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Derivatives clearing: EU Commission adopts delegated regulation specifying conditions for FRANDT status under EMIR REFIT

The EU Commission has adopted a Delegated Regulation supplementing the European Market Infrastructure Regulation (EMIR) as amended by Regulation (EU) 2019/834 (EMIR REFIT) specifying the conditions under which commercial terms for clearing services for over-the-counter (OTC) derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent (FRANDT). Under EU rules, certain OTC interest rate derivative contracts must be cleared through central counterparties (CCPs). EMIR REFIT introduces an obligation on clearing service providers to provide those services under FRANDT commercial terms from 18 June 2021.

The Delegated Regulation is intended to have the following effects, amongst others:

- improve transparency for the on-boarding process and in respect of the commercial terms on offer including price, conditions for acceptance of clearing orders, the suspension of clearing services and close-out of client positions;
- ensure that commercial terms relate to costs and risks and that prices, fees and discounts are based on objective criteria;
- ensure that notice periods for termination of services or material changes to commercial terms are fair and provide time for clients to find another provider.

The Delegated Regulation will now be subject to scrutiny from the EU Parliament and Council. The Delegated Regulation will enter into force on the day following its publication in the Official Journal and apply from six months thereafter.

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CRD4: EBA publishes final draft ITS on benchmarking of internal models

The European Banking Authority (EBA) has published a report setting out draft implementing technical standards (ITS) amending Commission Implementing Regulation (EU) 2016/2070 with regard to benchmarking of internal models under Article 78(8) of the fourth Capital Requirements Directive (CRD4).

The draft ITS include all benchmarking portfolios and metrics for use in the 2022 benchmarking exercise, which covers approved internal approaches used for own funds requirements calculation of credit and market risk, as well as internal models used for the International Financial Reporting Standard for Financial Instruments (IFRS9).

Updates include those in relation to the following topics among others:

- for market risk, an extension of the framework to include information on sensitivity-based measures (SBMs);
- for credit risk, the addition of data fields in order to understand the level of conservatism incorporated in risk estimates and resulting risk-weighted exposure amounts;
- for IFRS9 portfolios, the addition of data fields intended to collect information on parameters including the Loss Given Default (LGD); and
- changes and clarifications based on a December 2020 consultation paper (EBA/CP/2020/26).

The draft ITS will be submitted to the EU Commission for endorsement and would apply twenty days after publication in the Official Journal.

EBA publishes annual report for 2020

The EBA has published its 2020 Annual Report. The report details the EBA's work in the past year and anticipates areas of focus for the year ahead.

The report discusses the changes and challenges that COVID-19 has brought to operational and policy work, as well as the activities the EBA undertook to mitigate the impact of the pandemic on the banking sector. The EBA's work in relation to COVID-19 included guidelines on moratoria of loan repayments, assessments and monitoring of the evolution of risks, enhancing transparency, and consumer protection from financial crime.

Among other things, the report also discusses:

- the EBA's delivery on its key mandates and the majority of its 2020 work programme;
- monitoring the implementation of Basel III global standards;
- new and upcoming areas such as anti-money laundering and countering the financing of terrorism (AML/CFT), sustainable finance and digital innovation; and
- the strategic priorities for 2021 including the review of the stress-testing framework, implementation of the mandates in the domain of AML/CFT, financial innovation and sustainable finance.

IFR: ESMA and EBA publish provisional list of own funds instruments and funds for small investment firms

The European Securities and Markets Authority (ESMA) and the EBA have published a provisional list of additional instruments and funds that competent authorities may allow small and non-interconnected investment firms to use as own funds under the Investment Firms Regulation (IFR).

The list, which is intended to provide guidance to investment firms and competent authorities ahead of the application of the IFR requirements as of 26 June 2021, sets out the types of further instruments or funds in each Member State that qualify as own funds for investment firms which are not legal persons or joint-stock companies or which meet the conditions for qualifying as small and non-interconnected investment firms under IFR.

The list includes instruments and funds permitted to be used as own funds in addition to the instruments included in the Common Equity Tier 1 (CET1) list published by the EBA in accordance with the Capital Requirements Regulation (CRR). Therefore, instruments and funds of investment firms will be allocated either to the new list or the existing CET1 list, depending on their nature.

ESMA and the EBA intend to assess the terms and conditions of all instruments and funds included in the list against regulatory provisions at a later stage, and to subsequently update, maintain and publish the list on a regular basis.

MiFID2/MiFIR: ESMA publishes market data guidelines

ESMA has published a final report setting out guidelines on market data obligations for the purpose of the pre- and post-trade transparency regime under MiFID2 and MiFIR.

The guidelines, which apply in relation to market data that trading venues, systematic internalisers (SIs), approved publication arrangements (APAs) and consolidated tape providers (CTPs) are required to make public on a reasonable commercial basis (RCB), cover:

- the provision of market data on the basis of costs;
- the obligation to provide market data on a non-discriminatory basis;
- the per-user fee obligation;
- the obligation to keep data unbundled;
- transparency obligations, including the standardised key terminology and publication format, cost disclosure and auditing practices; and
- the obligation to make market data available free of charge 15 minutes after publication.

ESMA has also decided to cover market data providers offering market data free of charge in respect of the requirements not explicitly exempted in the Level 2 requirements.

The guidelines apply from 1 January 2022.

AIFMD: ESMA updates information reporting opinion and Q&A

ESMA has published an updated opinion on the collection of information for the effective monitoring of systemic risk in the context of AIFMD reporting.

The opinion provides details on a set of additional information that national competent authorities (NCAs) may require alternative investment fund managers (AIFMs) to report on a periodic basis for the purposes of monitoring systemic risk, and has been updated to provide guidance to AIFMs on risk measures, including definitions and practical examples for the reporting of value-at-risk, Net FX delta and Net commodity delta.

ESMA has also updated its questions and answers (Q&A) document on the application of the AIFMD to complement the opinion, by including three new Q&As that seek to clarify the reporting of the risks measured by Net DV01 (new question 84), NET CS01 (new question 85) and Net Equity Delta (new question 86).

Cross-border payments: FSB consults on quantitative targets proposals

The Financial Stability Board (FSB) has launched a public consultation on global targets for addressing the four challenges of cross-border payments. The targets set goals for improving cost, speed, transparency, and access for cross-border payments and, according to the FSB, will play an important role in defining the ambition of the work and creating accountability.

The quantitative targets proposed are a foundational step in the G20 roadmap for enhancing cross-border payments. They are intended to provide a common vision for the improvements that are being sought in cross-border payments services through the collaborative work of the private and public sectors.

The FSB believes that the targets have been developed so that they are directly related to the challenges, provide a clear indication of the extent of progress, are appropriately ambitious, can be readily communicated, and are meaningful to a wide range of stakeholders.

Targets have been proposed across three market segments:

- wholesale payments;
- retail payments (involving non-financial corporates or public sector entities as payers or receivers and person-to-person (P2P) payments other than remittances); and
- remittances.

The FSB has proposed end-2027 as a common target date for achieving the individual targets, except for the remittance cost target, where a 2030 date has already been set within the UN Sustainable Development Group Goal (SDG).

Comments are due by 16 July 2021.

FSB and IOSCO issue statements to support transition away from LIBOR by end 2021

The International Organization of Securities Commissions (IOSCO) has issued a statement and the FSB has published a set of documents to support a smooth transition away from LIBOR by the end of 2021.

IOSCO has published a statement reiterating that the use of LIBOR rates in new contracts should be ceased as soon as practicable, and no later than the timelines set out by the authorities and national working groups in the relevant currencies.

The FSB has published a number of statements and reports setting out its recommendations for financial and non-financial sector firms, as well as the authorities, to consider, including:

- an updated global transition roadmap that, drawing on national working group recommendations, summarises the high-level steps firms will need to take now and over the course of 2021 to complete their transition;
- a paper reviewing overnight risk-free rates and term rates, building on the concept that the tools necessary to complete the transition are currently available. The FSB cautions market participants against waiting for the development of additional tools, in particular forward-looking term risk-free rates;
- a statement on the use of the ISDA spread adjustments in cash products, to support transition particularly in loan markets, which remains an area of concern with much new lending still linked to LIBOR; and
- a statement encouraging authorities to set globally consistent expectations that regulated entities should cease the new use of LIBOR in line with the relevant timelines for that currency, regardless of where those trades are booked.

The FSB urges market participants to act now to complete the steps set out in its global transition roadmap. The FSB plans to produce its next full report on progress in November 2021.

FCA extends temporary registrations regime for cryptoasset businesses

The Financial Conduct Authority (FCA) has moved the end date of the temporary registration regime for cryptoasset firms from 9 July 2021 to 31 March 2022. The regime was established in December 2020 to allow cryptoasset firms that were in operation before 10 January 2020 and had applied for registration with the FCA under the Money Laundering Regulations prior to 16 December 2020 but whose applications were still being processed to continue trading, pending the FCA's final decision regarding their application. These firms will now be able to continue trading up to 31 March 2022 while the FCA continues with its assessments.

The FCA notes that a significantly high number of businesses did not meet the required standards under the Money Laundering Regulations and there has therefore been an unprecedented number of withdrawn applications.

PRIIPs Regulation: HMT announces extension of exemption for UCITS funds until 2026

HM Treasury (HMT) has announced that it intends to introduce legislation to extend the current exemption for Undertakings for the Collective Investment in Transferable Securities (UCITS) funds from the requirements of the onshored Packaged Retail Investment and Insurance-based Products (PRIIPs) Regulation from 31 December 2021 to 31 December 2026. Under this exemption, UCITS funds providers are permitted to produce Key Investor Information Documents (KIIDs) rather than Key Information Documents (KIDs) as per the requirements of the UCITS Directive.

HMT notes that, depending on the results of its review of the UK retail disclosure regime, changes to, or replacements for, the PRIIPs Regulation may be introduced sooner than 2026. In this instance, efforts would be made to ensure a smooth transition to the new regime for all retail investment product providers, including those marketing UCITS funds.

NPLs: PRA consults on capital treatment for non-performing exposures securitisation following Basel amendment

The Prudential Regulation Authority (PRA) has published a consultation paper (CP10/21) on the implementation of Basel standards in respect of non-performing loan (NPL) securitisations. The paper sets out how the PRA proposes to define non-performing exposure (NPE) securitisations and amend the associated capital treatment.

The proposals are intended to implement an amendment to the securitisation capital framework published by the Basel Committee on Banking Supervision (BCBS) in 2020, featuring a bespoke treatment for NPL securitisations, and include the following elements:

- definitions for non-performing exposure securitisations and qualifying non-performing exposure securitisations;
- revised rules for calculating capital requirements on exposures to NPE securitisations; and
- a new expectation regarding NPE securitisations.

Comments are due by 26 July 2021.

PRA publishes policy statement on senior manager absences

The PRA has published a policy statement on temporary, long-term absences (PS11/21).

PS11/21 provides feedback to responses to the PRA and the FCA's joint proposals regarding their expectations regarding temporary, long-term absences by senior managers for longer than 12 weeks, including:

- where an individual who performs a senior management function (SMF) is temporarily absent and the firm intends to keep the role open for that individual to return to, firms would not need to notify the PRA (and where applicable the FCA) that the individual's approval should be removed;

- the expectation that, during the long-term leave of an individual who carries out a required function, firms will appoint another individual to perform that required function in the interim; and
- a minor amendment to Form D for changes to personal information/application details and conduct breaches/disciplinary action related to conduct, to enable firms to notify the PRA and FCA that the relevant individual is taking, or returning from, leave.

The PRA has decided to make the proposed changes, which include:

- consequential amendments to the PRA Rulebook;
- an updated supervisory statement on strengthening individual accountability in banking (SS28/15);
- an updated supervisory statement on strengthening individual accountability in insurance (SS35/15); and
- an updated Form D.

The changes took effect from 2 June 2021.

BaFin consults on draft circular on application of EBA guidelines on tri-party repos for large exposures purposes

The German Federal Financial Services Supervisory Authority (BaFin) has launched a public consultation on a draft circular agreed with Deutsche Bundesbank regarding the application of the EBA guidelines (EBA/GL/2021/01) specifying the conditions for the application of the alternative treatment of institutions' exposures related to 'tri-party repurchase agreements' set out in Article 403(3) of the CRR for large exposures purposes. BaFin has notified the EBA that it intends to incorporate the guidelines into its administrative practice with effect from 28 June 2021.

Comments on the draft circular are due by 16 June 2021.

BaFin consults on draft new MREL circular

BaFin has launched a public consultation on a draft circular on the determination of the minimum requirement for own funds and eligible liabilities (MREL) for institutions and group entities whose resolution plan provides for a winding up under normal insolvency proceedings.

The new draft circular is intended to amend and replace the existing MREL circular of 20 August 2019 (Circular 12/2019 on the determination of MREL for institutions in respect of which the liquidation under normal insolvency proceedings as resolution strategy is credible and feasible). The amendments are mainly based on the Risk Reduction Act (Risikoreduzierungsgesetz) which came into force on 28 December 2019 and includes new rules for the calculation of MREL.

Comments on the draft circular are due by 30 June 2021.

German Federal Council approves Act to strengthen Financial Market Integrity

The German Federal Council (Bundesrat) has approved the 'Act on the strengthening of the integrity of the financial market' (Gesetz zur Stärkung der

Finanzmarktintegrität, FISG) proposed by the German Federal Government in 2020 and already adopted by the Bundestag on 21 May 2021.

The law, the main parts of which are expected to enter into force on 1 July 2021, has been created in reaction to the recent events in connection with the former German DAX-listed financial service provider Wirecard.

In order to improve the system of financial statements control for capital market and capital market-oriented companies, the law provides that BaFin shall be equipped with more extensive competencies in the financial statements control process. In future, BaFin will, amongst other things, be able to take actions directly against companies active in the capital market in case of any suspicion of a manipulation of financial statements and to conduct examinations with regard to all capital market-oriented companies.

Furthermore, the law will introduce an obligation for capital market companies to change their external auditors at least every ten years, a civil law liability of auditors for any breach of their duties in the audit process, more severe punishments for criminal offences in connection with financial statements as well as a prohibition of dealing with certain financial instruments for BaFin employees.

German Federal Council approves Electronic Securities Act

Bundesrat has approved the Electronic Securities Act (Gesetz zur Einführung von elektronischen Wertpapieren, eWpG).

The Act provides a legal framework for the electronic issue of securities: primarily bearer bonds (Inhaberschuldverschreibungen) and, to a more limited extent, also bearer share certificates (Inhaberanteilscheine). The Act is viewed by the German legislator as a first step within a wider intention to open German law for electronic (i.e. paperless) securities.

Where bearer bonds or share certificates are issued as electronic securities under the eWpG, the issue of 'physical' securities (in paper form) will be replaced by registration of the securities in an electronic securities register. The eWpG further establishes that electronic securities qualify as objects (Sachen) under German law and contains specific provisions on their acquisition and transfer designed to ensure that holders of electronic securities benefit from the same level of legal protection as holders of securities in paper form.

The eWpG was already adopted by the German Bundestag on 6 May 2021 and will enter into force on the day after its publication in the Federal Gazette (Bundesgesetzblatt).

CSSF issues press release regarding signature of memorandum of understanding with SEBI

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a press release on the signature of a memorandum of understanding on mutual cooperation and technical assistance relating to the supervision of securities markets between the CSSF and the Securities and Exchange Board of India (SEBI).

In its press release, the CSSF notes that this agreement covers in particular the exchange of regulatory and technical information, as well as cooperation

as regards supervision and inquiries. The memorandum took effect on 2 June 2021.

Luxembourg Law amending certain laws introduced in context of COVID-19 pandemic published

A new law of 1 June 2021 amending the following Luxembourg laws, most of which were introduced in the context of the COVID-19 pandemic, has been published in the Luxembourg official journal (Mémorial A):

- Law of 3 April 2020 on an aid scheme for businesses in temporary difficulty, as amended, and amending the amended law of 19 December 2014 on 1) social measures for the benefit of independent professional artists and intermittent workers in the entertainment industry, and 2) the promotion of artistic creation;
- Law of 18 April 2020 setting up a guarantee scheme to support the Luxembourg economy in the context of the COVID-19 pandemic, as amended;
- Law of 24 July 2020 aimed at stimulating business investment in the context of the COVID-19 pandemic, as amended; and
- Law of 5 April 1993 on the Financial Sector, as amended (LFS).

The new law's primary purpose is to extend the term of application of these laws from 30 June 2021 to 31 December 2021, as permitted by the temporary framework and required by the current pandemic situation. In addition, the new law increases the maximum amount of aid received per company from EUR 800,000 to EUR 1,800,000 for applications submitted after its entry into force and provides certain clarifications (in particular regarding the 'owner-operator' principle).

Finally, in order to encourage the stabilisation and relaunch of the economy, the new law is intended to facilitate the acquisition of shareholdings and the injection of capital into companies by CRR institutions (credit institutions or CRR investment firms) by excluding qualifying shareholdings that do not exceed a threshold of EUR 40 million and 5% of own funds of the CRR institution from the scope of the prior approval requirement referred to in Article 57 of the LFS.

The new law entered into force on 1 June 2021.

FINMA specifies transparency obligations on climate risks

The Swiss Financial Market Supervisory Authority (FINMA) has announced that it is requiring large banks and insurance companies to provide qualitative and quantitative information on climate-related risks and is amending its circulars on disclosure to this effect.

Following a dialogue with various interested parties and a public consultation, FINMA is amending its 'Disclosure – banks' and 'Disclosure – insurers' circulars. In the future, affected institutions should:

- describe the major climate-related financial risks and their impact on the business strategy, business model and financial planning (strategy);
- disclose the process for identifying, assessing and managing climate-related financial risks (risk management) as well as quantitative information

(including a description of the applied methodology) on their climate-related financial risks; and

- describe the central attributes of their governance structure in relation to climate-related financial risks.

The revised circulars will enter into force on 1 July 2021. Initially only the large banks and insurance companies (supervisory categories 1 and 2) will fall under the scope of the disclosure obligations for climate-related financial risks. The disclosure obligations are designed to be principles-based, giving the institutions flexibility when implementing them. FINMA has based its disclosure rules on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), an internationally recognised reference framework, and is therefore introducing internationally compatible disclosure requirements.

China releases draft amendment to PRC Anti-money Laundering Law for public comment

The People's Bank of China (PBoC) has issued a draft amendment to the Anti-Money Laundering Law of the People's Republic of China, seeking public comments until 30 June 2021. The draft amendment demonstrates the PRC Government's determination to reform and improve the supervision framework for AML matters in China.

Amongst other things, the following key aspects of the draft amendment are worth noting:

- enhanced disclosure requirements on ultimate beneficial owners (UBOs) – the draft amendment imposes a statutory requirement on PRC corporate entities to disclose UBOs through the National Enterprise Credit Information Publicity System operated by the State Administration for Market Regulation, which is another 'look-through' supervision measure taken by PRC regulators;
- new AML reporting on significant-value cash transaction – the draft amendment introduces a new AML reporting requirement that any entity or person, if receiving or paying cash exceeding a threshold to be designated for the provision of services/products without going through a financial institution, shall report such transactions to the China Anti-money Laundering Monitoring and Analysing Centre. The threshold and the corresponding implementing measures need to be further clarified through secondary legislation;
- reformed regulatory measures on export of AML information – under the existing regulatory framework, AML data is subject to strict local storage requirements. The draft amendment proposes to relax the restriction in this aspect. Subject to a prior filing with PRC financial regulators, PRC financial institutions may provide general compliance information and business operation information to non-PRC authorities upon their reasonable request for regulatory supervision purposes. On the other hand, the draft amendment clarifies that if non-PRC authorities require PRC financial institutions to (a) export AML information collected in the PRC; (b) seize, freeze and/or transfer PRC assets; or (c) take any measure based on non-PRC laws that are deemed inappropriate, while such authorities fail to reach an agreement with PRC authorities or apply the reciprocity principle, the relevant PRC financial institutions must

acquire the prior approval of PRC authorities before providing any assistance; and

- cooperation obligation of overseas financial institutions – the draft amendment also provides that based on an agreement with the corresponding non-PRC authorities or the reciprocity principle, PRC regulators may request offshore financial institutions which open onshore correspondent accounts or have close financial connections with the PRC to cooperate with AML and counter-terrorism financing investigations. A failure to cooperate may trigger administrative penalties for such overseas financial institutions in accordance with the draft amendment, including being added to the PRC's sanction list.

Hong Kong financial regulators issue guidance on COVID-19 vaccination programme

The Securities and Futures Commission (SFC), the Hong Kong Monetary Authority (HKMA) and the Insurance Authority (IA) have published guidance on their respective COVID-19 vaccination programmes. Amongst other things, the regulators have provided the following guidance:

- the SFC has urged licensed corporations to consider vaccination as a critical part of their operational risk management. Licensed corporations should identify functions that are critical to their business operations and client interests and encourage staff performing such critical functions to get vaccinated;
- given that banks perform critical economic functions and are expected to maintain some level of operations even under extreme pandemic control measures, the HKMA considers it necessary to strengthen the protection of bank staff and customers and to facilitate better business continuity planning. The HKMA therefore requires that all AIs should strongly encourage staff performing client-facing roles or critical support functions to get vaccinated; and
- the IA has urged insurance companies to arrange for all staff and intermediaries who come into regular contact with customers or who deliver critical functions to get vaccinated.

Critical staff who have not yet been vaccinated or are unfit for vaccination due to medical conditions are encouraged to undergo periodic COVID-19 testing.

SFC announces exemption from compulsory quarantine scheme for senior executives at licensed corporations

The SFC has published a circular to announce that the Hong Kong Government has designated certain categories of person in the financial services sector to be exempted from the compulsory quarantine arrangements in Hong Kong.

Under the exemption scheme, senior executives of licensed corporations (LCs) or their overseas affiliates who are fully vaccinated and meet the eligibility criteria may apply for an exemption from the compulsory quarantine arrangements when they return or travel to Hong Kong. Such personnel will be one of the following types of senior staff:

- Returning Executives – senior executives of an LC assuming global or regional roles who are returning to Hong Kong after travelling to foreign

places primarily for the purposes of managing the group entities for which they have responsibility; or

- Visiting Executives – global or regional heads or senior executives of financial institutions that an LC is affiliated with, who are travelling to Hong Kong primarily for the purposes of managing the LC.

An application for exemption is required to be made by the sponsoring LC of the proposed exempted executive. Amongst others, the required supporting documents include a detailed itinerary of the proposed exempted executive for the entire duration of the trip (for a Visiting Executive) or throughout the entire medical surveillance period (for a Returning Executive) in Hong Kong. The exempted person must only travel for permitted essential business activities as set out in the itinerary. Meals with others and social activities must not be part of the itinerary.

The sponsoring LC and the exempted executive are required to fully comply with the specific conditions under the exemption. Amongst others, the sponsoring LC will need to submit attestation to the SFC at specific time intervals for the exempted executive. Contraventions with the exemption conditions would result in removal of the exemption status.

Clifford Chance has prepared a briefing note on the exemption scheme.

Commencement of Credit Bureau Act 2016 and MAS responds to feedback received on proposed regulations and notices for licensed credit bureaus and approved members

The Monetary Authority of Singapore (MAS) has published its responses to the feedback received on its October 2020 consultation on the draft regulations and notices that are applicable to licensed credit bureaus (LCBs) and approved members of these LCBs (AMs). The draft regulations and notices were proposed to give effect to the objectives of the Credit Bureau Act 2016 (CBA), which was passed by the Singapore Parliament on 9 November 2016 and came into operation on 31 May 2021. Amongst other things, the MAS has confirmed its proposals as follows:

- matters relating to data integrity, data reporting and operational risk of credit reporting processes will be added under the Code of Conduct which an LCB must maintain for the LCB and its AMs;
- amendments will be made to clarify the composition of Approved Members Committee (AMC) and the types of disputes that the Dispute Resolution Committee (DRC) is responsible for;
- the period for an LCB or AM to complete the investigation and correction process for disputed data will be extended to 10 business days; and
- an LCB will be required to provide a narrative in the credit report to indicate any dispute in respect of any error or omission in any data in the credit report, where the dispute has not been resolved.

There will be a transition period for the LCB to establish the DRC and AMC within six months from the date when the Notice to Licensed Credit Bureaus and Approved Members takes effect.

Based on conclusions from the consultation, the MAS has published the following notices and regulations which were effective from 31 May 2021:

- Notice on Technology Risk Management for Licensed Credit Bureaus;
- Notice on Cyber Hygiene for Licensed Credit Bureaus;
- Notice to Licensed Credit Bureaus and Approved Members;
- Credit Bureau Regulations 2021; and
- Credit Bureau (Composition of Offences) Regulations 2021.

The Singapore Government has also gazetted the Payment Services Act 2019 (Commencement) Notification 2021 to designate 31 May 2021 as the commencement date of section 111 of the Payment Services Act 2019, which amends section 49(11) (Investigation by MAS) of the CBA.

APRA releases letter to authorised deposit-taking institutions on implementation of capital framework reforms

The Australian Prudential Regulation Authority (APRA) has released a letter to authorised deposit-taking institutions (ADIs) on the implementation of the capital framework reforms, which will come into effect from 1 January 2023. The letter follows the December 2020 consultation on the ADI capital framework, which was intended to reinforce the industry's capital position, as recommended by the Financial System Inquiry, and to improve the flexibility of the framework to respond during periods of stress.

APRA is now writing to ADIs to set out a timeline to finalise the consultation phase, and to support the banking industry's implementation of the reforms. The timeline covers key policy releases, reporting requirements, industry workshops and the process for capital model approvals. Over the course of 2021, APRA intends to:

- conduct a targeted data study, to assess potential changes to the calibration of the prudential standards;
- initiate regular workshops with industry as the standards and guidance are finalised, to provide a forum for updates and FAQs; and
- release final prudential standards, draft prudential practice guides (PPGs) and initial details of reporting requirements by the end of the year.

Further, over the course of 2022, APRA intends to finalise the PPGs and reporting requirements. There are a number of related policy revisions that will also be progressed in 2022, including the fundamental review of the trading book and public disclosure requirements. APRA intends to conduct a parallel run of capital reporting on the new framework in late 2022.

APRA expects ADIs to be fully compliant with the revised capital framework from 1 January 2023, including the determination and reporting of capital adequacy. APRA will seek assurance from the relevant accountable person at each ADI on the accuracy of capital ratios. ADIs using the internal ratings-based approach to credit risk will also need to seek APRA approval for relevant models, as part of the implementation of the reforms. Finally, APRA notes the constructive engagement with industry during the consultation period to date, and looks forward to this continuing as the reforms are finalised.

Australian regulators outline expectation for market participants to cease use of LIBOR in new contracts

The Australian Services and Investments Commission (ASIC), APRA and the Reserve Bank of Australia have outlined the importance of ensuring a timely transition away from the London Interbank Offered Rate (LIBOR) for Australian institutions.

On 2 June 2021, the FSB announced that all new use of LIBOR benchmarks should cease as soon as practicable and no later than the timelines set out by home authorities and/or national working groups in the relevant currencies. In particular, even though some USD LIBORs will continue until mid-2023, the US banking supervisors have stated that firms should cease entering into new contracts that use USD LIBOR as a reference rate as soon as practicable and in any event by no later than 31 December 2021. The FSB has also released:

- an updated global transition roadmap for LIBOR incorporating the confirmed LIBOR cessation dates and transition milestones set across the different LIBOR jurisdictions;
- a statement encouraging the adoption of overnight risk-free rates (RFR) where appropriate, while recognising the role for use of forward-looking RFR term rates in some limited cases; and
- a statement supporting the use of the International Swaps and Derivatives Association spread adjustments in cash products.

The Australian regulators have declared their support for the guidance and expectations set out by the FSB and the US banking supervisors. They expect all market participants to adhere to the deadline at the end of 2021 for the issuance of new LIBOR contracts as well as requiring them to accelerate the active conversion of legacy LIBOR contracts.

President Biden issues Executive Order on climate-related financial risk

President Biden has signed an Executive Order making it the policy of his administration to:

- advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk, including both physical and transition risks;
- mitigate that risk and its drivers while both accounting for and addressing disparate impacts on disadvantaged communities of colour and spurring the creation of well-paying jobs; and
- achieve the US's target of a net-zero emissions economy by no later than 2050.

The Executive Order directs the Secretary of the Treasury to engage with the Securities and Exchange Commission (SEC) and other members of the Financial Stability Oversight Council (FSOC) to consider the following actions:

- assessing physical and transition climate-related risks to the financial stability of the Federal Government and US financial system;
- facilitating the sharing of climate-related financial risk data among FSOC members;

- issuing a report to President Biden within 180 days on efforts by FSOC member agencies to integrate climate-related financial risk into their policies and programs, including the necessity for actions to enhance climate disclosures by regulated entities; and
- including an assessment of climate-related financial risk in the FSOC's annual report to Congress.

In addition, the Executive Order directs the Secretary of the Treasury to assess climate-related issues in the insurance industry and climate-related financial risk to financial stability.

RECENT CLIFFORD CHANCE BRIEFING

Mutual recognition and assistance in insolvency proceedings between Mainland China and Hong Kong

On 14 May 2021, the Hong Kong SAR Government and the PRC Supreme People's Court signed a Record of Meeting setting out a landmark consensus for mutual recognition and assistance of insolvency proceedings between designated Mainland municipalities and Hong Kong.

In conjunction with the Record of Meeting, the PRC Supreme People's Court (SPC) issued a guiding opinion (SPC Opinion) and the Hong Kong SAR Government issued a practical guide, both of which provide further guidance on applications for recognition and assistance in designated Mainland municipalities and Hong Kong respectively.

The SPC Opinion designates Shanghai, Shenzhen, and Xiamen as pilot cities that will recognise and provide assistance to Hong Kong insolvency proceedings. It is anticipated that the framework will be expanded to further Mainland municipalities in the future.

This briefing highlights the key features of this new framework for Hong Kong insolvency proceedings as well as its potential impact on cross-border insolvency proceedings involving both Mainland China and Hong Kong.

https://www.cliffordchance.com/briefings/2021/06/mutual-recognition-and-assistance-in-insolvency-proceedings-betw.html

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