue costs and an unlevel playing field situation for EU counterparties; and
- allow UK counterparties to be replaced with EU counterparties without triggering the bilateral margin and clearing obligation requirements under certain conditions. This limited exemption aims to create a level playing field between EU counterparties and preserve the regulatory and economic conditions under which the contracts were originally entered into.

ESMA has also published a final report with new draft RTS proposing amendments to three Commission Delegated Regulations in order to facilitate certain Brexit-related novations of OTC derivative contracts to EU counterparties during a specific time-window.

The ESAs and ESMA note that they cannot disapply EU law. However, in view of the remaining steps that the draft RTS need to go through before being finalised and entering into force, and in light of some of the relevant deadlines, the ESAs and ESMA state that they expect competent authorities to apply the EU framework in a risk-based and proportionate manner with regard to the requirements related to the measures contained in the draft RTS until the amended RTS enter into force.

Sustainable finance: ECB publishes final guide on climate-related and environmental risks

The ECB has published its final guide on climate-related and environmental risks following a public consultation held in May 2020.

The guide, which is not legally binding to member institutions, describes how the ECB expects significant institutions to consider climate-related and environmental risks when formulating and implementing their business strategy and governance and risk management frameworks.

Following the supervisory expectations outlined in the guide, the ECB intends to:

- ask banks to conduct a self-assessment in early 2021;
- conduct a full supervisory review of banks' practices in 2022; and
- conduct its next supervisory stress test in 2022 focus on climate-related risks.

Alongside the guide, the ECB has published a report on institutions' climate-related and environmental risk disclosures concluding that institutions need to make more significant efforts to support their disclosure statements.

This guide applies from 27 November 2020.

2021 SEPA scheme rulebooks and guidelines published

The European Payments Council (EPC) has published the 2021 Single Euro Payments Area (SEPA) payment scheme rulebooks and related guidelines.

The updated rulebooks, which come into effect on 21 November 2021, are:

- the 2021 Credit Transfer (SCT) rulebook version 1.0;
- the 2021 Instant Credit Transfer (SCT Inst) rulebook version 1.0;
- the 2021 Direct Debit Core (SDD) rulebook version 1.0; and
- the 2021 Direct Debit B2B (SDD B2B) rulebook version 1.0.

All four rulebooks replace the term 'bank' with 'PSP' and contain an updated definition of the term 'customer'. Other amendments include:

- an updated definition of the term 'banking business day' and changes to Recall and Request for Recall by the Originator (RFRO) in the SCT and SCT Inst rulebooks;
- updates to the inquiry procedure in the SCT rulebook;
- an optional credit notification message for the beneficiary for a successfully executed transaction in the bank-to-customer space, and the possibility to submit instructions with a future execution date and time in the SCT Inst rulebook;
- the replacement of references to EONIA with €STR in the SCT and SDD rulebooks; and

- the removal of references to the e-Mandate operating model in the SDD and SDD B2B rulebooks.

Annex IV of each rulebook sets out amendments and changes compared to the 2019 version 1.2.

Brexit: ESMA issues statement clarifying application of trading obligation for derivatives

ESMA has issued a statement concerning the application of the trading obligation for derivatives (DTO) under Article 28 of MiFIR after the end of the transition period on 31 December 2020. The statement updates ESMA's March 2019 statement on the DTO.

In its March 2019 statement, ESMA considered that there was no evidence that market participants would not be able to continue to meet their obligations under the DTO in case of a no-deal Brexit, although committed to monitor the situation.

In its statement, ESMA clarifies that the DTO will continue to apply after the end of the transition period. ESMA does not consider that the continued application of the DTO will create stability risks to the financial system.

ESMA is aware that UK branches of EU investment firms are likely to be subject to the DTO in the EU and UK in the absence of an equivalence decision, but considers that EU counterparties can meet their obligations by trading on EU trading venues or eligible trading venues in third countries. ESMA has determined that the situation is primarily a consequence of the way in which the UK has chosen to implement the DTO.

ESMA will continue to monitor the situation closely and assess whether markets would be sufficiently liquid enough to allow EU market participants to execute transactions in derivatives subject to the DTO on eligible trading venues after the end of the transition period.

CSDR: Commission Implementing Decision determining equivalency of UK regime published in Official Journal

Commission Implementing Decision (EU) 2020/1776 determining for a limited period of time that the UK's regulatory framework applicable to central securities depositories (CSDs) is equivalent in accordance with the Central Securities Depositories Regulation (CSDR) has been published in the Official Journal.

In view of the UK's announcement that certain requirements that will come into force under the EU legal framework relating to CSDs will not be incorporated into domestic law, the legal and supervisory arrangements currently in place in the UK can only be deemed as equivalent for a limited period of time. Following the UK's announcement about the future divergence of legal and supervisory arrangements applicable to UK CSDs, market participants are expected to prepare for a situation without a further equivalence decision in this area.

The EU Commission, in cooperation with ESMA, will monitor any changes introduced in the legal and supervisory arrangements affecting the provision of services in the UK, market developments and the effectiveness of supervisory cooperation, and, if it considers it necessary, will re-assess the equivalence granted by this Decision.

The Decision entered into force on 27 November 2020 and applies from 1 January 2021 to 30 June 2021.

Basel Committee publishes technical amendment on non-performing loan securitisations capital rules

The Basel Committee on Banking Supervision (BCBS) has published a technical amendment setting out the capital requirements for non-performing loan securitisations.

The final technical amendment, which follows a consultation held in June 2020, is intended to incorporate the following elements to the securitisation standard in the Basel Framework:

- a definition of securitisations of non-performing loans (NPLs);
- the removal of the option to use foundation internal risk-based parameters as inputs for the internal ratings-based approach (SEC-IRBA) for all securitisations of NPLs;
- the introduction of a 100% risk weight floor for exposures to securitisations of NPLs that are risk weighted under the SEC-IRBA or the standardised approach (SEC-SA); and
- for the senior tranches of securitisations of NPLs where the non-refundable purchase price discount is equal to, or greater than, 50% of the securitised portfolio, the risk weight under SEC-IRBA or SEC-SA is 100%.

The BCBS expects the technical amendment to be implemented by 1 January 2023.

Brexit: FCA publishes notification user guide and templates for STS securitisations

The Financial Conduct Authority (FCA) has published a user guide and templates for notifying the FCA where a securitisation meets the UK criteria for a Simple, Transparent and Standardised (STS) securitisation under the onshored Securitisation Regulation.

The notification templates relate to the following securitisation types:

- public securitisations;
- private full securitisations; and
- private anonymised securitisations.

Brexit: FCA publishes statements and validation rules on UK EMIR and SFTR reporting

The FCA has published statements on reporting of derivatives under UK EMIR and reporting of securities financing transactions under UK SFTR after the end of the transition period on 31 December 2020.

Both statements explain what trade repositories (TRs), and UK counterparties that use them, should do to comply with their reporting obligations and cover, among other things:

- which firms are in scope of the UK EMIR and SFTR reporting regimes;

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- the EMIR and SFTR reporting requirements excluded from the temporary transition power (TTP) and therefore applying immediately from the end of the transition period;
- the reporting of new and outstanding trades under the UK EMIR and SFTR regimes by in-scope counterparties from 11pm on 31 December 2020;
- validation rules to be used by UK reporting counterparties and UK TRs when submitting transactions entered into, or amended, from 11pm on 31 December 2020;
- the continued use of EU non-legislative material (such as ESMA Q&As, guidelines and technical specification documents) implemented before the end of the transition period to the extent that the guidance is relevant under the UK regimes;
- historic data, inter-TR reconciliation and the publication of data; and
- the FCA's use of the power to suspend reporting requirements.

The statement on derivatives reporting under UK EMIR also covers the intragroup exemption, mandatory delegated reporting and data access by authorities. It also notes that, following HM Treasury's announcement of its intention to provide unilateral equivalence to the EU in relation to EMIR, the FCA intends to publish a list of third country regulated markets under UK EMIR in due course.

PRA issues policy statement on market risk

The Prudential Regulation Authority (PRA) has published a policy statement (PS23/20) providing feedback to responses received to its October 2020 consultation paper on market risk and its final policy in the form of an updated supervisory statement.

The PRA's October 2020 consultation set out proposals to update its supervisory statement on market risk with expectations relating to measurement of risks not in value at risk (RNIV) and the meaning of 'period of significant financial stress relevant to the institution's portfolio' for stressed value at risk (sVaR) calculation.

Following its review of the responses received, the PRA has changed its draft policy to expect that RNIV own funds requirements should be calculated as the average across the preceding three month period, of an RNIV measure calculated at least monthly, rather than weekly as initially proposed.

The changes to its supervisory statement on market risk took effect on 26 November 2020. The PRA appreciates that, particularly for the measurement of RNIV, firms may not be in a position to immediately comply with the PRA's new expectations. Firms should contact their supervisor to agree their plans, and a reasonable timeline for complying with these new expectations.

Working Group on Sterling Risk-Free Reference Rates publish paper on transition in Sterling non-linear derivatives

The Working Group on Sterling Risk-Free Reference Rates has published a paper providing considerations on how a non-linear derivatives market based on a risk free rate could be structured using compounded in arrears SONIA.

The paper considers the economic nature of the trade, operational requirements and currently available pricing in the market to show how a non-linear derivatives market could potentially be structured using compounded in arrears SONIA. The Working Group also provides its views on operational preparedness for non-linear derivatives if they were based on compounded in arrears SONIA.

The paper is intended to support all users of non-linear derivatives to meet the Working Group's target milestone for market participants to cease initiating new GBP LIBOR linked non-linear derivatives expiring after 2021 by end Q2/Q3 2021 (except for risk management of existing positions).

CRR: BaFin publishes letter on qualification as a small and non-complex institution and application of sNSFR

The German Federal Financial Services Supervisory Authority (BaFin) has published a letter on how banks can qualify as a small and non-complex institution (SNCI) and apply to use the simplified net stable funding ratio (sNSFR).

In general, an institution which fulfils the conditions of Article 4 (1) No. 145 of the EU Capital Requirements Regulation (CRR) qualifies as a SNCI. Under Article 428ai CRR (as amended by CRR2), SNCIs can now seek permission from BaFin to comply with and report only the simplified net stable funding ratio (sNSFR) instead of the full NSFR, as previously required.

The letter explains how qualification as an SNCI is achieved, how the application for use of the sNSFR must be made and specifies the information that must be provided.

Legal High Committee for Financial Markets reports on French law version of ISDA 2002 Master Agreement

The Legal High Committee for Financial Markets of Paris (HCJP), an initiative of the Autorité des marchés financiers (AMF) and the French Central Bank, has published a report on the application of the French law version of the International Swaps and Derivatives Association (ISDA) 2002 Master Agreement. This version of the Master Agreement, which was published in June 2018, was primarily designed as an alternative to the English Law Master Agreement for institutions who wished to continue trading under an EU Member State's law with EU court jurisdiction clauses once the UK left the EU.

The HCJP was tasked with investigating the use of the French Law Master Agreement since its publication and the barriers to its further uptake, as well as making recommendations to encourage its wider acceptance. From its investigation, the HCJP reports that, despite several professional institutions issuing recommendations that their members use the French Law Master Agreement, its application in the market has remained relatively low. Barriers include limited resources available to novate, an increase in other regulatory projects with higher priorities, a lack of demand from clients, limited litigation risk, and the costs associated with modifying existing contracts.

In order to encourage an increase in the use of the agreement, the HCJP has provided responses to some of the key objections to the use of French law and French courts commonly raised in the context of cross border financial matters. These include concerns around:

- potestativity and indertermination;

- the election of domicile provision;
- negative consent;
- proof, evidence and electronic signatures;
- the prudential treatment of exposures on a net basis under the Capital Requirements Directive (CRR);
- coverage of the contract by legal opinions;
- force majeure;
- the interaction of the agreement with other ISDA documentation; and
- the interpretation of the agreement by the courts.

CSSF issues regulation concerning systemically important institutions authorised in Luxembourg

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), issued on 25 November 2020 Regulation 20-07 concerning systemically important institutions (SSI) authorised in Luxembourg.

The Regulation identifies seven SSI authorised in Luxembourg, all qualifying as other systemically important institutions (O-SIIs). There is no global systemically important institution (G-SII) authorised in Luxembourg.

Four of these institutions qualify as O-SIIs based on the score obtained by application of the EBA standard methodology (i.e. exceeding the threshold laid down in accordance with the relevant EBA guidelines (EBA/GL/2014/10).

Another institution is identified as O-SII based on the relevant authority's judgement and the score obtained by application of the enriched methodology. This classification is justified by the contribution of this institution to the Luxembourg economy, notably due to its exposure to the real estate market and the importance of its Luxembourg deposits.

Two other institutions qualify as O-SIIs by application of the prudential judgement and due to their scores, which fall below the relevant threshold but remain very close thereto. The identification of the first institution is justified by its role as market infrastructure, and the second, by its importance for the investment fund sector or the asset management industry.

The Regulation maintains the capital buffer rates for these O-SIIs set already on 1 January 2020 by CSSF regulation 19-09 which is abrogated by the new Regulation.

The Regulation will enter into force on 1 January 2021.

Dutch Central Bank updates its supervision priorities

The Dutch Central Bank (DNB) has updated its Supervisory Strategy 2021-2024, developing priorities it had identified in 2018 in the areas of technological innovation, sustainability and financial crime. In particular, the DNB has brought its ambitions into sharper focus, setting out what it, as a supervisor, expects from the financial institutions it supervises in the period ahead and what the sector can expect from DNB.

Amongst other things, the Strategy highlights that:

- the DNB expects institutions to have adequate safeguards for their data in place. They must ensure the quality of their data, in terms of completeness and integrity, but also in terms of robust security, for example to withstand cyberattacks. In addition, the privacy aspects of managing and using such data are important, especially if financial institutions increasingly use algorithms and artificial intelligence;
- adequate management of sustainability risks by financial institutions requires even more of DNB's attention. In recent years, DNB has studied how climate change, the energy transition and biodiversity loss can affect financial institutions. It is now up to the financial institutions to embed the results into their policies and risk management, while DNB integrates them further into its supervision; and
- although financial institutions have further strengthened their gatekeeping role and invested in human and technological resources to keep criminals out of our financial system more effectively, there is still great scope for improvement. Over the coming years, DNB will monitor that financial institutions take more structural measures aimed at managing integrity risks and more effectively preventing financial crime. Focus points will be: promoting initiatives for public-private partnership in crime prevention, and cooperating more closely across borders.

Spanish Government adopts three agreements related to Guarantees Scheme

The Spanish Government has released two new tranches of the Guarantees Scheme: The first tranche will allow companies that are in the composition phase and that are up to date with their payments to obtain financing guaranteed by the Instituto de Crédito Oficial (ICO) both through financial entities (up to an amount of EUR 2.5 billion) and through the Spanish Alternative Fixed Income Market (MARF) (up to an amount of EUR 50 million).

The second tranche is intended to guarantee the commercial paper incorporated in MARF issued by those companies which could not benefit from the first tranche of the Guarantees Scheme because they were renewing their commercial paper programmes.

Self-employed individuals and companies may request loans guaranteed by the Guarantees Scheme until 1 June 2021 and these loans may be granted until 30 June 2021.

The Compañía Española de Reafianzamiento S.M.E, S.A (CERSA) is allowed to extend until the same date the term for requesting guarantees from the tranche of EUR 500 million intended to reinforce the recollateral to be granted to the Mutual Guarantee Companies of the Autonomous Communities.

In addition, ICO is instructed to extend the term of its guarantees by up to three additional years with a maximum of eight years, so that companies and self-employed individuals that meet the eligibility criteria (i.e being up to date with their payments and not being in an insolvency proceedings) may extend the maturity of their guaranteed loans. They can also benefit from the grace period for an additional 12-months term, provided that the total grace period does not exceed 24 months.

Finally, it is agreed the possibility of extending the maturity date of the guaranteed loans not yet released under the first tranche of the Guarantees Scheme. This extension will also apply to the guarantees granted and to be granted by CERSA.

Coronavirus: Royal Decree-Law on urgent measures to support business solvency and the energy sector, and on tax matters published in Official Gazette

Royal Decree-Law 34/2020 of 17 November on urgent measures to support business solvency and the energy sector, and on tax matters has been published in the Spanish Official Gazette.

The Spanish Government, via Royal Decree-Law 34/2020, has approved, among others, the measures relating to the Official Credit Institute (ICO) guarantee scheme and alternative financing.

In relation to the guarantee scheme, Royal Decree-Law 34/2020 extends the deadline for the granting of guarantees by the ICO until 30 June 2021, the maximum maturity of the relevant facility related to the guarantee by three more years (up to a maximum of eight years, if certain requirements are met) and the grace period by twelve months (up to a maximum of twenty-four years, if certain requirements are met).

Financial institutions must maintain the limits on working capital until 30 June 2021 for all debtors who meet the eligibility requirements and enjoy a guaranteed loan under both Royal Decree Law 8/2020 of 17 March and Royal Decree Law 25/2020 of 3 July.

Royal Decree-Law 34/2020 also specifies that promissory notes placed on MARF may benefit from the guarantees. Terms and conditions of the guarantees shall be established by Council of Minister's Resolution.

In relation to alternative financing, Royal Decree-Law 34/2020 increases the capitalisation threshold above which a company is obliged to request that the trading of its shares be changed from an 'expanding SME market' (Mercado PYME en expansion) to a regulated market from EUR 500,000,000 to EUR 1,000,000,000.

These measures entered into force on 19 November 2020.

PDPC publishes draft advisory guidelines for Personal Data Protection (Amendment) Bill

The Personal Data Protection Commission (PDPC) has published draft advisory guidelines on the Personal Data Protection (Amendment) Bill. The draft guidelines are intended to provide clarification on key provisions of the bill. They follow the closing note to the public consultation on the bill, issued by the Ministry of Communications and Information and the PDPC, and provide guidance with regard to the:

- enhanced framework for the collection, use and disclosure of personal data with a view to obtaining consent in a way that is meaningful to individuals;
- mandatory data breach notification for affected individuals to be issued by organisations and data intermediaries;
- financial penalties imposed by the PDPC on organisations in instances where there has been a breach of the data protection provisions; and

- offences related to individuals mishandling personal data in the possession of, or under the control of, an organisation.

SGX consults on proposed central depository default management process

The Singapore Exchange (SGX) has launched a public consultation on proposed changes to the central depository (CDP) default management process in order to align them with global best practices.

Under the existing process, in the event of a clearing member default, CDP will first attempt to settle the defaulting member's outstanding customer trades, failing which CDP will proceed to liquidation to manage those trades and complete the default management process.

Under the proposals, CDP intends to manage the defaulting member's outstanding trades, together with its non-customer trades, through liquidation only. In particular, SGX is proposing that:

- the liquidation process will be conducted on a net basis as far as possible. CDP will set off for each counter the defaulting member's outstanding buy and sell trades, regardless of whether the trades are due to customers or non-customers. The setting off reduces the number of transactions that CDP must liquidate, thus reducing the impact on the market;
- if, after setting off, the defaulting member is due to deliver securities (net sell), CDP will acquire those securities and close out the net outstanding trades. Conversely, if the defaulting member is due to receive securities (net buy), CDP will sell the securities and close out the net outstanding trades; and
- the proceeds, costs or expenses resulting from the acquisition or sale will be added to the tally of loss arising from the member's default. Such loss will be covered by the defaulting member's collateral and when that is insufficient, mutualised among CDP and the non-defaulting members through the clearing fund. The default management process is then concluded.

The SGX has clarified that CDP will continue to settle the outstanding trades of non-defaulting members and their customers, and confirms that the money and assets of customers of a defaulting broker will not, at any point, be used to meet the liabilities owed by the defaulting member to CDP.

Comments on the consultation are due by 21 December 2020.

Australian Government consults on pre-budget submissions for 2021-22

The Australian Government has launched a public consultation seeking submissions from individuals, businesses and community groups on their priorities for the 2021-22 Budget.

The 2021-22 Budget is intended to contribute to the next phase of the Morrison Government's Economic Recovery Plan designed to create more jobs and secure Australia's future.

To ensure that views can be incorporated into the Budget process, submissions on the consultation are due by 29 January 2021.

CFTC extends Brexit-related no-action relief

The Commodity Futures Trading Commission (CFTC) has issued two letters extending the no-action relief granted to the UK and UK firms in relation to Brexit in anticipation of the end of the transition period.

CFTC Letter 20-39 extends and supersedes the following no-action relief granted to the UK and UK entities in Letter 19-08:

- CFTC comparability determinations for the EU regarding certain entity-level requirements, certain transaction-level requirements and certain margin requirements; and
- an order exempting multilateral trading facilities and organized trading facilities authorized within the EU from the requirement to register as swap execution facilities.

CFTC Letter 20-40, which revises and supersedes the no-action relief granted in Letter 19-09, permits UK entities to rely on regulatory relief issued by CFTC staff in the following no-action letters involving EU entities:

- Letter 12-70 providing relief for certain swap dealers, de minimis dealers, agent affiliates and associated persons from registration as an introducing broker or commodity trading advisor; and
- Letter 13-45 providing relief for registered swap dealers and major swap participants from requirements in connection with uncleared swaps subject to risk mitigation techniques under EMIR.

The relief will become effective upon the end of the transition period on 31 December 2020.

CFTC approves final rule amending swap execution facility requirements

The CFTC has announced its unanimous approval of a final rule amending certain parts of CFTC regulations relating to the execution of package transactions on swap execution facilities (SEFs) and the resolution of error trades on SEFs.

The final rule codifies the majority of relief currently provided in no-action letters (20-31, 17-27 and 20-01) and will be effective 60 days after its publication in the Federal Register.

RECENT CLIFFORD CHANCE BRIEFINGS

UK government extends further emergency insolvency and company meetings legislation to protect businesses

As the number of reported cases of the coronavirus in the UK continues to rise, certain temporary insolvency and other measures aimed at protecting business, have now been reinstated and extended by the UK government.

This briefing discusses the reinstatement and extension of the measures.

https://www.cliffordchance.com/briefings/2020/11/uk-government-extends-further-emergency-insolvency-and-company-m.html

Coronavirus – Royal Decree-Law 34/2020 of 17 November – another turn of the screw for the regime on foreign investment in Spain post COVID-19

Among the many measures that the Government adopted as a result of the declaration of the state of emergency by means of Royal Decree 436/2020, of 14 March, with a significant impact on investments, one that stands out is the suspension, effective as of 18 March, of the system of deregulation of foreign direct investment in Spain, implemented by Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to address the economic and social impact of COVID-19. As a result, the need for authorisation for foreign investment became the norm, when it had previously only been required exceptionally, for very specific sectors, when carried out by residents of countries outside the EU and the European Free Trade Association.

This briefing discusses the changes to foreign investment in Spain.

https://www.cliffordchance.com/briefings/2020/11/royal-decree-law-34-2020--of-17-november--another-turn-of-the-sc.html

Postponement of transition of critical infrastructure to Russian software and hardware

A number of draft legislative acts put forward by the Russian president and the Russian federal government and ministries have been published which (i) envision postponement of the mandatory transition by operators of critical information infrastructure ('CII') to preferential use of Russian software and hardware from 1 January 2021 and 1 January 2022 to 1 January 2024 and 1 January 2025, respectively, and (ii) establish requirements applicable to software and hardware and the procedure for coordination and approval of their use.

This briefing discusses these drafts.

https://www.cliffordchance.com/briefings/2020/11/postponement-of-transtion-of-critical-infrastructure--eng-.html

SEC changes its rules to facilitate use of electronic signatures for EDGAR filings

On 17 November 2020, the US Securities and Exchange Commission (SEC) adopted rule changes in response to a petition that called for allowing the use of electronic signatures in connection with EDGAR filings. These rule changes will become effective immediately upon publication of the SEC's release in the Federal Register, which is expected to occur in the near future.

This briefing discusses the rule changes.

https://www.cliffordchance.com/briefings/2020/11/sec-changes-its-rules-to-facilitate-use-of-electronic-signatures.html

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