INTERNATIONAL REGULATORY UPDATE 15 – 19 MARCH 2021

- **EMIR: EU Commission consults on draft delegated act extending clearing obligation exemption for pension scheme arrangements**
- **Capital Markets Union: EU Commission consults on referral scheme for SMEs turned down for funding**
- **EU Commission consults on supervisory convergence and single rulebook**
- **Sustainable finance: ESAs consult on taxonomy-related sustainability disclosures under SFDR**
- **EBA to make Basel III monitoring exercise mandatory**
- **CRR: EBA consults on draft RTS for implementing alternative standardised approach to market risk**
- **AMLD4: EBA consults on changes to guidelines on risk-based supervision**
- **EBA consults on recovery plan indicators and resolvability guidelines**
- **Coronavirus: ESMA announces expiration of temporary requirement for net short position holders to disclose positions of 0.1% and above**
- **MiFID2: ESMA issues supervisory statement on position limits ahead of Quick Fix amendments**
- **CRR: ITS on reporting requirements for market risk published in Official Journal**
- **CRR: ITS on supervisory reporting published in Official Journal**
- **FCA announces supervisory flexibility for RTS 27 reports and 10% depreciation notification requirements**
- **PRA publishes policy statement on holding company regulatory transaction fees**
- **SFDR: Bank of Italy provides guidance on application**
- **Luxembourg bill implementing PEPP Regulation, SFDR and Taxonomy Regulation published**
- **CSSF issues communiqué on application of SFDR and related RTS**
- **CSSF updates circular on practical rules concerning role of statutory auditors in investment firms and highlighting recent changes made to CSSF Circular 07/325**

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

To request a subscription to our Alerter: Finance Industry service, please subscribe to our Client Portal, where you can also request access to the Financial Markets Toolkit and subscribe to publications, insights and events.

If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

Marc Benzler +49 69 7199 3304

Caroline Dawson +44 207006 4355

Steven Gatti +1 202 912 5095

Lena Ng +65 6410 2215

Gareth Old +1 212 878 8539

Mark Shipman + 852 2826 8992

Donna Wacker +852 2826 3478

International Regulatory Update Editor

Joachim Richter +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname @cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

- **Coronavirus: Facility for restructuring of COVID financial debt announced**
- **CNMV given power to control advertising of cryptoassets and other assets and instruments**
- **FINMA publishes assessment on progress in recovery and resolution planning by systemically important financial institutions and financial market infrastructures**
- **MAS consults on proposed exemption framework for cross-border business arrangements of capital markets intermediaries involving foreign offices**
- **MAS revises form regarding notice of commencement of business/additional financial advisory services by persons exempt from holding a financial adviser's licence**
- **Coronavirus: MAS publishes new and revises existing notices to set out requirements for classifying a credit facility**
- **APRA consults on revised licensing approach for new banking entrants**
- **Federal Reserve writes to banks regarding LIBOR transition**
- **Recent Clifford Chance briefings: Czech foreign investment and CNMV Brexit guidelines. Follow this link to the briefings section.**

EMIR: EU Commission consults on draft delegated act extending clearing obligation exemption for pension scheme arrangements

The EU Commission has published for consultation a draft delegated act further extending a temporary exemption from the European Market Infrastructure Regulation (EMIR)'s clearing obligation for pension scheme arrangements (PSAs).

Regulation (EU) 834/2019 (EMIR REFIT) prolonged an existing exemption until 18 June 2021 and the draft delegated act would further extend it by a year. The draft act can be downloaded from the consultation webpage.

Comments on the consultation are due by 13 April 2021. The delegated act would enter into force on the day following its publication in the Official Journal.

Capital Markets Union: EU Commission consults on referral scheme for SMEs turned down for funding

The EU Commission has called for feedback on proposals to establish a referral scheme under which banks and other funding providers could direct small and medium enterprises (SMEs) whose funding applications they have turned down to providers of alternative funding. Under the Capital Markets Union action plan, published in September 2020, the Commission was tasked with analysing the merits and feasibility of an alternative funding referral scheme by the fourth quarter of 2021. This call for feedback forms the first stage of that work and seeks stakeholder comments on whether there is need for such a scheme and, if so, the potential options for its scope, features and governance.

Comments are due by 9 April 2021.

EU Commission consults on supervisory convergence and single rulebook

The EU Commission has published a targeted consultation on the functioning of the European Supervisory Authorities (ESAs), comprising the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA), and the European Insurance and Occupational Pensions Authority (EIOPA).

The consultation seeks to take stock of supervisory practices among national supervisors, supervisory convergence and how the EU's single rulebook works in practice, as well as targeted views on certain aspects related to the 2019 ESAs review, such as no action letters, peer reviews, supervisory priorities and governance.

Feedback received will feed into the preparation of a report reviewing the ESAs, which is required under the ESAs' founding regulations and was outlined in the Capital Markets Union (CMU) action plan published in September 2020. Among other things, the action plan requires the Commission to work towards an enhanced single rulebook for capital markets by assessing the need for further harmonisation and monitoring progress towards supervisory convergence, including to consider proposing measures for stronger supervisory coordination or direct supervision by the ESAs.

Comments are due by 21 May 2021.

Sustainable finance: ESAs consult on taxonomy-related sustainability disclosures under SFDR

The Joint Committee of the ESAs has launched a consultation on draft regulatory technical standards (RTS) with regard to the content, methodologies and presentation of sustainability disclosures under the EU Sustainable Finance Disclosure Regulation (SFDR).

The proposed draft RTS aim to:

- facilitate disclosures to end investors regarding the investments of financial products in environmentally sustainable activities; and
- create a single rulebook for sustainability disclosures under the SFDR and the Taxonomy Regulation by amending the draft RTS to minimise duplication.

The ESAs' proposal as to how and to what extend activities funded by financial products are taxonomy-aligned, compromises a graphical representation of the taxonomy-compliant investments of the products and a key performance indicator (KPI) calculation for that alignment alongside a statement showing that the activities funded by the products are compliant with the criteria of the Taxonomy Regulation.

The ESAs also propose to standardise the presentation of the disclosures by amending the templates to add a new section that includes the disclosures required under the Taxonomy Regulation.

Comments on the consultation are due by 12 May 2021. The ESAs plan to issue a report with final draft RTS by July 2021.

EBA to make Basel III monitoring exercise mandatory

The EBA has published a decision that will change the Basel III monitoring exercise from its current voluntary nature to a mandatory exercise from December 2021.

The EBA intends to expand the sample to more jurisdictions and credit institutions to make it more representative, as well as to reach a stable sample over time by providing authorities with a sound legal basis that frames institutions' participation.

The decision also provides competent authorities and institutions of the Member States with provisions for a reduced frequency of reporting Basel III data, i.e. annually, and for mandatory submission of only a part of the Basel templates. These provisions are intended to offload some of the reporting burden that participating credit institutions might bear otherwise.

The decision applies clear selection criteria for defining the country samples. Specifically, each Member State should apply, sequentially, the following criteria:

- all Global and Other Systemically Important Institutions (G-SIIs and O-SIIs) are included in the country sample at the highest level of EU consolidation, irrespective of their size;
- if 80% RWA coverage is not exceeded, and the sample is smaller than 30 banks, additional large banks (Tier 1 capital > EUR 3 billion or Total Assets > EUR 30 million) that are not O-SIIs are included until 80% RWA coverage is exceeded; and
- if 80% RWA coverage is not exceeded, additional medium-sized and small banks that are not O-SIIs are selected from the eligible population of three different broad business models according to predefined percentages per business model.

Additionally, the decision is intended to limit the burden on small jurisdictions, as a whole (Member State's RWA < 0.5% of the total EU RWA), by limiting the participation to O-SIIs only, irrespective of whether the 80% RWA coverage is exceeded or not.

CRR: EBA consults on draft RTS for implementing alternative standardised approach to market risk

The EBA has published for consultation draft RTS on the alternative standardised approach for market risk (FRTB-SA) under the Capital Requirements Regulation (CRR/CRR2). The draft RTS specify:

- how gross jump-to-default (JTD) amounts are to be determined for the purposes of calculating the default risk charge for non-securitisation instruments; and
- the scope of the residual risk add-on (RRAO), and in particular what an 'exotic underlying' is and which instruments bear residual risks for the purposes of Article 325u(2) of CRR2.

Together, the draft RTS provide for calculating own funds requirements for default risk and residual risks, which institutions are required to determine in addition to own funds required under the sensitivities-based method.

Comments on both consultations are due by 12 June 2021.

AMLD4: EBA consults on changes to guidelines on risk-based supervision

The EBA has published a consultation on proposed changes to its guidelines on risk-based supervision of firms' compliance with anti-money laundering and countering the financing of terrorism (AML/CFT) obligations. The changes are intended to foster convergence in supervisory practices.

The EBA notes it has observed difficulties arising in competent authorities' implementation of the risk-based approach to AML/CFT supervision since the ESAs' guidelines were originally published in 2016, which meant that supervision has not always been as effective as the legal framework set out in the Fourth Anti-Money Laundering Directive (AMLD4) and the ESAs' guidelines envisaged.

The guideline changes proposed are intended to provide step-by-step guidance to address key problematic aspects of the risk-based approach, including in relation to the following topics amongst others:

- identifying and managing ML/TF risks, including risks that may arise from de-risking practices in certain sectors or Member States;
- choice of supervisory tools; and
- cooperation between supervisory authorities and ML/TF risks associated with tax crimes.

Comments on the consultation are due by 17 June 2021.

EBA consults on recovery plan indicators and resolvability guidelines

The EBA has launched consultations on its revised guidelines on recovery plan indicators and on its draft guidelines for institutions and resolution authorities on improving resolvability.

The main objective of recovery plan indicators is to help institutions monitor and respond to the emergence and evolution of stress. While maintaining overall stability to the current recovery plan indicators framework, the revised guidelines provide additional guidance on indicators' calibration, monitoring and breaches notifications. The amendments are intended to strengthen the quality of the recovery indicators framework and contribute to the effective crisis preparedness of institutions. Comments are due by 18 June 2021.

The draft guidelines for institutions and resolution authorities on improving resolvability are intended to complement the EU legal framework in the field of resolution. They aggregate existing international standards, leverage on existing EU best practices and implement them into an EU-wide legal document. In particular, the guidelines set out requirements to improve resolvability in the areas of operational continuity in resolution, access to financial market infrastructure, funding and liquidity in resolution, bail-in execution, business reorganisation and communication. Comments are due by 17 June 2021.

Coronavirus: ESMA announces expiration of temporary requirement for net short position holders to disclose positions of 0.1% and above

ESMA has announced that its temporary requirement that holders of net short positions in shares traded on an EU regulated market must notify the relevant national competent authority (NCA) if the position reaches or exceeds 0.1% of the issued share capital expired on 19 March 2021. The requirement was initially introduced in March 2020 in response to the coronavirus pandemic and has been renewed in three month increments since then. In light of the optimistic GDP forecasts, the decrease in volatility, and the decrease in the overall level of net short positions, ESMA has decided that the measures are no longer required. The last reporting where the lower threshold of 0.1% applies will be in relation to 19 March 2021, and must be reported to NCAs by 22 March 2021. From 20 March 2021 onwards, positions holders will need to send notifications only if they reach or exceed the 0.2% threshold.

Alongside ESMA's announcement, the European Free Trade Association (EFTA) Surveillance Authority has announced that its equivalent measure applicable to EEA EFTA states' markets also expired on 19 March 2021.

MiFID2: ESMA issues supervisory statement on position limits ahead of Quick Fix amendments

ESMA has published a public statement on its supervisory approach to position limits for commodity derivatives. The statement is intended to clarify the application of position limits and to coordinate the supervisory actions of NCAs, pending the legislative changes introduced by Directive (EU) 2021/338 (MiFID Quick Fix) which apply from 2022.

ESMA's statement sets out points in relation to the following, amongst other topics:

- a policy perspective on the limits, including the burden they may create for market participants;
- the effect position limits may have on the development of new and less liquid commodity derivatives in particular; and
- ESMA's expectations regarding NCAs, and in particular that they will not prioritise supervisory actions towards entities holding positions in commodity derivatives other than agricultural commodity derivatives.

CRR: ITS on reporting requirements for market risk published in Official Journal

Commission Implementing Regulation (EU) 2021/453 laying down implementing technical standards (ITS) for the application of the CRR with regard to specific reporting requirements for market risk has been published in Official Journal. The Implementing Regulation covers:

- reference dates and reporting dates;
- reporting on thresholds set out in Articles 94(1) and 325a(1) of the CRR;
- reporting on the alternative standardised approach; and
- data exchange formats and information associated with submissions.

The Implementing Regulation enters into force on 5 April and applies from 5 October 2021.

CRR: ITS on supervisory reporting published in Official Journal

Commission Implementing Regulation (EU) 2021/451 laying down ITS for the application of the CRR with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014 has been published in the Official Journal.

The Regulation entered into force on 20 March 2021 and will apply from 28 June 2021.

FCA announces supervisory flexibility for RTS 27 reports and 10% depreciation notification requirements

The Financial Conduct Authority (FCA) has published a statement setting out temporary measures with respect to RTS 27 reports and 10% depreciation notifications as well as its plans to consult on changes to those requirements later in spring 2021.

In particular, the statement details the following in relation to the RTS 27 reporting requirement:

- issues arising from the forthcoming set of RTS 27 reports on execution quality being based on pre-Brexit data and from the EU's two-year suspension of the requirement for firms in the Temporary Permissions Regime; and
- the FCA's plans to consult on the reporting obligation with a view to abolishing it.

In relation to the 10% depreciation notification to investors requirement, the statement details:

- an extension to the temporary period of flexibility originally put in place in response to the coronavirus pandemic and Brexit transition period; and
- the FCA's plans to consult on changes to the requirement; and
- in relation to both requirements, the FCA's plans not to take action against firms for certain breaches until the end of 2021.

The FCA has updated its 'FCA expectations regarding funds in light of coronavirus (Covid-19)' page and 'Coronavirus and 10% depreciation notifications: further temporary measures for firms' statement in light of the changes.

PRA publishes policy statement on holding company regulatory transaction fees

The Prudential Regulation Authority (PRA) has published a policy statement on holding company regulatory transaction fees (PS3/21).

PS3/21 sets out the PRA's final policy following its consultation on proposed changes to the Fees Part of the PRA Rulebook (CP21/20) to introduce a regulatory transaction fee of GBP 2,500 payable in respect of an application by a parent financial holding company (FHC) or parent mixed financial holding company (MFHC) for approval or exemption under section 192Q of the Financial Services and Markets Act 2000 (FSMA).

The new rule came into force on 19 March 2021.

SFDR: Bank of Italy provides guidance on application

The Bank of Italy has provided guidance on the application of the SFDR 2019/2088 and the related draft RTS proposed by the European Supervisory Authorities (EBA, ESMA, EIOPA) to harmonise the content and presentation of the information required by the SFDR.

Many SFDR provisions came into force on 10 March 2021, while the RTS are expected to come into force on 1 January 2022. In order to guide intermediaries on measures to be adopted in between, the European Supervisory Authorities, in a statement dated 25 February 2021, recommended that intermediaries should use, during this period of time, the indications contained in the draft RTS as a useful basis for fulfilling their obligations under the SFDR. In this respect, the Bank of Italy considers that the immediate start of the process of compliance with the new RTS will allow operators to comply with the new provisions, the market to start having clear information, and the supervisory authorities to prepare to start an effective monitoring of compliance with the requirements set out under the SFDR.

Luxembourg bill implementing PEPP Regulation, SFDR and Taxonomy Regulation published

A new bill of law (Bill No. 7774) implementing certain provisions of the following EU Regulations was lodged with the Luxembourg Parliament on 26 February 2021:

- Regulation (EU) 2019/1238 of European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (PEPP Regulation);
- Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR); and
- Regulation (EU) 2020/852 of the European Parliament and the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending SFDR (Taxonomy Regulation).

The implementation of the PEPP Regulation, SFDR and Taxonomy Regulation in the Luxembourg legal framework is made through proposed amendments to the Luxembourg law of 16 July 2019 implementing the EuVECA, EuSEF, ELTIF, Money Market Fund and STS Securitisation Regulations, in order notably to:

- appoint the Luxembourg financial sector authority, the Commission de Surveillance de Secteur Financier (CSSF), and the Luxembourg insurance sector authority, the Commissariat aux Assurances (CAA), as Luxembourg competent authorities for monitoring the application of the PEPP Regulation, SFDR and Taxonomy Regulation by the Luxembourg entities subject to their respective supervision; and
- specify the supervision and investigation powers of the CSSF and the CAA for the purpose of the PEPP Regulation, SFDR and Taxonomy Regulation as well as the sanctions and other administrative measures that may be applied by the CSSF and the CAA as Luxembourg competent authorities in the context of the abovementioned EU Regulations. As an example, the sanctions that may be applied by the CSSF and the CAA in case of non-

compliance by the entities subject to their respective supervision with the relevant requirements of the PEPP Regulation, SFDR and Taxonomy Regulation include, amongst others, a ban against the responsible persons from exercising management functions, pecuniary fines on both natural and legal persons, as well as publication of decisions in relation thereto on the CSSF's and CAA's websites.

The lodging of Bill 7774 with the Luxembourg Parliament constitutes the start of the legislative procedure.

CSSF issues communiqué on application of SFDR and related RTS

The Luxembourg financial sector supervisory authority, the CSSF, has issued a communiqué concerning the application of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR) and its draft RTS.

In its communiqué, the CSSF notes the European Supervisory Authorities' (ESAs') 25 February 2021 joint supervisory statement on the effective and consistent application and national supervision of SFDR. In particular, the CSSF draws the attention of Luxembourg financial market participants (e.g. AIFMs and UCITS management companies as well as credit institutions and investment firms providing portfolio management) and Luxembourg financial advisers (e.g. credit institutions, investment firms, AIFMs and UCITS management companies providing investment advice) to the following points addressed by ESAs in their joint supervisory statement:

- the recommendation made to national competent authorities, financial market participants and financial advisers to use the draft RTS (as published on 4 February 2021) as a reference when applying the provisions of SFDR in the interim period between the application of SFDR (as of 10 March 2021) and the application of the RTS at a later date (i.e. 1 January 2022, which is the application date proposed by ESAs for the RTS); and
- the application timelines (and summary table) as clarified for some specific provisions of the SFDR, the Taxonomy Regulation and the related RTS.

In line with the ESAs' supervisory statement, and although the final RTS must still be adopted by the EU Commission and could therefore be different from the draft RTS published on 4 February 2021, the CSSF encourages Luxembourg financial market participants and financial advisers to:

- use the interim period from 10 March 2021 to 1 January 2022 to prepare for the application of the RTS; and
- use the draft RTS as a reference for the purposes of applying the provisions of Articles 2a, 4, 8, 9, and 10 of SFDR in the interim period until the final RTS are adopted by the Commission.

The CSSF has also specified in its communiqué that it will await the answer from the EU Commission to the letter published by the ESAs on 7 January 2021 in respect of the priority areas in relation to the interpretative uncertainties of SFDR, which cover (i) the application of SFDR to non-EU AIFMs and registered AIFMs, (ii) the application of the 500-employee threshold for principal adverse impact reporting on parent undertakings of a large group, (iii) the meaning of 'promotion' in the context of Article 8 products promoting environmental or social characteristics, (iv) the application of Article 9 of SFDR, and (v) the application of SFDR product rules to portfolios and dedicated funds.

CSSF updates circular on practical rules concerning role of statutory auditors in investment firms and highlighting recent changes made to CSSF Circular 07/325

The Luxembourg financial sector supervisory authority, the CSSF, has issued Circular 21/768 to update the amended CSSF Circular 03/113 on the practical rules concerning the role of réviseurs d'entreprises (statutory auditors) in investment firms, and to draw the attention of investments firms and Luxembourg branches of investments firms from other EU Member States to its communication relating to the amended CSSF Circular 07/325 on the provisions relating to credit institutions and investment firms of EU origin established in Luxembourg by way of branches or exercising activities in Luxembourg by way of free provision of services following the amendments made to CSSF Regulation No 12-02.

The main objective of the circular is to amend section 8 (professional obligations with regard to the prevention of money laundering and terrorist financing) of the audit summary report, as defined in CSSF Circular 03/113 on the practical rules concerning the role of statutory auditors in investment firms, to take into account the modifications made to Articles 49 (2) and 49 (3) of the revised CSSF Regulation No. 12-02 on the fight against AML/CTF. The revised requirements apply from the financial year ending on 31 December 2020.

A mark-up version of CSSF Circular 03/113 showing the changes to it is annexed to CSSF Circular 21/768.

The CSSF has emphasised that this update of CSSF Circular 03/113 only concerns the AML/CTF aspects, while it is foreseen that the remainder of the circular will be fundamentally revised.

Finally, the CSSF has highlighted the addition of a paragraph to point 29 of the amended CSSF Circular 07/325 to the effect that in order to prepare its report, the statutory auditor applies, mutatis mutandis, the relevant provisions for the establishment of the annual analytical audit report with regard to compliance with AML/CTF professional obligations and the conduct rules for the provision of investment services. The statutory auditor's report has to include a description of the procedures and controls in place within the branch as well as the statutory auditor's assessment. The descriptive parts of the report are made available by the branches to the statutory auditor.

Coronavirus: Facility for restructuring of COVID financial debt announced

Title II of Royal Decree-Law 5/2021 of 12 March on extraordinary measures to support business solvency in response to the COVID-19 pandemic contains a set of measures to make COVID financial debt more flexible and strengthen solvency. These measures include an authorisation for the extension of the maturity of the public guarantees granted, the maintenance of the public guarantees granted in case financing facilities are eventually transformed into participating loans on the terms of a resolution of the Council of Ministers, and a last resort and an exceptional measure consisting of the conversion of part of the public guarantee into transfers to companies and self-employed workers that meet the requirements established by the Council of Ministers.

Likewise, the Council of Ministers shall develop a Code of Good Practices, which may be signed by financial institutions to facilitate an adequate response of the financial sector to the exceptional economic situation, to strengthen business solvency and to guarantee liquidity in the future.

CNMV given power to control advertising of cryptoassets and other assets and instruments

In order to strengthen the legal framework for the protection of investors with regard to the advertising of new financial instruments and assets in the digital environment, the Second Final Provision of Royal Decree-Law 5/2021 of 12 March on extraordinary measures to support business solvency in response to the COVID-19 pandemic amends the restated text of the Securities Market Law to grant the Comisión Nacional del Mercado de Valores (CNMV) powers to control the advertising of cryptoassets and other assets and instruments which are not regulated in the Securities Market Law and which are offered as an investment option.

FINMA publishes assessment on progress in recovery and resolution planning by systemically important financial institutions and financial market infrastructures

The Swiss Financial Market Supervisory Authority (FINMA) has published its annual assessment of recovery and resolution planning by the systemically important Swiss financial institutions and noted the following further progress:

- for the first time all domestic systemically important banks have credible resolution strategies and the two large global banks have made further improvements to their global resolvability;
- FINMA continues to regard the Swiss emergency plans of the global systemically important banks as effective, although one of the banks must continue to reduce certain financial interdependencies within the group according to the agreed schedule. The large banks were also able to achieve further progress in their global resolvability, by building up the necessary capabilities or removing obstacles to the implementation of the resolution strategy. To achieve global resolvability, regulatory and supervisory requirements are still to be developed or finalised on the part of authorities, particularly in the area of liquidity; and
- the recovery plans for the two systemically important financial market infrastructures have improved since 2019, but do not yet meet the high requirements for approval.

MAS consults on proposed exemption framework for cross-border business arrangements of capital markets intermediaries involving foreign offices

The Monetary Authority of Singapore (MAS) has launched a public consultation on the introduction of an exemption framework for cross-border business arrangements involving foreign head offices or branches (Foreign Offices) of financial institutions (FIs) in Singapore (Branch Framework).

In December 2018, the MAS issued a consultation paper on the proposal to streamline the exemption framework for cross-border business arrangements between FIs in Singapore and their foreign related corporations (FRCs), by replacing the current case-by-case approval with an ex-post notification approach (FRC Framework). The proposed Branch Framework is intended to achieve the same outcome for Foreign Offices, as with the FRCs under the proposed FRC Framework.

Under the proposed Branch Framework, the Foreign Offices will be exempt from the applicable business conduct requirements under the Securities and Futures Act and/or Financial Advisers Act when they conduct regulated activities under an arrangement with their Singapore FI which is notified to the MAS. The Foreign Offices will also be exempt from the requirement to appoint overseas-based representatives to serve Singapore customers under the proposed Branch Framework. The Singapore FI will be required to comply with a set of boundary conditions, similar to those under the proposed notified FRC framework.

Further, the MAS proposes to expand the licensing exemption in regulation 32C of the Financial Advisers Regulations to also exempt Foreign Offices in respect of the financial advisory service of issuing or promulgating research analyses or reports concerning any investment product to investors in Singapore, subject to the same safeguard currently provided for under regulation 32C.

The MAS plans to implement the proposed Branch Framework on 9 October 2021.

Comments on the consultation are due by 15 April 2021.

Coronavirus: MAS publishes new and revises existing notices to set out requirements for classifying a credit facility

MAS has published Notice 811A Credit Files, Grading and Provisioning - COVID-19 (MAS Notice 811A), Notice 1005A Credit Files, Grading and Provisioning - COVID-19 (MAS Notice 1005A) and Notice 612A Credit Files, Grading and Provisioning - COVID-19 (MAS Notice 612A) to set out the credit grading treatment, for credit facilities granted support measures in response to the coronavirus pandemic, for the period beginning on 1 January 2021 and ending on 31 December 2021 (both dates inclusive) with regard to:

- all finance companies in Singapore (MAS Notice 811A);
- all merchant banks in Singapore (MAS Notice 1005A); and
- all the banks in Singapore (MAS Notice 612A).

The MAS has also made consequential amendments to the following existing notices to incorporate a new paragraph under ‘Grading of Credit Facilities’:

- Notice 811 Credit Files, Grading and Provisioning;
- Notice 1005 Credit Files, Grading and Provisioning; and
- Notice 612 Credit Files, Grading and Provisioning.

The revisions in the existing notices and the new notices are effective from 16 March 2021.

MAS revises form regarding notice of commencement of business/additional financial advisory services by persons exempt from holding a financial adviser's licence

MAS has revised its existing Form 26 - Notice of Commencement of Business/Additional Financial Advisory Services by Persons Exempt from Holding a Financial Adviser's Licence under Section 23(1)(a), (b), (c), (d), and (e). The form has been revised mainly to:

- require the exempt financial institution (EFI) to elaborate on the corporate track record of the EFI, its parent or related entity in the new financial advisory service (FAS) that the EFI is commencing;
- specify that the EFI is required to employ or appoint at least two full time individuals as appointed representatives for the provision of FAS which the EFI is seeking to commence; and
- where the applicant intends to deliver or distribute its products and services via internet-accessible web or mobile applications, require the applicant to remediate all high risk findings identified, and conduct independent validation on the effectiveness of the remediation actions taken prior to the deployment of the applications.

APRA consults on revised licensing approach for new banking entrants

The Australian Prudential Regulation Authority (APRA) has launched a public consultation on an information paper setting out an updated approach to licensing and supervising new authorised deposit-taking institutions (ADIs). The revised approach follows a review of APRA's ADI licensing regime, which is intended to incorporate learnings since the launch of the restricted ADI licensing pathway in 2018.

The information paper outlines stronger requirements for being granted a banking licence, and closer supervision of new entrants as they seek to establish themselves. The revisions outlined in the information paper include the following:

- restricted ADIs must achieve a limited launch of both an income-generating asset product and a deposit product before being granted an ADI licence;
- there is increased clarity around capital requirements at different stages for new entrants, aimed at reducing volatility in capital levels and facilitating a transition to the methodology for established ADIs over time; and
- new entrants are expected to have more advanced planning for a potential exit, including a focus on return of deposits as an option.

Comments on the consultation are due by 30 April 2021.

Federal Reserve writes to banks regarding LIBOR transition

The Board of Governors of the Federal Reserve System (FRB) has sent a letter to banks (SR 21-07) notifying them that it plans to examine their LIBOR transition plans. This communication reiterates the position taken by US financial regulators in November 2020 that entry into new contracts referencing US dollar LIBOR after 31 December 2021 would create safety and soundness risks. Firms are encouraged to cease entering into such contracts as soon as practicable, notwithstanding the fact that US dollar LIBOR will continue to be published for an extended period (1 January 2022 – 30 June 2023).

The letter includes two attachments outlining the factors that examiners should consider in assessing six key aspects of transition efforts: (1) transition planning; (2) financial exposure measurement and risk assessment; (3) operational preparedness and controls; (4) legal contract preparedness; (5) communication; and (6) oversight. US examiners will consider issuing supervisory findings and other supervisory actions if a firm is not on track to cease entering into LIBOR-based contracts by 31 December 2021.

As a result of this regulatory guidance, market participants should not expect to be able to enter into any new contracts that reference new US dollar LIBOR (such as loans or swaps) with any bank that is subject to US supervision after 31 December 2021.

RECENT CLIFFORD CHANCE BRIEFINGS

New Czech foreign direct investment screening regime

On 19 January 2021 the Czech Parliament passed a new act that aims to strengthen the control of foreign direct investments in the Czech Republic (the 'FDI Act'). The FDI Act has been introduced as a result of the new EU framework for the screening of foreign direct investments, which was adopted on 10 April 2019 and which applies from 11 October 2020. The FDI Act will have a significant impact on many strategic investments from non-EU countries. Rigorous and potentially retroactive screening of investments may deter potential non-EU investors from considering the Czech Republic as an investment target. The Ministry of Industry and Trade will be in a position to hit the brakes on in-scope transactions made by non-EU investors.

The FDI Act will become effective on 1 May 2021.

This briefing discusses the FDI Act.

https://www.cliffordchance.com/briefings/2021/03/new-czech-foreign-direct-investment-screening-regime.html

CNMV Brexit guidelines for Spain

The Spanish Securities Market Commission has released guidelines in relation to Brexit and Royal Decree-Law 38/2020 which covers a range of topics, including, amongst others, the marketing of UK collective investment undertakings, access to UK and EU trading venues and OTC trading.

This briefing looks at the guidelines.

https://www.cliffordchance.com/briefings/2021/03/cnmv-brexit-guidelines-for-spain.html

CLIFFORD CHANCE

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ