INTERNATIONAL REGULATORY UPDATE 01 – 05 MARCH 2021

- **Sustainable finance: EBA consults on draft ITS on Pillar 3 disclosures of ESG risks**
- **EBA publishes revised guidelines on money laundering and terrorist financing risk factors**
- **Transparency Directive: ESMA writes to EU Commission on proposed improvements**
- **Prospectus Regulation: ESMA publishes final guidelines on disclosure requirements**
- **MiFID2: ESMA publishes results of annual transparency calculations for equity and equity-like instruments**
- **CRR: EU Commission adopts derivatives RTS on identifying material risk drivers and call & put options' supervisory delta**
- **CRR: EU Commission adopts RTS on specification of an economic downturn**
- **Sustainable finance: ESAs publish advice on KPI disclosures for environmentally sustainable activities**
- **IOSCO publishes work programme for 2021-2022**
- **FCA publishes statement on cessation of LIBOR**
- **FCA publishes final policy on use of benchmark powers**
- **UK MiFIR: FCA updates statement on double volume cap**
- **UK Listings Review report published**
- **BaFin plans not to increase countercyclical capital buffer until year-end**
- **Luxembourg law clarifying certain AML/CTF provisions and extending temporary regime for marketing of UK UCITS to retail investors published**
- **Polish Financial Supervision Authority analyses impact of changes to legal environment on CHF mortgage loan portfolios**
- **China issues interim measures on implementation of recovery and resolution plans of banking and insurance institutions for consultation**

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- **HKMA announces further extension of pre-approved principal payment holiday scheme**
- **FSC announces Korea's risk-free reference rate**
- **MAS and ABS publish information paper on managing risks of remote working in financial institutions**
- **MAS consults on proposed revisions to enterprise risk management, investment and public disclosure requirements for insurers**
- **MAS updates criteria guidelines and application form regarding grant of a financial adviser's licence**
- **Singapore Industry taskforce proposes taxonomy and launches environmental risk management handbook to support green finance**
- **Recent Clifford Chance briefings: Biometric class-action suits, SPACs in Europe, and more. Follow this link to the briefings section.**

Sustainable finance: EBA consults on draft ITS on Pillar 3 disclosures of ESG risks

The European Banking Authority (EBA) has launched a consultation on proposed implementing technical standards (ITS) on Pillar 3 disclosures of environmental, social and governance (ESG) risks. The draft ITS are intended to ensure institutions make comparable disclosures on:

- climate change related transition and physical risks;
- exposures to carbon related assets and assets subject to chronic and acute climate change events;
- actions undertaken to support their counterparties in the transition to a carbon neutral economy and in the adaptation to climate change; and
- the ways in which they are embedding ESG considerations into their governance, business models, strategies and risk management frameworks.

The draft ITS also set out proposals for a green asset ratio (GAR) which will allow institutions to identify the financing activities they undertake which are environmentally sustainable according to the EU taxonomy for sustainable activities.

Comments are due by 1 June 2021.

EBA publishes revised guidelines on money laundering and terrorist financing risk factors

The EBA has published its final revised guidelines on money laundering and terrorist financing (ML/TF) risk factors. The guidelines have been updated to reflect changes to the EU anti-money laundering and counter terrorism financing (AML/CFT) legal framework and to address new ML/TF risks, including those identified in the EBA's AML/CFT implementation reviews and the European Supervisory Authorities' (ESAs') 2019 joint opinion on ML/TF risks. They contain new guidance on:

- business-wide and individual ML/TF risk assessments;

- customer due diligence (CDD) measures, including on the beneficial owner;
- compliance with the provisions on enhanced CDD related to high-risk third countries; and
- emerging risks, such as crowdfunding platforms, corporate finance, payment initiation and account information service providers, and currency exchange services.

The guidelines will apply three months after they have been translated and published in the EU official languages.

Transparency Directive: ESMA writes to EU Commission on proposed improvements

The European Securities and Markets Authority (ESMA) has published a letter to the EU Commission proposing improvements to the Transparency Directive (TD).

ESMA's letter, which builds on the November 2020 fast-track peer-review (FTPR) report on the Wirecard case and the 2017 peer review reports and letters to EU institutions on the enforcement of financial information, proposes a set of recommendations to modify the TD in four key areas:

- cooperation between TD national competent authorities (NCAs) and other authorities;
- coordination of enforcement of financial information at national level between central competent authorities and delegated entities/designated authorities;
- strengthening of the independence of national competent authorities; and
- strengthening of harmonised supervision of financial and non-financial information across the EU.

Alongside the proposed improvements, ESMA highlights its support for initiatives to enhance EU requirements in the areas of corporate governance and audit committees and their supervision.

Prospectus Regulation: ESMA publishes final guidelines on disclosure requirements

ESMA has published its final guidelines on disclosure requirements under the Prospectus Regulation.

The guidelines, which have now been translated into the official EU languages, are intended to ensure that market participants have a uniform understanding of the relevant disclosure requirements and assist national competent authorities when they assess completeness, comprehensibility and consistency of information in prospectuses.

The guidelines apply from 4 May 2021.

MiFID2: ESMA publishes results of annual transparency calculations for equity and equity-like instruments

ESMA has published the results of the annual transparency calculations for equity and equity-like instruments.

The calculations include:

- the liquidity assessment;
- the determination of the most relevant market (MRM) in terms of liquidity;
- the determination of the average daily turnover (ADT) relevant for the determination of the pre-trade and post-trade large in scale (LIS) thresholds;
- the determination of the average value of the transactions (AVT) and the related standard market size (SMS); and
- the determination of the average daily number of transactions on the most relevant market in terms of liquidity relevant for the determination of the tick-size regime.

The transparency requirements based on the results shall apply from 1 April 2021 until 31 March 2022.

CRR: EU Commission adopts derivatives RTS on identifying material risk drivers and call & put options' supervisory delta

The EU Commission has adopted a Delegated Regulation (EU) setting out regulatory technical standards (RTS) in relation to derivative transactions under the Capital Requirements Regulation (CRR). The Delegated Regulation specifies the following:

- the method for identifying derivative transactions with material risk driver(s), and where relevant the most material of those drivers, for the purposes of Article 277(5); and
- calculations and methods for the purposes of Article 279a(3), including regarding the supervisory delta of call and put options mapped to the interest rate risk category and to whether a transaction is a long or short position in relation its material risk driver in the given risk category for the standardised approach for counterparty credit risk.

The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal.

CRR: EU Commission adopts RTS on specification of an economic downturn

The EU Commission has adopted a Delegated Regulation setting out RTS specifying the nature, severity and duration of an economic downturn as referred to in Article 181(1), point (b), and Article 182(1), point (b) of the CRR.

The draft RTS specify the nature, severity and duration of an economic downturn to be taken into account in downturn LGD and downturn CF estimation, where these parameters are estimated under the IRB Approach. The draft RTS set out a notion of economic downturn, which may encompass one or several disjunctive downturn periods. The nature of an economic downturn is specified by a set of economic factors relevant for the underlying businesses, sectors and jurisdictions. The severity is specified in relation to these economic factors by the worst value observed in the past 20 years on each economic factor. The duration is specified in relation to the downturn periods, which are identified as periods in time where one or several economic factors show their most severe values. Some exemptions are possible for the specification of the severity and duration where the macroeconomic conditions are better captured by these. Institutions will use these final draft RTS to identify the relevant downturn periods to be taken into account in downturn LGD and CF estimation.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. The Regulation shall apply from 1 January 2021.

Sustainable finance: ESAs publish advice on KPI disclosures for environmentally sustainable activities

The ESAs, comprising ESMA, the EBA, and the European Insurance and Occupational Pensions Authority (EIOPA), have separately published advice on the mandatory disclosure of key performance indicators (KPIs) for environmentally sustainable activities under Article 8 of the Taxonomy Regulation by firms within scope of the Non-Financial Reporting Directive (NFRD).

ESMA's advice sets out recommendations relating to non-financial undertakings and asset managers, including:

- the definition, content and methodology for the disclosure of turnover, capital expenditure (CapEx) and operating expenditure (OpEx) KPIs by non-financial undertakings; and
- the definition, content and methodology for the disclosure of the turnover KPI including only eligible assets by asset managers.

The EBA's advice sets out recommendations relating to banks and investment firms, including the definition, content and methodology for the disclosure of GAR, off-sheet exposures, and fee and commission income KPIs.

EIOPA's advice sets out recommendations relating to insurers and reinsurers, including the definition, content and methodology for the disclosure of sustainable investments and sustainable underwriting activities KPIs.

The advice is provided in response to an EU Commission request for input to develop future delegated acts under the Taxonomy Regulation, and has been delivered to the EU Commission for consideration. Under Article 8, the Commission is due to adopt delegated acts by 1 June 2021.

IOSCO publishes work programme for 2021-2022

The Board of the International Organization of Securities Commissions (IOSCO) has published its work programme for 2021 to 2022. The programme sets out two new priorities, in particular:

- financial stability and systemic risks in relation to non- bank financial intermediation activities (NBFI). This work will continue to be led by the IOSCO Financial Stability Engagement Group; and
- risks exacerbated by the coronavirus pandemic, including misconduct risks, fraud and operational resilience. This work will be led by the IOSCO Retail Market Conduct Task Force, while IOSCO's Committees on Secondary Markets and Market Intermediaries will initiate joint work on operational risks.

Further priorities outlined in the work programme include sustainability-related issues in capital markets. This work will address three main areas:

- sustainability-related disclosures for issuers;
- sustainability-related disclosures for asset managers, including greenwashing; and
- credit rating agencies (CRAs), ESG ratings, and ESG data providers.

The programme addresses a two year horizon and will be reviewed at the end of 2021.

FCA publishes statement on cessation of LIBOR

The Financial Conduct Authority (FCA) has published a statement announcing the dates that panel bank submissions for all LIBOR settings will cease, after which representative LIBOR rates will no longer be available.

The FCA has confirmed that all LIBOR settings will either cease to be provided by any administrator or no longer be representative:

- immediately after 31 December 2021, in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings; and
- immediately after 30 June 2023, in the case of the remaining US dollar settings.

The FCA does not expect that any LIBOR settings will become unrepresentative before these dates, but has confirmed that representative LIBOR rates will not be available beyond these dates. Publication of most of the LIBOR settings will cease immediately after these dates.

The International Swaps and Derivatives Association (ISDA) has published a statement confirming that the FCA's announcement constitutes an index cessation event under the IBOR Fallbacks Supplement and the ISDA 2020 IBOR Fallbacks Protocol for all LIBOR settings. As a result, the fallback spread adjustment published by Bloomberg is fixed as of the date of the announcement for all euro, sterling, Swiss franc, US dollar and yen LIBOR settings. ISDA has also published guidance describing how the terms of the ISDA 2020 IBOR Fallbacks Protocol, the IBOR Fallbacks Supplement, the 2006 ISDA Definitions Benchmarks Annex and the ISDA Benchmarks Supplement apply to the FCA's announcement.

ICE Benchmark Administration (IBA) has published a feedback statement for the consultation on its intention to cease the publication of LIBOR settings. The FCA has advised IBA that it has no intention of using its proposed new powers to require IBA to continue the publication of any EUR or CHF LIBOR settings, or the Overnight/Spot Next, 1 Week, 2 Month and 12 Month LIBOR settings in any other currency, beyond the above intended cessation dates for such settings.

The FCA intends to consult in Q2 2021 on using proposed new powers that the UK Government is legislating to grant to it under the Benchmarks Regulation to require continued publication on a 'synthetic' basis for some sterling LIBOR settings and, for 1 additional year, some Japanese yen LIBOR settings. It will also continue to consider the case for using these powers for some US dollar LIBOR settings. Any 'synthetic' LIBOR will no longer be representative for the purposes of the Benchmarks Regulation and is intended for use in tough legacy contracts only. The FCA intends additionally to consult in Q2 2021 on which legacy contracts will be permitted to use any 'synthetic' LIBOR rate.

FCA publishes final policy on use of benchmark powers

The FCA has published its final policy on the use of its benchmark powers proposed under Articles 23A and 23D of the Benchmarks Regulation.

To help ensure an orderly wind-down of a critical benchmark, such as LIBOR, the UK Government has proposed legislation as part of the Financial Services Bill to amend and enhance the FCA's powers under the Benchmarks Regulation. The FCA launched consultations in November 2020 on the use of its benchmark powers proposed under Articles 23A and 23D.

The FCA has published feedback statements summarising the feedback received to the consultations and the FCA's response, as well as statements of policy on:

- designating an unrepresentative benchmark using new powers under proposed Article 23A; and
- requiring changes to a critical benchmark, including its methodology, using new powers under proposed Article 23D.

The FCA plans to consult in Q2 2021 on its approach to the exercise of its powers under the proposed Article 21A and Article 23C of the Benchmarks Regulation.

The FCA intends to conduct a further consultation in 2021 in relation to any decision to exercise the proposed Article 23D power in respect of LIBOR.

UK MiFIR: FCA updates statement on double volume cap

The FCA has published a revised version of its statement of policy on its power to suspend pre-trade transparency waivers for a trading venue for the purposes of the double volume cap (DVC) under UK MiFIR.

The revised statement extends the decision not automatically to apply the DVC to UK equities to all equities, and sets out the FCA's amended approach to the DVC if another jurisdiction makes an equivalence decision in respect of the UK.

UK Listings Review report published

HM Treasury (HMT) has published a report on the UK's listings regime.

The independent report is the result of the Listings Review, launched in November 2020 and chaired by Lord Hill, and sets out recommendations broadly aimed at improving the flexibility and proportionality of the UK's regulatory system to encourage more high-quality UK equity listings and public offerings.

Key recommendations include:

- modernising listing rules to allow dual class share structures in the London Stock Exchange's (LSE's) premium listing segment, subject to certain conditions;
- reducing free float requirements from 25% to 15%, and allowing companies to use other measures to demonstrate liquidity;

- rebranding and repositioning the LSE's standard listing segment to increase its appeal;
- liberalising the rules regarding special purpose acquisition companies (SPACs);
- a fundamental review of the prospectus regime, including changing requirements so admission and offers are treated separately, changing exemption thresholds and allowing the use of alternative listing documentation; and
- an annual report on the state of the City and its competitive position, to be delivered to Parliament by the Chancellor.

The review also recommends that the liability regime for issuers and directors be amended to facilitate the provision of forward-looking information, the listing process be made more efficient, the FCA's statutory objectives be updated to include a duty to take into account the UK's attractiveness as a place to do business, and consideration of how technology can be used to improve retail investor participation in stewardship.

The Government intends to examine the recommendations and set out next steps. In a statement welcoming the report, the FCA sets out an intention to publish a consultation on changes to listing rules by the summer, with a view to making relevant rules by late 2021.

BaFin plans not to increase countercyclical capital buffer until year-end

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has announced that it will leave the countercyclical capital buffer (CCyB) at 0% and currently expects not to increase it until the end of 2021.

The decision has been made in light of the borrowing requirements of the real economy and potential credit losses in the further course of the coronavirus pandemic. It is intended to give the German banking sector planning reliability and to make it easier for institutions to absorb losses from loan defaults and continue to grant loans to companies and households to the extent appropriate.

The CCyB is fixed by BaFin on a quarterly basis and had been reduced to, and since left at, 0% from 0.25% in April 2020 in response to the coronavirus pandemic. The level at which BaFin will set the CCyB after the pandemic will largely depend on how cyclical vulnerabilities and risks in the banking sector develop.

Luxembourg law clarifying certain AML/CTF provisions and extending temporary regime for marketing of UK UCITS to retail investors published

The law of 25 February 2021, which amends (i) the law of 12 July 2004 on the fight against AML/CTF Law, (ii) the law of 20 April 1977 on gambling and betting relating to sporting events (Gambling Law), (iii) the law of 25 March 2020 establishing a central electronic data retrieval system related to IBAN accounts and safe-deposit boxes (Central Register Law), (iv) the law of 10 July 2020 creating a register of fiducies and trusts (RFT Law), and (iv) the law of 17 December 2010 relating to undertakings for collective investment (UCI Law), has been published in the Luxembourg official journal.

The main objective of the new law is to clarify and add further detail to certain provisions of the AML/CTF Law and Gambling Law and to further correct three material errors which have crept into the Central Register Law and RFT Law. These adaptations are intended to refine the transposition of certain provisions of AMLD 4, Solvency 2 and CRD 4 and are in line with the recommendations of the Financial Action Task Force in this respect.

The second objective of the new law is to extend, until 31 July 2021, the temporary regime introduced in Article 186-6 of the UCI Law by the Luxembourg law of 8 April 2019 concerning the measures to be taken in relation to the financial sector, and more particularly regarding certain Luxembourg and UK funds, in case of a withdrawal of the UK from the EU (Brexit Law).

The Brexit Law, which entered into force on the date of the UK's withdrawal from the EU on 31 January 2020, provided, among other things, for a specific temporary regime in favour of UK UCITS marketed to retail investors in Luxembourg under the UCITS marketing passport in order to allow them to continue, under certain conditions, their marketing activities to retail investors in Luxembourg for a period of twelve months from the date of the UK's withdrawal from the EU (i.e. until 31 January 2021).

This temporary regime under the Brexit Law has, however, not applied a lot in practice to the extent that UK entities, including UK UCITS, have been allowed by the EU-UK Withdrawal Agreement to continue to provide their services and activities in Luxembourg on the basis of their respective EU passporting rights until the end of the EU transition period for Brexit on 31 December 2020. In this context, the law of 25 February 2021 extends the temporary regime of the Brexit Law, which ended on 31 January 2021, for an additional 6 month period until 31 July 2021, in order to ensure a smooth transition and avoid any legal uncertainty for Luxembourg investors holding units/shares in UK UCITS.

The Law of 25 February 2021 entered into force on 2 March 2021, save for the modifications made to Article 186-6 of the UCI law that entered into force on 1 February 2021 to ensure the continuity between the end of the temporary regime of the Brexit Law on 31 January 2021 and its proposed extension until 31 July 2021.

Polish Financial Supervision Authority analyses impact of changes to legal environment on CHF mortgage loan portfolios

The Polish Financial Supervision Authority (KNF) has published an analysis of the potential impact of changes to the legal environment on the CHF mortgage loan portfolios of banks operating in Poland.

The lowest estimated cost for banks – PLN 34.5 billion – is the option whereby banks and customers would enter into settlement agreements, under which the foreign currency loan would be settled from its drawdown date down as a loan taken out in Polish zlotys.

Invalidation of mortgage loans would be the most expensive option for the banks – PLN 234 billion.

China issues interim measures on implementation of recovery and resolution plans of banking and insurance institutions for consultation

The China Banking and Insurance Regulatory Commission (CBIRC) has issued the 'Interim Measures for the Implementation of Recovery and Resolution Plans for Banking and Insurance Institutions' for consultation, to provide guidance on establishing a mechanism for recovery and resolution planning by banking and insurance institutions. The purpose of the Measures is to prevent and resolve major systemic risks, ensure that key operations and services are kept uninterrupted, protect the legitimate rights and interests of financial consumers, and maintain financial stability. The Measures provide two sample recovery plans and another two sample resolution plans. The CBIRC has also issued a Q&A on the Measures.

The deadline for the submission of comments is 25 May 2021.

HKMA announces further extension of pre-approved principal payment holiday scheme

The Hong Kong Monetary Authority (HKMA) and the Banking Sector SME Lending Coordination Mechanism have announced that the pre-approved principal payment holiday scheme will be extended for another six months to October 2021.

Given the impact of the COVID-19 pandemic on some SMEs that continue to face cash-flow pressure, the Mechanism agreed that all principal payments of loans falling due between May and October 2021 by eligible corporate customers will be deferred by another six months except for repayments of trade loans, which will be deferred by 90 days.

As the scheme has been rolled out for nearly one year, in order to strike a balance between catering for the unique circumstances facing individual customers and the need for prudent risk management, the Mechanism has also agreed that, for loans which have been extended for 540 days or more cumulatively since first being drawn down (or trade loans which have been extended for 270 days or more cumulatively since first being drawn down), banks can adopt a flexible approach and consider, on a case-by-case basis and subject to prudent risk management principles, whether other forms of relief are more suitable to help the customers ride out the current difficulties.

The scheme covers all corporate customers that have an annual sales turnover below HKD 800 million and that have no seriously overdue loan payments. Similar to the scheme extension in November 2020, banks will not issue individual notifications to eligible customers regarding the deferment arrangement. Deferment requests will be handled on a 'pre-approved' basis.

FSC announces Korea's risk-free reference rate

Following the 35th financial risk assessment meeting and third taskforce meeting on benchmark interest rate reform, the Financial Services Commission (FSC) has announced the selection of the overnight repo rate of government bonds and monetary stabilisation bonds as Korea's new risk-free reference rate (RFR).

To prepare for the discontinuation of London Inter-bank Offered Rate (LIBOR), the financial authorities along with the relevant institutions have been operating a taskforce under the auspices of the working group on reforming benchmark interest rates. For a seamless and systematic transition from LIBOR, the authorities are seeking to ensure that financial institutions have adequate consumer protection measures in place and regularly monitor financial institutions' LIBOR exposures.

The FSC has indicated that the repo market's liquidity and its expandable use in derivatives markets were the main reasons for selection. After additional discussions on the calculation method of the RFR, the Korea Securities Depository, which currently provides repo rate calculations, will begin to provide RFRs from as early as the third quarter of 2021. As it has become a global standard to use RFRs as a reference rate, the authorities will continue to work on measures to promote and facilitate its use in the market.

Moreover, keeping in mind the third wave of COVID-19 and the slowing pace of economic recovery, the financial sectors agreed on 22 February 2021 to extend the period of loan payment deferrals until September 2021. In this regard, the financial authorities will further extend the temporary deregulatory and support measures for financial institutions with regard to their capital, liquidity and sales practice-related rules, while continuing to encourage the maintenance of adequate loss provisions.

The FSC has emphasised that the pandemic support measures are not permanent and it will therefore work on an orderly rollback of the pandemic-related response measures.

MAS and ABS publish information paper on managing risks of remote working in financial institutions

The Monetary Authority of Singapore (MAS) and the Association of Banks in Singapore (ABS) have jointly issued an information paper on managing new risks that could emerge from extensive remote working arrangements adopted by financial institutions (FIs) amid the COVID-19 pandemic.

The paper, entitled 'Risk Management and Operational Resilience in a Remote Working Environment', highlights that, in view of the protracted remote working arrangements and the likely adoption of hybrid working arrangements in future, it is important that FIs remain vigilant regarding remote working risks and take pre-emptive steps to mitigate them. The paper is intended to:

- raise awareness of key remote working risks in the financial sector;
- share good practices adopted by FIs to mitigate key remote working risks; and
- encourage all FIs to adopt good practices on managing remote working risks.

The paper explores possible risks to FIs in the areas of operations, technology and information security, fraud and staff misconduct, and legal and regulatory risks. It also examines the impact on people and culture that may be brought about by remote working. Drawing from the experiences of ABS member banks, the paper suggests key risk management actions needed to address these areas of concern. The risks and risk mitigation measures set out in the paper are also applicable to non-bank FIs.

The MAS encourages FIs to benchmark their remote working controls against the examples in the paper. It also expects FIs continually to review and enhance their risk management practices to address evolving risks.

MAS consults on proposed revisions to enterprise risk management, investment and public disclosure requirements for insurers

MAS has launched a public consultation on proposed revisions to MAS Notice 126 on enterprise risk management, MAS Notice 125 on investments of insurers and MAS Notice 124 on public disclosure requirements.

Following a review of policy measures that serve to mitigate systemic risk in the insurance sector, the International Association of Insurance Supervisors (IAIS) has developed the Holistic Framework for Systemic Risk in the Insurance Sector. A key feature of the Holistic Framework is an enhanced set of supervisory policy measures to facilitate macroprudential surveillance by insurance regulators, which was reflected in the updated insurance core principles (ICPs) adopted by the IAIS in November 2019.

In order to align its rules and regulations with the relevant updated ICPs, the MAS is proposing to enhance its current requirements relating to enterprise risk management, investment risk management and disclosure practices.

Aside from the requirements relating to the mitigation of systemic risks, the MAS is additionally proposing a separate set of amendments to the MAS Notice 125 to provide more clarity on its expectations regarding oversight and investment activities of insurers. The MAS is also proposing to enhance the public disclosure requirements in the MAS Notice 124 in the areas of investment risk, company profile information, technical provisions, and non-generally accepted accounting principles financial measures.

Comments on the consultation are due by 19 March 2021.

MAS updates criteria guidelines and application form regarding grant of a financial adviser's licence

MAS has updated its guidelines on the criteria for the grant of a financial adviser's licence under the Financial Advisers Act.

The guidelines have been revised to add a new requirement for financial adviser's licence applicants relating to technology risk management which stipulates that, where appropriate, the MAS may require an applicant to perform a penetration test of its internet-accessible web or mobile applications prior to deployment.

The MAS has also updated the application form for a financial adviser's licence to incorporate guidance for applicants that intend to deliver or distribute products and services via internet-accessible web or mobile applications.

Singapore Industry taskforce proposes taxonomy and launches environmental risk management handbook to support green finance

The Green Finance Industry Taskforce (GFIT), convened by MAS, has launched a public consultation proposing a taxonomy for Singapore-based financial institutions to identify activities that can be considered green or transitioning towards green. The GFIT's mandate is to help accelerate the development of green finance through four key initiatives: (i) develop a taxonomy, (ii) enhance environmental risk management practices of financial institutions, (iii) improve disclosures, and (iv) foster green finance solutions.

The consultation seeks feedback on the GFIT's recommendations on environmental objectives, focus sectors, and a 'traffic-light' system which sets out how activities can be classified as green, yellow (transition), or red according to their level of alignment with environmental objectives. Moreover, the GFIT will develop, in its next phase of work, a combination of principle-based criteria and quantifiable thresholds for activities. This is intended to provide clarity and ease the implementation of the taxonomy by financial institutions.

The GFIT has also issued a handbook that offers guidance to banks, insurers, and asset managers on best practices in environmental risk management. It will support the financial industry's efforts to implement the MAS' guidelines on environmental risk management. In addition, the GFIT is exploring technology solutions for financial institutions to enhance the quality of their climate-related disclosures. The GFIT also aims to pilot innovations that seek to solve current challenges in mobilising green finance across sectors.

Comments on the consultation are due by 11 March 2021.

RECENT CLIFFORD CHANCE BRIEFINGS

ESG initiatives – from politics to the lending market

ESG initiatives are at the forefront of today's market economy as government and corporate leaders are urging advancements in sustainable investing. These broad-sounding terms have specific implications for the economy and corporate world, influencing the public and private sector, corporate behaviour, new regulations, disclosure mandates and the lending market.

In our series of articles covering the evolving ESG landscape we explore the changing discourse of leadership (both political and corporate), how such discourse presents opportunities in finance, and how legislative action may force the hand of holdouts in industry, all with a view of producing tangible milestones to measure progress of ESG initiatives.

This article discusses how the Biden administration is prioritising ESG initiatives, first movers in the corporate sector, the lending market and issues of disclosure.

https://www.cliffordchance.com/briefings/2021/03/esg-initiatives---from-politics-to-the-lending-market.html

SPACs in Europe

Special purpose acquisition companies (SPACs) have gained increasing attention over the past year, largely due to the recent surge of SPAC offerings in the United States. While SPACs have been a less common means of capital markets financing and listing in Europe, a number of recent and anticipated offerings by SPACs indicate that this may be changing.

This briefing provides a high-level overview of common SPAC features, key considerations for SPACs in Europe as well as issues raised in offerings by SPACs to qualified institutional buyers in the United States.

https://www.cliffordchance.com/briefings/2021/02/spacs-in-europe.html

Narrower definitions for mandatory filing sectors announced for the UK national security screening regime

The UK Government has narrowed the definitions of sectors that will be subject to mandatory filing obligations for investors under the National Security and Investment Bill. The draft definitions are of practical importance to deals that are being done now, because they indicate how, when the new regime is in place, the Government is likely to use its retroactive power to call in transactions that have already closed by that time.

The Government has also indicated that after the Bill is enacted it intends to put in place various other pieces of secondary legislation with a view to commencing the new regime by the end of the year.

This briefing discusses the draft definitions.

https://www.cliffordchance.com/briefings/2021/03/narrower-definitions-for-mandatory-filing-sectors-announced-for-.html

UK Pension Schemes Act – lenders beware

On 11 February 2021, the Pension Schemes Bill received Royal Assent and became the Pension Schemes Act 2021. One of the key changes introduced by the Act in relation to defined benefit pension schemes is a new criminal offence for anyone engaging in conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received. There are no specific exceptions for lenders or loan transactions where there is a defined benefit pension scheme in the borrower group. So, lenders need to become familiar with the new regime and be able to navigate the risks posed.

The new offence is not yet in force (expected to occur at some point this year) and it is hoped that Pensions Regulator guidance soon to be consulted upon will offer some insights into the types of circumstances in which it expects to use its new powers. Despite some positive sound bites already from the Regulator that it will use its powers sparingly, the powers in the Act are drafted widely. Now the Act has Royal Assent it's a good time for lenders to take stock of the new regime and what happens next.

This briefing discusses the Act and new regime.

https://www.cliffordchance.com/briefings/2021/03/uk-pension-schemes-act--lenders-beware.html

New Slovak investment screening regime

On 5 February 2021 the Slovak Government approved a bill amending the Act on Critical Infrastructure, which introduces a new screening regime for certain sector-based investments. The amending act, which was approved in an accelerated legislative process, became effective on 1 March 2021. The grounds on which the authorities may challenge proposed investments are broad and thus open to interpretation – which may present an obstacle for future transactions in Slovakia.

This briefing discusses the new investment screening regime.

https://www.cliffordchance.com/briefings/2021/02/new-slovak-investment-screening-regime.html

The coming wave of biometric class-action suits

Companies are facing more claims under the Illinois Biometric Information Privacy Act, which regulates the collection and use of biometric data and provides individuals with a private right of action. Most recently, TikTok's parent company, ByteDance Ltd., agreed to pay USD 92 million to settle a class-action lawsuit relating to data privacy claims.

This briefing discusses the Act.

https://www.cliffordchance.com/briefings/2021/03/The-Coming-Wave-of-Biometric-Class-Action-Suits.html

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