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# INTERNATIONAL REGULATORY UPDATE 04 – 08 JANUARY 2021

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## UCITS: ESMA launches common supervisory action on supervision of costs and fees

The European Securities and Markets Authority (ESMA) has launched a common supervisory action (CSA) with national competent authorities (NCAs) on the supervision of costs and fees of UCITS in the EU.

The CSA is intended to assess the compliance of supervised entities with the relevant cost-related provisions in the UCITS framework and the obligation of not charging investors with undue costs. The CSA will also cover entities employing efficient portfolio management (EPM) techniques to assess whether they adhere to the requirements set out in the UCITS framework and ESMA's guidelines on ETFs and other UCITS issues.

Throughout 2021 NCAs will work with ESMA to share knowledge and experiences to ensure supervisory convergence in cost-related issues as part of ESMA's work to enhance the protection of investors in the EU.

## Brexit: MoUs between EU and UK regulators on cooperation, monitoring and exchange of information published

Memoranda of Understanding (MoUs) between EU and UK regulators covering cooperation and exchange of supervisory information have been published simultaneously by ESMA and the Financial Conduct Authority (FCA).

The MoUs concern:

- consultation, cooperation and the exchange of information between ESMA and the FCA; and
- consultation, cooperation and the exchange of information between each of the EEA competent authorities and the FCA.

In addition, ESMA has published two further MoUs on:

- ESMA's monitoring of the ongoing compliance with recognition conditions by central securities depositories (CSDs) established in the UK; and
- arrangements for cooperation with the Bank of England (BoE) on the monitoring and supervision of central counterparties (CCPs) established in the UK.

## SRB and BoE bank resolution cooperation arrangement enters into force

The Single Resolution Board (SRB) has published a press release noting that the cooperation arrangement it has reached with the BoE in connection with bank resolution planning entered into force on 1 January 2021.

The cooperation arrangement broadly covers the exchange of information and cooperation, including:

- the general framework for cooperation;
- common principles regarding resolutions of entities with cross-border operations;
- the mechanism and scope of resolution consultation, cooperation and exchange of information;
- the execution of requests for assistance;
- permissible uses and confidentiality of information; and
- data protection.

## EMIR: CFTC and ESMA sign enhanced MoU regarding certain recognised central counterparties

The Commodity Futures and Trading Commission (CFTC) and ESMA have signed a new memorandum of understanding regarding cooperation and the exchange of information with respect to certain registered derivatives clearing organisations established in the United States that are central counterparties recognised by ESMA under the European Market Infrastructure Regulation (EMIR).

The MoU expresses the wishes of the CFTC and ESMA for enhanced cooperation as to the larger US CCPs operating in the EU, expanding upon the collaboration set out in the 2016 CFTC-ESMA MoU related to recognised CCPs.

## Short Selling (Notification Thresholds) Regulations 2021 published

The Short Selling (Notification Thresholds) Regulations 2021 (SI 2021/5) have been made and laid before the UK Parliament.

SI 2021/5 amends Article 5(2) of the retained EU law version of the Short Selling Regulation (UK SSR) to lower the initial notification threshold for the reporting of net short positions in issued share capital to the FCA from 0.2% to 0.1%.

The amendment is being made in light of the end of the transition period on 31 December 2020, when ESMA’s temporary decision to lower the threshold to 0.1% in response to COVID-19 ceased to apply and the threshold in the UK reverted to 0.2%.

The explanatory memorandum notes that the amended threshold will result in the UK requirements differing from the EU requirements. In the UK, the 0.1% threshold will apply in respect of shares admitted to trading on UK regulated markets and UK multilateral trading facilities (MTFs), whereas in the EU the 0.1% threshold applies only in respect of shares admitted to trading on EU regulated markets.

The lower threshold takes effect from 1 February 2021 and will apply indefinitely. The FCA has stated that notifications can continue to be made at the 0.1% threshold during the interim period between the end of the transition period and 1 February.

The SI was made according to the negative procedure on 5 January and, if not annulled by Parliament, comes into force on 1 February 2021.

## MiFIR: FCA modifies UK derivatives trading obligation

The FCA has published a statement on its use of the temporary transitional power (TTP) to modify the UK's derivatives trading obligation (DTO) under UK MiFIR.

In order to prevent a conflict of law between the EU and UK DTOs, the FCA has made a transitional direction modifying the UK DTO so that firms subject to it are able to execute trades with, or on behalf of, EU clients subject to the EU DTO on EU venues provided that:

- they take reasonable steps to be satisfied the client does not have arrangements in place to execute the trade on a trading venue to which both the UK and EU have granted equivalence; and
- the EU venue has the necessary regulatory status to do business in the UK, such as those that are a recognised overseas investment exchange (ROIE), have been granted the relevant temporary permission or benefit from the overseas person exclusion.

The relief does not apply to transactions concluded by an EEA UCITS fund or an EEA AIF, which are currently outside the scope of the UK DTO, nor to trades with non-EU clients, proprietary trading conducted to hedge a firm's own risk exposure or trades between UK branches of EU firms, which remain subject to the UK DTO.

The direction took effect at the end of the transition period on 31 December 2020.

The FCA intends to keep its use of the TTP under review, and to consider by 31 March 2021 whether market or regulatory developments warrant a review of its approach.

## Coronavirus: FCA publishes results of financial resilience survey

The FCA has published the data and a summary of responses from the survey it conducted on the impact of the coronavirus pandemic on the financial resilience of solo-regulated firms. The survey was sent out in June and August 2020 and responses were received from approximately 19,000 firms. Key findings from the data include:

- the retail investments, retail lending and wholesale financial markets sectors saw an increase in liquidity between February (pre-lockdown) and May/June (during the impact of the first lockdown) (of 8%, 8% and 83%, respectively);
- the insurance intermediaries and brokers, payments and e-money and investment management sectors all saw a decrease in liquidity between the same reporting periods (of 30%, 11% and 2%, respectively);

- the payments and e-money sector had the lowest proportion of profitable firms, followed by the wholesale financial markets, investment management, insurance intermediaries and brokers, retail lending and retail investment sectors;
- the retail lending sector made the most use of the available government support, with 49% of firms furloughing staff and 36% obtaining government-backed loans, followed, in order, by the insurance intermediaries and brokers, retail investments, payments and e-money, wholesale financial markets and investment management sectors; and
- 59% of respondents expected coronavirus to have a negative impact on their net income, of which 72% expected the impact to be between 1% and 25%, and 3% expected it to be over 76%.

The FCA highlights that the survey is only one of the four ways it is monitoring firms and that it was conducted before the extension of the Government's furlough scheme, the positive developments with the vaccine and the announcement of new rules and restrictions.  Caution should therefore be taken before using the data to make predictions.

## FCA updates list of equivalent third country disclosure rules

The FCA has updated its webpage on the equivalence of non-UK regimes.

The webpage notes that the FCA has made rules exempting third country issuers from certain Disclosure Guidance and Transparency Rules (DTRs) on the basis that the third country law the issuer is subject to is equivalent.  In particular:

- countries that have adopted the International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), namely EEA States, Switzerland, the United States, Canada, China, Japan and South Korea, are exempt from certain financial reporting rules (DTR 4);
- issuers with securities admitted to trading on a UK regulated market that are incorporated in the United States, Japan, Israel and Switzerland are exempt from certain major shareholding rules (DTR 5); and
- issuers of shares admitted to trading on a UK regulated market that are incorporated in Switzerland are exempt from certain information requirements (DTR 6).

The FCA notes that it may update the list as it completes further equivalence exercises.

## HM Treasury consults on regulatory approach to cryptoassets and stablecoins

HM Treasury has launched a consultation on the Government's approach to regulating cryptoassets, and stablecoins in particular.  The consultation is the first stage in a wider effort to engage with industry and stakeholders on how the UK's regulatory framework can support innovation and new technologies while mitigating their potential risks to consumers and stability.  The consultation paper sets out:

- the current cryptoasset landscape and their status in UK regulations;

- the Government's proposed policy approach, with specific proposals for cryptoassets used for payments purposes; and
- a range of broad questions on cryptoassets used for investment purposes and the use of distributed ledger technology (DLT) in financial services, particularly its adoption across financial markets.

Key elements of the proposed policy approach include that:

- the Government will establish a broad framework, including the scope of the regulatory perimeter and its key objectives and principles;
- this framework will focus on protecting financial stability, market integrity and consumers, and on promoting competition, innovation and the competitiveness of the UK fintech sector;
- the Government will not set out detailed requirements in legislation but will instead place responsibility with UK regulators to use the framework to issue rules or codes of practice, with the intention of creating a more agile and flexible regulatory framework, that can easily respond to the rapid pace of technological development and the expected upcoming issuance of global standards;
- the current division of regulator responsibilities will be maintained as far as possible and existing regulations and requirements will be drawn on wherever applicable, following the principle of 'same risk, same regulatory outcome';
- a regulatory regime will be introduced for 'stable tokens' (i.e. tokens which stabilise their value by referencing one or more assets, such as a fiat currency or commodity) that are being used as a means of payment, covering firms that issue them and provide services in relation to them;
- unregulated tokens and associated activities primarily used for speculative investment purposes will remain outside the regulatory perimeter for conduct and prudential purposes but will be subject to more stringent regulation with regard to consumer communications and anti-money laundering and counter terrorist financing measures; and
- utility tokens will remain outside the authorisation perimeter.

Comments are due by 21 March 2021.

## Brexit: PRA publishes final policy statement on changes at the end of the transition period

The Prudential Regulation Authority (PRA) has published a policy statement (PS30/20) containing the final PRA rulebook instrument, transitional direction and related guidance documents.

PS30/20 makes final the near-final rules published on 18 December 2020 in PS27/20, which have not been changed.

The transitional direction and most of the PRA rulebook instrument commenced at the end of the transition period at 11pm on 31 December 2020.

## CRR: PRA announces intention to consult on prudential treatment of software assets

The PRA has published a statement setting out considerations relating to the prudential treatment of software assets under Article 36(1)(b) of the amended

Capital Requirements Regulation (CRR2). Article 36(1)(b) exempts software assets from the deduction requirement for intangible assets from Common Equity Tier 1 (CET1).

The PRA notes the following points, among others:

- the revised regulatory treatment of software assets does not derive from the Basel Standards and is specific to the CRR;
- the PRA has found no credible evidence that software assets can absorb losses effectively in stress and is therefore concerned that exempting software assets from the CET1 capital deduction requirements could undermine firms' soundness and safety;
- the PRA intends to consult on maintaining the earlier position whereby all software assets continue to be fully deducted from CET1 capital; and
- an interim recommendation that firms not base their distribution or lending decisions on any capital increase from applying this requirement.

The PRA statement follows the publication of EU Commission Delegated Regulation 2020/2176 in the Official Journal on 22 December 2020 and the entry into force of Article 36(1)(b) on 23 December 2020. Delegated Regulation 2020/2176 adopted the European Banking Authority (EBA) regulatory technical standards (RTS) on the prudential treatment of software assets.

## CRD5: PRA publishes final policy on approach to designating entities in certain UK consolidation groups

The PRA has published a policy statement (PS 29/20) setting out final rules following its consultation (CP 22/20) on a proposed approach to designating entities within certain UK consolidation groups as responsible for ensuring that consolidated prudential requirements are met during a transitional period. Specifically, the PRA proposed to introduce a new rule to designate the PRA subsidiaries of parent financial holding companies (FHCs) or parent mixed financial holding companies (MFHCs) as responsible for ensuring compliance with the group's Capital Requirements Regulation (CRR) consolidated prudential requirements until the date on which its parent FHC or MFHC application for approval or exemption had been determined by the PRA.

The PRA received no responses to its consultation and has therefore published the policy as proposed. It entered into force on 28 December 2020 and will apply until the date on which the application of the parent FHC or MFHC has been determined. For the period between the 28 and 31 December 2020 the CRR-defined term 'parent FHC (or MFHC) in a Member State' was used. At the end of the Brexit transition period this was replaced with the new PRA Rulebook Glossary definition of 'UK parent financial (or mixed financial) holding company'.

PS 29/20 also confirms that the policy published in PS 26/20 as near-final has been finalised. In PS 26/20, the PRA set out its feedback to responses received to its July 2020 (CP12/20) and October 2020 (17/20) consultations on implementation of the Capital Requirements Directive (CRD5) and near-final Rulebook instruments, statements of policy, supervisory statements and templates. As of 28 December 2020, the PRA was able to exercise its power to make rules imposing consolidated or sub-consolidated requirements on

holding companies, and has therefore published the final versions of the policy initially set out in PS 26/20.

## BaFin publishes revised guidance note on members of management and supervisory board

The German Federal Financial Services Supervisory Authority (BaFin) has published its revised guidance note on the requirements imposed on members of the management and supervisory board of credit institutions, investment firms, payment institutions and capital management companies.

The focus of the revision was to incorporate guidelines issued by the EBA and ESMA into BaFin's administrative practices, in particular the guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2017/12) and the guidelines on internal governance (EBA/GL/2017/11)).

Since the guidelines regulate a wide range of companies and case constellations, special attention has been paid to the principle of proportionality to address concerns that smaller and medium-sized institutions could be disproportionately overburdened.

## Brexit: Bank of Italy and Consob further clarify new transitional provisions adopted by Italian Government

Further to the publication in the Italian Official Gazette of Law Decree no. 183 of 31 December 2020, which sets out provisions on the operations of UK credit institutions, financial institutions and insurers following the end of the transitional period envisaged by the EU-UK Withdrawal Agreement, the Bank of Italy and Consob have published two separate communications intended to clarify the new set of transitional provisions.

On condition that an Italian application was duly filed before 31 December 2020, UK credit and financial institutions may carry on the activities performed before the end of the transitional period until such time as the authorisation is either granted or refused and, in any case, no later than 30 June 2021. During this period, operations must be limited to the activities for which an authorisation is sought and to the management of existing contractual relationships. Therefore, it is not possible to enter into new agreements or to amend existing ones (with a view to including new services or products).

The entities referred to above are subject to the national regime applicable to non-EU institutions and to the supervision of the competent Italian authorities.

Should the authorisation to continue activities in Italy be refused, UK institutions are compelled to cease such non-authorised activities in the shortest time possible and, in any case, no later than three months after the communication of the refusal, always with a view to not causing prejudice to clients. During the wind-down period, UK institutions continue to be subject to the national regime applicable to non-EU institutions and to the supervision of the competent Italian authorities.

## CSSF adopts regulation on marketing of foreign UCIs to retail investors in Luxembourg

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has adopted Regulation No. 20-10 outlining the modalities of application of Article 100(1) of the Luxembourg law

of 17 December 2010 on undertakings for collective investments (UCI Law) concerning the marketing of non-Luxembourg based undertakings for collective investments other than the closed-ended type (Foreign UCIs) to retail investors in Luxembourg.

According to Article 100(1) of the UCI Law and Regulation 20-10, a Foreign UCI (or the compartment(s) thereof) intending to market its units/shares to retail investors in Luxembourg must be authorised by the CSSF prior to starting such marketing activities and will be registered on the CSSF's official list of Foreign UCIs published on the CSSF website.

The CSSF's authorisation will be granted only if certain requirements are complied with, including the following among others:

- a specific application for authorisation to market the relevant Foreign UCI to retail investors must be filed with the CSSF together with all the mandatory information and documentation as set out in the UCI Law and Regulation 20-10; and
- the relevant Foreign UCI must be subject in its home state to permanent supervision performed by a relevant supervisory authority and must also be subject to supervision considered by the CSSF to be equivalent to that laid down in the UCI Law.

Regulation 20-10 was published in the Luxembourg official journal (Mémorial A) on 23 December 2020 and entered into force on 1 January 2021. Foreign UCIs which had already been authorised for marketing to retail investors in Luxembourg under Article 100(1) of the UCI Law are considered ipso jure as authorised under Regulation 20-10 at the time of its entry into force.

## CSSF regulation on equivalence of the UK for the purpose of the MiFIR third country national regime published

CSSF Regulation No 20-09 of 14 December 2020, amending CSSF Regulation No 20-02 of 29 June 2020 on the equivalence of certain third countries with respect to supervision and authorisation rules for the purpose of providing investment services or performing investment activities and ancillary services by third-country firms (Regulation No 20-09), has been published in the Official Journal of the Grand Duchy of Luxembourg. Regulation No 20-09 includes the United Kingdom of Great Britain and Northern Ireland in the list of jurisdictions which are deemed equivalent for the application of the national third-country regime. Regulation 20-09 has been in force since 1 January 2021.

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has also published a press release with respect to Regulation 20-09, reminding the public that, in the absence of an equivalence decision by the EU Commission in accordance with Article 47(1) of MiFIR, a third-country firm may, subject to certain conditions set out in Circular CSSF 19/716 as amended by Circular CSSF 20/743, including the recognition of national equivalence of the third country, provide investment services or activities as well as ancillary services in Luxembourg to eligible counterparties and professional clients per se, without setting up a branch in Luxembourg. In particular, a third-country firm must be subject to supervision and authorisation rules that the CSSF deems equivalent to those laid down in the Luxembourg law of 5 April 1993 on the financial sector, as amended.

In accordance with Article 2(2) of Regulation No 20-02, equivalence decisions made by the CSSF may be revoked where one or several conditions on which the decision was based are no longer met. To that effect, the CSSF will continue to monitor the applicable regulatory framework in the United Kingdom regarding the supervision and authorisation of firms providing investment services and activities.

In order to benefit from the national third-country regime, a third-country firm must submit a complete application file to the CSSF without delay. More details on this are available in Circular CSSF 19/716.

## Ministry of Finance presents amendments to Act on Covered Bonds and Mortgage Banks

The Polish Ministry of Finance has presented draft amendments to the Act on Covered Bonds and Mortgage Banks. The purpose of the draft is to implement Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 which, together with Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019, is part of the regulatory package concerning covered bonds.

The amendments:

- introduce the definition of a covered bond and expand the terms used under the Act by adding definitions of primary assets, substitution assets, cover assets, cover pool and derivative instruments;
- specify the rules according to which national banks use the terms ‘European covered bond’ and ‘European covered bond (premium)’;
- modify the conditions of calculating the liquidity buffer for cover pools;
- propose to extend the scope of grounds for the issue of a public covered bond;
- state the conditions for obtaining a permit for a programme to issue mortgage covered bonds or public covered bonds and additional requirements concerning supervision by the Polish Financial Supervision Authority of issue programmes conducted by mortgage banks;
- introduce information requirements concerning covered bond issue programmes to enable investors to examine the risk profile of a relevant programme, and mortgage banks’ special reporting obligations to the supervision authority;
- confer on the Polish Financial Supervision Authority powers to impose administrative sanctions; and
- modify the provision on assets making up a separate bankruptcy estate that serves to satisfy creditors’ claims under covered bonds and claims under agreements for a derivative instrument.

The draft has been sent for public consultation.

## Coordination Commission for digital transformation of financial sector created

As provided for in Law 7/2020 of 13 November, for the digital transformation of the financial sector, the Spanish Ministry of Economic Affairs and Digital Transformation (Ministerio de Asuntos Económicos y Transformación Digital)

has created, by means of the Order ETD/1305/2020, of 29 December, the Coordination Commission responsible for the digital transformation of the financial sector. The Coordination Commission will have monitoring, coordination and information exchange functions in connection with the Spanish sandbox, but will not be empowered to take decisions affecting it (as these will fall within the competence of the competent authorities). Among other things, the Coordination Commission shall acknowledge the applications submitted by sponsors, the results of the prior assessment performed by the supervisory authorities and the reasons for the admission and non-admission of the pilot projects. Likewise, it will promote participation, coordination and exchange of information between the competent authorities.

The Order entered into force on 6 January 2021.

## HKMA publishes consultation conclusions on contractual stay rules on termination rights in financial contracts and further consults on draft stay rules

The Hong Kong Monetary Authority (HKMA) has published the conclusions on its public consultation relating to rules on contractual stays on termination rights in financial contracts for authorised institutions (Stay Rules). The Stay Rules were proposed to be made as subsidiary legislation pursuant to section 92 of the Financial Institutions (Resolution) Ordinance (FIRO).

The Stay Rules require authorised institutions (AIs) incorporated in Hong Kong and certain of their group companies to include an appropriate provision in certain non-Hong Kong law governed financial contracts to the effect that the parties to the contracts agree to be bound by a temporary suspension of termination rights that may be imposed by the HKMA as a resolution authority under section 90 of the FIRO. The Stay Rules are designed to address the cross-border risks to orderly resolution arising from the early termination of financial contracts governed by non-Hong Kong law, in line with the contractual approach to giving effect to cross-border resolution actions advocated by the Financial Stability Board.

In light of the comments received, the revised transitional timetable is as follows:

- Phase 1 – for a within scope contract where the only counterparties are AIs and/or financial institutions (other than AIs) that are, or are part of, global systemically important banks on the commencement date of the Stay Rules, 24 months from the date of the commencement of the Stay Rules; and
- Phase 2 – for all other within scope contracts, 30 months from the date of the commencement of the Stay Rules.

The HKMA has also launched an industry consultation on the draft Stay Rules for which comments are due by 31 January 2021.

The HKMA intends to introduce the Stay Rules into the Legislative Council for negative vetting within the current legislative year of 2020/2021, with a view to bringing the Stay Rules into operation shortly after the completion of the vetting process in 2021.

## Electronic Transactions (Amendment) Bill moved for first reading in Singapore Parliament

The Electronic Transactions (Amendment) Bill has been moved for its first reading in the Singapore Parliament. This Bill is intended to amend the Electronic Transactions Act to:

- adopt with modifications the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Transferable Records adopted by the UNCITRAL on 13 July 2017;
- amend section 13 to achieve consistency with Article 10 of the United Nations Convention on the Use of Electronic Communications in International Contracts; and
- delete item 2 of the First Schedule to the Act, in conjunction with the adoption of the Model Law. The First Schedule of the Act sets out matters excluded by section 4 of the Act, and item 2 refers to negotiable instruments, documents of title, bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.

The Bill also makes consequential and related amendments to the Bills of Lading Act and the Contracts (Rights of Third Parties) Act.

The adoption of the UNCITRAL Model Law, together with the deletion of item 2 of the First Schedule to the Act, is part of a wider and ongoing initiative by the Singapore Government to review and support the electronisation of various types of instruments or transactions, including the other matters specified in the First Schedule. These other matters will be deleted when the legislative and administrative frameworks supporting the electronisation of these other items are ready to be enacted or implemented.

The Electronic Transactions (Amendment) Bill will come into operation on a date that the Minister appoints by notification in the Gazette.

## Securities and Futures (Trading Venues for Derivatives Contracts in the United Kingdom) Regulations 2020 and Securities and Futures (Trading Venues for Derivatives Contracts in the European Union) (Amendment No. 2) Regulations 2020 gazetted

The Singapore Government has gazetted the Securities and Futures (Trading Venues for Derivatives Contracts in the United Kingdom) Regulations 2020. The Regulations are intended to give effect to an arrangement between the Monetary Authority of Singapore and Her Majesty's Treasury, under which both the parties respectively recognise that the requirements imposed on persons who operate trading venues for derivatives contracts in the United Kingdom under the UK rules are comparable to the requirements imposed by or under the Securities and Futures Act on persons who operate organised markets in Singapore. In particular, the Regulations have been designed to:

- exempt persons who establish or operate trading venues for derivatives contracts in the United Kingdom under and in accordance with the UK rules from the requirement under section 7(1) of the Act to be an approved exchange or a recognised market operator before establishing or operating

an organised market, or holding themselves out as operating an organised market; and

- prescribe trading venues for derivatives contracts in the United Kingdom that are regulated under and in accordance with the UK rules as facilities on or through which a specified person may execute a specified derivatives contract for the purposes of section 129J(1) of the Act.

The Singapore Government has also gazetted the Securities and Futures (Trading Venues for Derivatives Contracts in the European Union) (Amendment No. 2) Regulations 2020 to amend the prescribed facilities, for purposes of section 129J(1)(a) of the Act, as set out in the Schedule to the Securities and Futures (Trading Venues for Derivatives Contracts in the European Union) Regulations 2019.

The Securities and Futures (Trading Venues for Derivatives Contracts in the United Kingdom) Regulations 2020 and the Securities and Futures (Trading Venues for Derivatives Contracts in the European Union) (Amendment No. 2) Regulations 2020 are effective from 2 January 2021.

## RECENT CLIFFORD CHANCE BRIEFINGS

### UK sanctions after Brexit – key changes of which to be aware

At 11pm on 31 December 2020, EU sanctions ceased to apply within the UK, and were replaced by a new UK sanctions regime which is similar, but not identical to the EU sanctions regime. In particular, there are a number of key differences both in drafting style and substance that will be relevant to compliance efforts by both UK and international businesses.

This briefing identifies some of the key changes of which to be aware.

https://www.cliffordchance.com/briefings/2020/12/uk-sanctions-after-brexit--key-changes-of-which-to-be-aware.html

### Guide to Hong Kong competition law

Hong Kong's cross-sector competition law regime has now been in effect for five years. This guide explains how the regime works including the prohibitions, defences, investigation and enforcement process, and sanctions available to the authorities for anti-competitive conduct, as well as the leniency programme.

https://www.cliffordchance.com/briefings/2021/01/guide-to-hong-kong-competition-law.html

### Singapore Court of Appeal affirms traditional Dunlop Pneumatic Test for Penalty Clauses

On 15 December 2020, a five-judge bench of the Singapore Court of Appeal delivered judgment in Denka Advantech Private Limited & another v Seraya Energy Pte Ltd & another [2020] SGCA 119.

The decision provides important guidance on the distinction between liquidated damages and penalty clauses, the latter being unenforceable at law. In Denka v Seraya, the Court of Appeal held that: (i) the correct legal test to be applied is whether the clause provides a genuine pre-estimate of the likely

loss as assessed at the time of contracting (i.e. the test articulated by Lord Dunedin in the English case of Dunlop Pneumatic Tyre Company, Ltd v New Garage and Motor Company, Limited [1915] AC 79); and (ii) the rule against penalties only applies to clauses which are triggered by a breach of contract and not other events.

This briefing discusses the decision.

https://www.cliffordchance.com/briefings/2021/01/singapore-court-of-appeal-affirms-traditional-dunlop-pneumatic-t.html

## ISS and Glass Lewis issue proxy voting policy updates for the 2021 proxy season

The two largest proxy advisory firms in the US, Institutional Shareholder Services Inc. and Glass, Lewis & Co., have released their updated proxy voting guidelines. ISS' policy updates are effective for annual shareholder meetings held on or after 1 February 2021. Glass Lewis' policy updates are effective for annual shareholder meetings held on or after 1 January 2021.

This briefing discusses both ISS' and Glass Lewis' 2021 policy updates for US companies, noting certain key changes, and action items that companies should implement in response. These policy changes and the voting policies of a company's major shareholders should inform proxy drafting and shareholder engagement for the upcoming annual meeting season.

https://www.cliffordchance.com/briefings/2021/01/iss-and-glass-lewis-issue-proxy-voting-policy-updates-for-the-20.html

## OFAC settlement underlines sanctions risks for digital currency services providers

On 30 December 2020, the US Department of the Treasury's Office of Foreign Assets Control announced a settlement of apparent US sanctions violations by California-based BitGo, Inc. that involved its provision of non-custodial digital wallet management services for digital currency private keys to customers in Crimea, Cuba, Iran, Sudan and Syria. The case highlights the sanctions risks for US companies that provide services in connection with digital assets and indicates sanctions compliance controls that may be appropriate to mitigate such risks. BitGo did not voluntarily self-disclose the apparent violations, but OFAC determined that they were not egregious and therefore assessed a base penalty of USD 183,000. OFAC then reduced the final penalty to USD 93,830 based on a number of mitigating factors including BitGo's cooperation with OFAC, remedial measures and compliance enhancements.

This briefing discusses the case.

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C L I F F O R D

C H A N C E

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