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EU Commission consults on retail investment strategy

The EU Commission has launched a public consultation on a retail investment strategy for the EU.

As announced in the September 2020 Capital Markets Union (CMU) Action Plan and following the publication of the April 2021 roadmap on a retail investment strategy, the Commission is seeking views and evidence to help it develop policies aimed at ensuring the legal framework is suitably adapted to the profile and needs of consumers, improves market outcomes, empowers retail investors and enhances their participation in the capital markets.

Views are sought on, among other things:

- financial literacy;
- digital innovation;
- pre-contractual and on-going disclosure requirements;
- review of the PRIIPs Regulation;
- suitability and appropriateness assessment rules;
- review of the investor categorisation framework;
- inducements and quality of advice;
- the complexity of financial products;
- redress;
- product intervention powers; and
- sustainable investing.

Comments are due by 3 August 2021.

The EU Commission intends to adopt a strategy in Q1 2022.

EU Commission reports on application and effectiveness of Mortgage Credit Directive

The EU Commission has published a report to the EU Parliament and Council on its review of the Mortgage Credit Directive (MCD). In particular the report sets out the Commission's assessment of the application of the MCD and its impact on consumer protection, the single market and financial stability, as well as the potential need for the supervision of credit registers.

Overall the report concludes that:

- the MCD has been effective in increasing the harmonisation of mortgage-lending practices and raising the standard of consumer protection across Member States, although the level of protection varies due to the range of options permitted in the MCD;
- there is a need to ensure that the consumer protection rules remain fit for purpose as the market develops, particularly with regard to increased digitalisation, use of artificial intelligence, and climate and environment-related policy objectives;
- the MCD has had limited impact on the creation of a single market for mortgages, predominantly due to the differences in national legislation outside the scope of the MCD, but also partly due to the hindrance to cross-border trade caused by the gold-plating of the MCD;
- an increased consumer take-up of mortgage switching could result in savings for consumers and increased competitiveness in the mortgage market;
- the MDC could be improved by extending the scope to address digitalisation and peer-to-peer lending, and by improving the enforcement by national competent authorities, particularly on cross-border aspects;
- the implementation of the MCD has resulted in consumers receiving loans that are in line with their financial capacity, which contributes to financial stability; and
- credit registries are already subject to an appropriate degree of supervision by the national data protection authorities and the European Data Protection Board, and there is no current need to extend this supervision under the MCD.

Sustainable Finance: EU Commission consults on draft Delegated Regulation on disclosure obligations under Taxonomy Regulation

The EU Commission has published for consultation a draft Delegated Act supplementing Regulation (EU) 2020/852 by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.

The draft Delegated Regulation has been developed following the February 2021 Joint Committee of the European Supervisory Authorities (ESAs) advice on key performance indicators (KPIs) disclosures for environmentally sustainable activities under Article 8 of the Taxonomy Regulation.

Alongside the call for feedback, the EU Commission has published frequently asked questions (FAQs) intended to provide guidance on the Taxonomy Regulation Article 8 Delegated Act.

Comments are due by 2 June 2021. The EU Commission is expected to adopt the proposed Delegated Act by Q2 2021.

BRRD/CRR: ITS on reporting and disclosure of TLAC and MREL published in Official Journal

Commission Implementing Regulation (EU) 2021/763 has been published in the Official Journal. The Implementing Regulation lays down implementing technical standards (ITS) for the application of the Capital Requirements Regulation (CRR) and the Bank Recovery and Resolution Directive (BRRD) with regard to the supervisory reporting and public disclosure of the minimum requirement for own funds and eligible liabilities (MREL), as well as with regard to total loss-absorbing capacity (TLAC). The Implementing Regulation relates to Articles 430(7)(5) and 434a(5) of the CRR and 45i(5) and (6) of the BRRD in particular.

The Regulation's recitals note that MREL and TLAC should be complementary elements of a common framework, and that their reporting and disclosure obligations are intended to be aligned by inclusion in a single Regulation.

The Implementing Regulation enters into force on 1 June 2021.

Benchmarks Regulation: EU Commission adopts RTS

The EU Commission has adopted three Delegated Regulations setting out regulatory technical standards (RTS) under the Benchmarks Regulation (BMR).

This follows the publication of a final report including the draft RTS by the European Securities and Markets Authority (ESMA) on 29 September 2020. The Delegated Acts specify the:

- conditions to ensure that the methodology for determining a benchmark complies with the quality requirements (C(2021) 3143);
- criteria for the competent authorities' compliance assessment regarding the mandatory administration of a critical benchmark (C(2021) 3117); and
- criteria under which competent authorities may require changes to the compliance statement of non-significant benchmarks (C(2021) 3116).

The Delegated Regulations will enter into force on the twentieth day following their publication in the Official Journal and will apply from 1 January 2022.

Securitisation Regulation: ECB to supervise risk retention and transparency requirements and resecuritisation ban for banks

The European Central Bank (ECB) has announced plans to start including compliance with the EU Securitisation Regulation's requirements for risk retention and transparency and the resecuritisation ban under Articles 6-8 as part of its direct supervision of banks.

The announcement follows recent amendments to the Regulation as part of the Capital Markets Recovery Package, which included a statement that the requirements in question are prudential and should be supervised by the competent prudential authorities.

The ECB notes that it will communicate details on its supervisory approach and model, including obligations for banks to notify their supervisor of securitisation-related activities, after defining more precisely its planned supervisory work over the coming months.

Working group on euro risk-free rates publishes recommendations on EURIBOR fallbacks

The working group on euro risk-free rates has published recommendations on events that would trigger fallbacks in EURIBOR-related contracts, as well as €STR-based EURIBOR fallback rates (rates that could be used if a fallback is triggered).

This follows the launch of two consultations on draft recommendations in November 2020. The working group's recommendations are intended to provide guidance and to represent the prevailing market consensus on EURIBOR fallback trigger events and €STR-based fallback rates, which market participants may wish to consider in their contracts. The recommendations are not legally binding.

The working group states that while there is currently no plan to discontinue EURIBOR, the development of more robust fallback language addresses the risk of a potential permanent discontinuation and is in line with the EU Benchmarks Regulation.

The secretariat for the working group on euro risk-free rates moved from the ECB to ESMA on 11 May 2021.

MiFID2/MiFIR: ESMA consults on RTS annual review report

ESMA has launched a consultation on the next MiFID2/MiFIR annual review report under Commission Delegated Regulation (EU) 2017/583 (RTS 2).

Views are sought on proposals to:

- adjust the average daily number of trades (ADNT) threshold used for the quarterly liquidity assessment of bonds;
- adjust the trade percentile to determine the SSTI pre-trade threshold for bonds; and
- not adjust the trade percentile to determine the SSTI pre-trade threshold for non-equity instruments.

The consultation closes on 11 June 2021.

ESMA expects to publish a final report and submit, if necessary, RTS to the EU Commission for endorsement in July 2021.

Global Foreign Exchange Committee requests feedback on draft guidance for pre-hedging and last look

The Global Foreign Exchange Committee (GFXC) has published draft guidance papers on the practices of 'pre-hedging' and 'last look' for feedback. The papers are intended to complement the FX Global Code's principles on the same subjects and outline expectations market participants should have, as well as controls and disclosures that could help to align practices with the Code.

Pre-hedging is a risk management tool used in principal-based, over-the-counter (OTC) markets, including foreign exchange (FX). It can assist in the provision of point-in-time risk transfer by liquidity providers to liquidity consumers in a non-centralised OTC marketplace, where there is no guarantee of price continuity or liquidity at a specific price, by helping to reduce the risk and market impact of trades that are expected significantly to impact market prices.

Last look is a practice utilised in electronic trading activities whereby a market participant receiving a trade request has a final opportunity to accept or reject the request against its quoted price.

Comments on the drafts are due by 31 May 2021. Following consideration of any feedback, the papers will be finalised at the GFXC's June 2021 meeting. The GFXC notes that it is reviewing responses to its earlier request for feedback in relation to anonymous trading, algorithmic trading and transaction costs analysis, disclosures and settlement risk, and plans to finalise those for approval at the June meeting.

Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2021 published

The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2021 (SI 2021/566) has been made and laid before Parliament.

The Order substitutes a new paragraph 6A of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062) to clarify that a firm that takes over lending agreements operated via a peer to peer lending platform, specifically because the original firm is being wound up, is not a collective investment scheme (CIS) and is therefore exempt from being authorised by the Financial Conduct Authority (FCA) for this particular activity.

The Order was made according to the negative procedure and, if not annulled by Parliament, comes into force on 18 June 2021.

Draft Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 laid before Parliament

HM Treasury (HMT) has laid the draft Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 before Parliament, together with a draft explanatory memorandum. The draft statutory instrument (SI) would amend the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/341) in order to ensure continuity for UK firms and their customers who rely on EEA systems retaining settlement finality protection as a requirement for continued membership to those systems.

In particular, the draft SI would change the Temporary Designation Regime (TDR) that was established by SI 2019/341 by modifying the consequences of a non-UK system failing to submit an application to the Bank of England (BoE) for Settlement Finality Regulations (SFR) designation within six months of the end of the transition period (TP). Instead of immediately losing settlement finality protections under the TDR, systems would retain protections for a period of 30 months following the end of the TP.

The draft SI has been laid for approval by resolution of each House of Parliament and would come into force on the day after it is made.

UK CRR (Amendment) (EU Exit) Regulations 2021 made and laid before Parliament

HMT has made the Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021 (SI 2021/558) and laid them before Parliament. SI 2021/558 is intended to correct deficiencies in the UK onshored Capital Requirements Regulation (UK CRR) so that it continues to operate effectively before the UK's Investment Firms Prudential Regime (UK IFPR) is introduced on 1 January 2022.

In particular, SI 2021/558 makes provision for exemptions for commodities dealers under articles 493 and 498 of the CRR to be prolonged from 26 June 2021, when they would otherwise lapse, until the introduction of the UK IFPR. The relevant exemptions concern own funds requirements and large exposure limits. Like the forthcoming EU Investment Firm Regulation (IFR), the UK IFPR is intended to introduce a more proportionate capital requirements regime for certain investment firms.

SI 2021/558 comes into force on 1 June 2021.

Dormant Assets Bill receives first reading

The Dormant Assets Bill, which is intended to make certain amendments to the UK Dormant Assets Scheme, has received its first reading in the House of Lords. The scheme was established by the Dormant Bank and Building Society Accounts Act 2008 and is run by Reclaim Fund Ltd (RFL), which has recently been set up as an HMT non-departmental public body. It enables unclaimed funds to be reinvested in social and environmental initiatives.

The proposed Dormant Assets Bill:

- amends the 2008 Act to expand the scope of the scheme to cover a wider range of dormant assets, including those in the insurance, pensions, investment, wealth management and securities sectors;
- enables RFL to accept transfers of unwanted assets that meet certain criteria;
- grants the Secretary of State and HMT the power to expand the type of dormant assets eligible under the scheme;
- grants HMT the power to establish other reclaim funds in the future, either in addition to RFL or as a replacement; and
- enables the social and environmental focus of the English portion of funds to be set through secondary legislation, which is consistent with the approach used in Scotland, Wales and Northern Ireland.

Alongside the bill, HMT has published two factsheets, one providing an overview of the bill itself, and another setting out the policy context and background.

The second reading of the bill has not yet been scheduled.

HM Treasury publishes response to consultation on wind-down of critical benchmarks

HMT has published its response following feedback received to its February 2021 consultation on supporting the wind-down of critical benchmarks.

The Government intends to bring forward legislation, when the Parliamentary time allows, to address the issues identified in the consultation and to supplement the measures in the Financial Services Act 2021.

The legislation will seek to reduce disruption that might arise due to the potential risk of contractual uncertainty and disputes in respect of contracts that have been unable to transition from LIBOR to another benchmark (tough legacy contracts), where the FCA has exercised the powers given to it in the Financial Services Act.

It remains the view of HMT that, wherever possible, parties should seek to transition contracts away from LIBOR ahead of the end of the 2021.

HMT has also published its reply to the Working Group on Sterling Risk-Free Reference Rates, who wrote to HMT seeking an update on this issue on 21 April 2021.

Insolvency: FCA finalises guidance for IPs on approaching regulated firms

The FCA has published finalised guidance (FG 21/4) for insolvency practitioners (IPs) on how to approach insolvencies of regulated firms. The guidance provides the FCA's view on how an IP should ensure regulated firms meet their ongoing financial services regulatory obligations following appointment in order to achieve better outcomes for consumers and market participants in the event of a regulated firm's failure.

The guidance sets out the following points, among others:

- the FCA's role in regulated firm failures;
- considerations for IPs before a regulated firm's entry into an insolvency procedure;
- the FCA's expectations for IPs at the point of a regulated firm's entry into, as well as during, an insolvency procedure; and
- expectations when a regulated firm enters into a company voluntary arrangement (CVA), scheme of arrangement or restructuring plan.

The FCA has also published a statement (FS 21/9) summarising and responding to feedback received on its earlier proposals for the guidance.

The guidance took effect from 12 May 2021.

FCA consults on new long term asset fund

The FCA has published a consultation (CP21/12) on a new authorised fund regime for investing in long term assets.

The consultation sets out proposals for a new long-term asset fund (LTAF) aimed at enabling investment in illiquid assets (including productive finance) such as venture capital, private equity, private debt, real estate and infrastructure.

The proposed rules seek to set a high-level, principles-based framework for the LTAF and cover:

- a new LTAF chapter of the Collective Investment Schemes (COLL) sourcebook;
- integration of the LTAF into the permitted links regime; and
- distribution of the LTAF.

Due to areas of overlap concerning operational infrastructure relating to the LTAF and open-ended property funds, namely proposals relating to notice periods, the FCA has also published its feedback statement (FS21/8) to its August 2020 consultation on liquidity mismatch in authorised open-ended property funds. Among other things, the FCA notes that a final policy decision on notice periods for open-ended property funds will not be made until Q3 2021 at the earliest.

The consultation closes on 25 June 2021.

UK regulators publish third edition of Regulatory Initiatives Grid

The Financial Services Regulatory Initiatives Forum has published the third edition of the Regulatory Initiatives Grid, which sets out the planned timetable for key initiatives in the regulatory landscape with the aim of supporting greater regulatory coordination.

Originally published in May 2020 and updated in September 2020, the latest version includes new initiatives relating to ESG, diversity and inclusion, and innovation, which have been introduced in response to the Chancellor's November 2020 statement on financial services, as well as initiatives from the Financial Reporting Council following its inclusion in the Forum.

The Grid also contains sector-specific chapters covering: banking, credit and lending; payment services and systems and market infrastructures; insurance and reinsurance; pensions and retirement income; retail investments; investment management; and, wholesale financial markets.

Key initiatives in the near, medium and long-term include:

- the final stages of open banking implementation;
- holding companies' CRD5 applications deadline;
- phase 5 of bilateral margin obligations;
- implementation of strong customer authentication;
- resolvability assessment framework reports deadline;
- transition from LIBOR;
- implementation of operational resilience;
- diversity in financial services policy statement; and
- implementation of Basel 3.1

The Grid also sets out initiatives relating to on-going strategic reviews, such as the Future Regulatory Framework Review, the Review of the UK Funds Regime, the Payments Landscape Review, the Review of Solvency II and the consultation on restoring trust in audit and corporate governance.

Now that the pilot phase has been completed, the Forum intends to stabilise the publication of the Grid, which is also available in dashboard and excel format.

The Forum includes representatives from the BoE, Competition and Markets Authority (CMA), FCA, Financial Reporting Council (FRC), HMT, Information Commissioner's Office (ICO), Prudential Regulation Authority (PRA), Payment Systems Regulator (PSR), and the Pensions Regulator (TPR).

Bank of Italy publishes new provisions on procedure for assessing fit and proper requirements of banks' and other financial intermediaries' key officers

The Bank of Italy has issued a new set of provisions on the procedure for assessing fit and proper requirements applicable to key officers of banks, financial intermediaries, electronic money institutions, payment institutions and depositor guarantee schemes. In particular the Bank of Italy notes that, following the adoption of the Decree of the Ministry of Economy and Finance No. 169/2020 on eligibility requirements, it is necessary to update the existing process set out under the second-level regulations of the Bank of Italy.

The new provisions enter into force on 1 July 2021.

Luxembourg bill on issuance of mortgage bonds published

A new bill of law (Bill No. 7822) on the issuance of mortgage bonds (lettres de gage) and transposing Directive 2019/2162 on the issue of covered bonds and covered bonds public supervision as well as implementing Regulation (EU) 2019/2160 on exposures in the form of covered bonds has been lodged with the Luxembourg Parliament.

The main purposes of the new bill are to transpose/implement the abovementioned EU texts into Luxembourg law by introducing a new law dedicated to the issuance of mortgage bonds and amending certain existing Luxembourg laws (including the law of 5 April 1993 on the financial sector (FSL) and the law of 17 December 2010 on undertakings for collective investment (UCI Law)), to introduce a 'product' approach to the issuance of mortgage bonds (lettres de gage) and to open, within a strict framework, the access to the activity of mortgage bonds (lettres de gage) issuance to any Luxembourg credit institution.

The current Luxembourg legal framework on banks issuing mortgage bonds (lettres de gage), which is established by the FSL, already provides for rules that are substantially similar to those of Directive 2019/2162. However, while Directive 2019/2162 provides for a regulatory framework establishing covered bonds, it does not preclude the maintenance of specific national regimes. Therefore, the bill specifies that covered bonds constitute a category of Luxembourg mortgage bonds (lettres de gage) which comply, in addition to the provisions arising from the existing Luxembourg framework, with additional conditions arising from Directive 2019/2162. As a consequence, only mortgage bonds (lettres de gage) that comply with these additional provisions can be qualified as covered bonds within the meaning of Directive 2019/2162. Therefore, the regime and the 'labelling' of the product, whether national or European, will be determined based on the combined application of the existing Luxembourg provisions and the Directive 2019/2162. Furthermore, the provisions of Directive 2019/2162 which are of general application have

been extended to all Luxembourg mortgage bonds (lettres de gage) and not only to covered bonds falling within the scope of this Directive.

The bill also adopts a 'product' approach to the issuance of mortgage bonds (lettres de gage) and a separate law will now be dedicated to the issuance of such instruments. This change of approach also means that the draft law provides for access to the activity of issuing mortgage bonds (lettres de gage) to any Luxembourg credit institution, without requiring the establishment of a specialised credit institution whose main purpose is the issuance of mortgage bonds (lettres de gage) ('Spezialbankenprinzip'), as is the case under the FSL.

The opening up of the mortgage bonds (lettres de gage) business to so-called 'universal' credit institutions should offer the latter additional possibilities to cover their financing needs by giving them access to a wider range of refinancing instruments. However, in order to provide sufficient legal certainty and adequate protection for the creditors of credit institutions operating according to the 'universal banking' principle, the issuance of mortgage bonds (lettres de gage) by the latter may only be made subject to and within strict limits (e.g. under the condition that the total of the cover assets linked to the issued mortgage bonds (lettres de gage) may not exceed at any time 20% of their total liabilities (including own funds, less eligible deposits).

The current regime for specialised mortgage bond banks will continue in parallel with the new regime allowing universal banks to access the activity of issuing mortgage bonds (lettres de gage).

The lodging of bill No. 7822 with the Luxembourg Parliament constitutes the start of the legislative procedure.

CSSF issues amending circular on semi-annual reporting of borrower related residential real estate indicators

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued CSSF Circular 21/772, amending CSSF Circular 18/703 on the introduction of semi-annual reporting of borrower related residential real estate indicators.

CSSF Circular 21/772 is addressed to all lenders in residential real estate. The objective of the circular is to modify Circular CSSF 18/703 as amended by Circular CSSF 20/737 and to provide information on an update of the data collection template.

To facilitate reading, changes are presented in the annex to the circular in 'track changes' format. The changes reflect further clarifications as already published in the corresponding CSSF FAQ paper and additional data needed to monitor compliance with Regulation CSSF No 20-08 on borrower-based measures for residential real estate credit.

The circular became applicable as of its publication date.

Polish Financial Supervision Authority sets out position on contingency plans arising under Benchmarks Regulation

The Polish Financial Supervision Authority (PFSA) has published its standpoint on how the contingency plans mentioned in Art. 28 sec. 2 of the BMR are to be reflected in contractual relationships with clients. The standpoint is addressed to commercial banks, including affiliate banks and cooperative banks.

The issues covered in the standpoint include the following:

- the scope of the BMR;
- the contingency plan in the event of material changes to a benchmark;
- the contingency plan in the event a benchmark is no longer provided; and
- how contingency plans are to be reflected in financial agreements

China releases draft implementation rules on cross-boundary wealth management connect pilot scheme in Greater Bay Area for public comment

The Guangzhou and Shenzhen offices of the People's Bank of China, the China Banking and Insurance Regulatory Commission and the China Securities Regulatory Commission have jointly issued the draft Implementation Rules on the Cross-boundary Wealth Management Connect Pilot Scheme in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA), which set out the details of operational arrangements and the supervisory approach that will apply to the scheme. Public comments are due by 21 May 2021.

Amongst other things, the Draft Implementation Rules set out:

- eligibility criteria of in-scope banking financial institutions (FIs), investors and wealth management products – FIs and individual residents in the GBA now have a clearer picture of the eligibility conditions required in order to participate in the scheme. In particular, eligible wealth management products distributed by Mainland FIs will include (a) Grade 1 to Grade 3 non-guaranteed net value wealth management products (excluding cash products) issued by eligible wealth management companies and (b) publicly offered securities investment funds rating at R1 to R3. The Draft Implementation Rules provide that investors can only use their proprietary funds to invest under the scheme and these products cannot be utilised as collateral;
- regulatory reporting/filing requirements – the Draft Implementation Rules will impose a wide range of reporting and filing obligations on Mainland FIs, including filing the 'one-to-one' partnership arrangement between FIs in the GBA, proper reporting under the RMB Cross-Border Payment & Receipt Management Information System (RCPMIS), product-related reporting for complying with asset management regulatory requirements and the relevant reporting balance of international payments; and
- quota management mechanism – the aggregate quota for Northbound Connect (i.e., individual residents of Hong Kong and Macao investing in eligible wealth management products distributed by Mainland FIs in the GBA) and Southbound Connect (i.e., individual residents of Mainland cities in the GBA investing in eligible wealth management products distributed by FIs in Hong Kong and Macao) respectively is RMB 150 billion and the investment quota of an individual investor is RMB 1 million.

When competent regulators in Hong Kong and Macao publish their supervision rules in the future, market participants may need to further consider integration/segregation business arrangements to comply with regulatory requirements applicable to different jurisdictions under the scheme and the interplay between existing business lines and the new business under the scheme. The formal launch of the scheme is still to be announced.

SFC announces launch of grant scheme for open-ended fund companies and real estate investment trusts

The Securities and Futures Commission (SFC) has announced the implementation of the Government's grant scheme to subsidise the setting up of open-ended fund companies (OFCs) and real estate investment trusts (REITs) in Hong Kong. The Financial Secretary of Hong Kong announced the scheme in the 2021-22 Budget Speech on 24 February 2021 and the Government has allocated funding of HKD 270 million to the scheme.

For OFCs successfully incorporated in or re-domiciled to Hong Kong and SFC-authorised REITs successfully listed on the Stock Exchange of Hong Kong Limited, the scheme covers 70% of eligible expenses paid to Hong Kong-based service providers, subject to a cap of HKD 1 million per OFC and HKD 8 million per REIT. The scheme will operate for three years and is open for applications starting from 10 May 2021 on a first-come-first-served basis. Details, including the eligibility criteria and application process, are set out in the attachment to the announcement.

The SFC has also published a set of frequently asked questions (FAQs) on the grant scheme for OFCs and REITs to provide guidance to the industry together with the following grant application forms:

- Application form for the grant scheme for OFCs and REITs; and
- Public OFCs – confirmation of intention to apply for a grant under the grant scheme for OFCs.

MAS consults on proposed revisions to guidelines on corporate governance for designated financial holding companies, banks, direct insurers, reinsurers and captive insurers

The Monetary Authority of Singapore (MAS) has launched a public consultation on proposed revisions to the Guidelines on Corporate Governance (CG Guidelines) for designated financial holding companies, banks, direct insurers, reinsurers and captive insurers which are incorporated in Singapore (FIs). The CG Guidelines provide guidance on good practices that these FIs should observe in relation to their corporate governance.

The current CG Guidelines comprise the principles and provisions of the 2012 version of the Code of Corporate Governance (CG Code) and additional guidelines (AGs) added by the MAS.

Under the consultation, the MAS intends to revise the CG Guidelines to incorporate the 2018 version of the CG Code. Taking into account international standards and industry good practices, the MAS is also proposing revisions to the AGs in the following areas: roles and responsibilities of the board of directors (Board), remuneration practices, and documentation of unresolved concerns of independent directors. The MAS is also proposing to add a new AG on the appointment of a non-director as a member of the Board Risk Committee. Some provisions and AGs currently within the CG Guidelines will also be shifted to the Banking (Corporate Governance) Regulations 2005 and the Insurance (Corporate Governance) Regulations 2013, including provisions on the key responsibilities of the Board.

The MAS expects locally-incorporated banks, Tier 1 insurers, and designated financial holding companies that own banks or Tier 1 insurers to fully observe the principles of the CG Code contained within the CG Guidelines. For Tier 2 insurers, captive insurers and designated financial holding companies which own Tier 2 insurers, MAS does not expect full observance of the principles, but any variation should be explained in their annual reports (for listed FIs) or company websites (for non-listed FIs).

Comments on the consultation are due by 18 June 2021.

APRA responds to feedback received on proposed measures to enhance capital adequacy of ADIs and consults on further minor revisions to APS 111

The Australian Prudential Regulation Authority (APRA) has published its responses to the feedback received to its October 2019 public consultation on proposed revisions to Prudential Standard 'APS 111 Capital Adequacy: Measurement of Capital' (APS 111) with a view to enhancing the capital adequacy of authorised deposit-taking institutions (ADIs).

The revised APS 111 will, in effect, increase the amount of capital required to support equity investments in large subsidiaries and reduce the amount required for small subsidiaries. APRA says that the change is not expected to increase system capital requirements, though the impact will differ across individual ADIs. APRA had originally planned to finalise these APS 111 reforms in 2020, but delayed this to allow entities to focus on managing the risks associated with COVID-19. With the recommencement of the policy agenda in 2021, APRA is now seeking to finalise APS 111.

Following the consultation, APRA has clarified its key proposals as follows:

- for the purposes of meeting Level 1 treatment of equity investments in banking and insurance subsidiaries requirement, Common Equity Tier 1 (CET1) capital should be calculated after all regulatory adjustments excluding any capital deduction resulting from equity investments in banking and insurance subsidiaries exceeding the 10% threshold;
- for an instrument to be classified as regulatory capital, the issuer cannot directly or indirectly have funded the purchase of the instrument. APRA has clarified that, as an example, indirect funding would include lending to a borrower on a non-recourse basis secured against any capital instruments of the ADI;
- capital instruments issued by the subsidiary ADI would be subject to the minority interest requirements of APS 111, where a non-operating holding company is head of the Level 2 group and owns other businesses; and
- an ADI will not be required to provide documentation to APRA for CET1 capital instruments, such as ordinary shares.

APRA has also clarified that, while industry did not support its proposal to remove the allowance for special purpose vehicles in regulatory capital issuance, it is maintaining its original policy proposal.

As part of the response paper, APRA is also consulting on further proposed revisions that were not included in the October 2019 consultation. The new revisions to APS 111 include measures to clarify that CET1 capital is not permitted to have any unusual features that could undermine its role as the highest quality loss absorbing capital. Comments on the consultation for

these further minor revisions are due by 10 June 2021. APRA expects to finalise changes to APS 111 in the second half of 2021, with the revised standard coming into force from 1 January 2022.

RECENT CLIFFORD CHANCE BRIEFINGS

The future of AI regulation in Europe and its global impact

On 21 April 2021, the European Commission finally released the long-awaited proposal for a Regulation on AI (AI Act), a cornerstone of its AI package. With the AI Act, the EU is confirming its role and ambition as a pioneer in the regulation of tech.

The AI Act is the first of its kind, setting out harmonised rules for AI systems in the EU. It attempts to strike a difficult balance between two key objectives: promoting innovation and harnessing the benefits of AI, on the one hand; and addressing key risks and fears AI gives rise to, on the other. In so doing, it seeks to address some of the main concerns levelled at a general, horizontal framework, favouring a risk-based approach and taking account of specific sectoral issues.

This briefing discusses what this means for businesses, and offering perspectives from around the world.

https://www.cliffordchance.com/briefings/2021/05/the-future-of-ai-regulation-in-europe-and-its-global-impact-.html

Beyond Brexit – EU vs UK margin rules for OTC derivatives

EU and UK margin rules for OTC derivatives will remain closely aligned after the end of the Brexit transition period – but some differences will remain.

The EU RTS on margin were 'onshored' in the UK from the end of the Brexit transition period with limited changes to reflect the UK's status outside the EU. The PRA and FCA are consulting on amendments to align elements of the UK Margin RTS with changes made to the EU Margin RTS following the end of the Brexit transition period. However, the end of the Brexit transition period still means some changes for both EU and UK counterparties under:

- the EU Margin RTS as a result of the UK becoming a third country for the purposes of EU law; and
- the UK Margin RTS as a result of the onshoring amendments, albeit mitigated by transitional relief until 31 March 2022.

This briefing highlights some key changes and differences that will remain between the EU and the UK Margin RTS.

https://www.cliffordchance.com/briefings/2021/05/beyond-brexit--eu-vs-uk-margin-rules-for-otc-derivatives.html

European Commission adopts long-awaited amendments for asset managers, insurers and insurance distributors on ESG integration

On 21 April 2021 the European Commission adopted a package of measures to help improve the flow of money towards sustainable activities across the European Union. The package comprised:

- the European Taxonomy Climate Delegated Act;
- a proposal for a Corporate Sustainability Reporting Directive (you can read our briefing on this development here); and
- six amending Delegated Acts on fiduciary duties, investment and insurance advice covering amendments to the AIFMD, UCITS, MiFID2, IDD and Solvency II frameworks.

This briefing provides an overview of what the Delegated Acts entail, and their impact on UK-based asset managers, insurers and insurance distributors.

https://www.cliffordchance.com/briefings/2021/05/european-commission-adopts-long-awaited-amendments-for-asset-managers-insurers-and-insurance-distributors-on-esg-integration.html

Labour rights of delivery workers who provide their services through digital platforms

On 12 May 2021 Royal Decree-Law 9/2021, of 11 May, amending the Workers' Statute to safeguard the labour rights of delivery workers who provide their services through digital platforms, was published in Spain's Official State Gazette.

This briefing discusses the amendments.

https://www.cliffordchance.com/briefings/2021/05/labour-rights-of-delivery-workers-who-provide-their-services-thr.html

Sovereign debt restructuring – proposed amendment to New York banking law through new article 7

Against the backdrop of the COVID-19 pandemic and its severe economic consequences certain New York lawmakers have introduced draft legislation designed to allow unsustainable sovereign and subnational debt to be restructured through new procedures to be built into the existing New York banking law by way of a new Article 7.

This briefing discusses the draft legislation.

https://www.cliffordchance.com/briefings/2021/05/sovereign-debt-restructuring--proposed-amendment-to-new-york-ban.html

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