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EMIR: Delegated Regulation extending clearing exemption for pension schemes arrangements published in Official Journal

Commission Delegated Regulation (EU) 2021/962 extending the transitional period for pension scheme arrangements (PSAs) referred to in Article 89(1)(1) of the European Market Infrastructure Regulation (EMIR) has been published in the Official Journal. The transitional period relates to a temporary exemption, which was further extended from 18 June 2021 to 18 June 2022, from the central clearing obligation for PSAs that meet certain criteria.

Delegated Regulation 2021/962 entered into force on 17 June 2021.

Cross-border distribution of funds ITS published in Official Journal

Commission Implementing Regulation (EU) 2021/955 laying down implementing technical standards (ITS) under the Regulation on cross-border distribution of funds ((EU) 2019/1156) has been published in the Official Journal.

The Implementing Regulation sets out:

- the information to be published on the websites of national competent authorities (NCAs) regarding the national rules governing marketing requirements for funds, as well as fees and charges levied by NCAs in relation to fund managers' cross-border activities; and
- the information to be communicated by NCAs to the European Securities and Markets Authority (ESMA) for the purpose of developing and maintaining a central database on cross-border marketing of alternative investment funds (AIFs) and undertakings for collective investment in transferable securities (UCITS).

The Regulation enters into force on 5 July 2021. Article 1 (NCAs to publish information on marketing requirements) and Article 3(1) (NCAs to send website links to ESMA) applies from 2 August 2021, and Article 5 (information to be communicated to ESMA for the purpose of the creation and maintenance of the central database) applies from 2 February 2022.

Money Market Funds: EU Commission adopts Delegated Regulation clarifying reverse repurchase agreement exemption

The EU Commission has adopted a Delegated Regulation amending Commission Delegated Regulation (EU) 2018/990 with regard to requirements for assets received by money market funds as part of reverse repurchase agreements.

The Commission has adopted the Delegated Regulation pursuant to the Money Market Funds Regulation (EU) 2017/1131 (MMFR) following a request from ESMA to clarify the legal bases for the application of the exemption from the supplementary qualitative and quantitative requirements on eligible investments in reverse repurchase agreements, namely to specify that the exemption applies to transactions entered into with credit institutions, investment firms and insurance undertakings established in the EU or covered by an equivalence decision adopted under the Capital Requirements Regulation (CRR), the Markets in Financial Instruments Regulation (MiFIR) or the Solvency II Directive.

If neither the EU Council nor the EU Parliament object to the Delegated Regulation, it will be published in the Official Journal and enter into force 20 days after publication.

Green Finance: EU Commission launches taxonomy compass

The EU Commission has launched an EU taxonomy compass webpage, which is intended to provide a visual representation of the contents of the EU taxonomy.

The EU taxonomy is a classification system establishing a list of environmentally sustainable economic activities.

In particular, the EU taxonomy compass aims to:

- make the contents of the EU taxonomy easier to access for a variety of users enabling them to check which activities are included in the EU taxonomy, to which objectives they contribute and what criteria they have to meet; and
- facilitate the integration of the criteria into business databases and other IT systems, providing the option to download its content in either Microsoft excel (xlsx) or JavaScript Object Notation (JSON) formats.

The EU Commission intends to update the taxonomy compass on a regular basis to include future delegated acts specifying technical screening criteria for additional economic activities that contribute to the climate and environmental objectives of the Taxonomy Regulation.

NPLs: EU Commission consults on reviewing Pillar 3 CRR disclosures and establishing data hub to encourage secondary markets

The EU Commission has launched a targeted consultation on measures intended to encourage secondary markets in non-performing loans (NPLs) by improving the comparability, quality and quantity of data on NPLs.

The Commission is considering setting up an EU-level data repository for the NPLs market and extending Pillar 3 disclosure requirements under the CRR in respect of NPLs so as to include information such as on recovery performance. The envisaged measures would be intended not to entail disproportionate reporting burdens or overlap, for example with NPL transaction templates being developed by the European Banking Authority (EBA).

Comments are due by 8 September 2021.

Banking Union: EU Council Presidency publishes progress report

The Portuguese Presidency of the EU Council has published a progress report on discussions held during the first semester of 2021 aimed at advancing and strengthening the Banking Union.

The report, dated 2 June 2021, sets out the Presidency's assessment of the outcome of meetings of the Ad Hoc Working Party on the Strengthening of the Banking Union (AHWP BU) held on 2 February, 23 February, 22 March, 27 April and 27 May 2021, which focused on the technical elements of the design of the European Deposit Insurance Scheme (EDIS), including:

- guiding principles for subsequent discussions on further strengthening the Banking Union, including EDIS;
- a hybrid model based on a liquidity-only EDIS covering the mandatory functions of deposit guarantee schemes (DGSs) as set out in the DGS Directive (DGSD), i.e. pay-out and the use of national deposit guarantee schemes (NDGSs) in resolution;
- the treatment of different entities, including non-Capital Requirements Directive (CRD)/CRR entities, institutional protection schemes (IPSs) and their members, and third-country branches;
- the interaction between EDIS and the options and national discretions (ONDs) provided for in the DGSD;
- the inclusion of preventative and alternative measures in the scope of EDIS, including a debate on the possible articulation between EDIS and the current review of the crisis management and deposit insurance (CMDI) framework; and
- risk-based contributions (RBC) under EDIS, including the possibility of adding indicators based on sovereign exposures to the calculation method.

ECB consults on revised guide to fit and proper assessments

The European Central Bank (ECB) has published for consultation a revised version of its guide to fit and proper assessments and its fit and proper questionnaire. The guide sets out the policy, supervisory practices and processes which are applied by competent authorities when assessing the suitability of a credit institutions' management body members and key function holders.

The ECB has revised the guide to:

- give closer consideration to severe supervisory findings that may impact an appointee's suitability, even when the appointee will not have direct responsibility for them;
- provide further detail on how board members will be reassessed if new material facts emerge after their appointment;
- request that banks subject under national law to an ex post assessment regime file their fit and proper applications before making appointments;
- consider knowledge in climate-related and environmental risk when assessing the collective suitability of the management body; and
- consider gender balance when assessing the collective suitability of the management body.

The fit and proper questionnaire has been updated to address calls from the industry to simplify and streamline the process, particularly the requests for information from supervised entities and appointees. It is also intended to reflect new policies and practices developed since the document was last revised, such as the increasing use of artificial intelligence and digitalisation.

Comments are due by 2 August 2021.

FCA and BoE publish statement encouraging switch to SOFR in US dollar interest rate swap markets

The Financial Conduct Authority (FCA) and the Bank of England (BoE) have published a joint statement encouraging market participants to switch to SOFR in US dollar interest rate swap markets from 26 July 2021.

This follows guidance published by US regulators that banks in the US should cease entering into new contracts that use USD LIBOR as a reference rate as soon as practicable and no later than the end of 2021. Similar guidance was issued to regulated firms in the UK by the Prudential Regulation Authority (PRA) and FCA in a 'Dear CEO' letter on 26 March, and has been reinforced globally by the Financial Stability Board (FSB). In support of this guidance, the CFTC's Market Risk Advisory Committee's Interest Rate Benchmark Reform Subcommittee (MRAC Subcommittee) voted to recommend 26 July for switching interdealer trading conventions for USD linear interest rate swaps from USD LIBOR to SOFR.

An FCA survey of UK market participants in the US dollar interest rate swaps market, including liquidity providers and interdealer brokers (IDBs) identified strong support for a change in the interdealer trading convention, which would see SOFR rather than LIBOR become the default price from 26 July 2021.

In line with the MRAC Subcommittee's recommendation, the FCA and the BoE have made a statement supporting and encouraging all participants in the interdealer US dollar interest rate swaps market to take the steps necessary to prepare for and implement these changes to market conventions on 26 July and shift liquidity away from USD LIBOR to SOFR.

PRA publishes update on temporary permissions regime

The PRA has published a statement providing an update on its approach to firm authorisation under the temporary permissions regime (TPR).

The PRA notes that there has been a considerable volume of applications from EEA banks and insurers, and that it expects to take authorisation decisions on a case-by-case basis dependent on its resourcing and governance processes, which may result in multiple decisions taken on the same date. The PRA also notes that the timing of authorisation should not be taken as an indication of its view of risks at individual institutions.

Taskforce on Innovation, Growth and Regulatory Reform publishes report

The Taskforce on Innovation, Growth and Regulatory Reform (TIGRR) has published a report setting out recommendations on the UK's approach to regulation following its withdrawal from the EU.

The report sets out broad proposals for a new regulatory framework in the UK based on a common law approach and a proportionality principle, as well as sector-specific proposals covering areas such as financial services and investment reform, and data protection.

In relation to financial regulation, proposals include:

- restoring a common law principles-based approach, such as a more discretionary approach to position limits and to the calculation of margin;
- changes to pensions and insurance regulation to enable greater investment across the UK, including changes to the charge cap and investment allowance, and to the matching adjustment and risk margins;
- amending the Seed Enterprise Investment Scheme (SEIS) and the Enterprise Investment Scheme (EIS) to maximise private equity and venture capital investment in growth industries, including adjusting the age eligibility requirements, increasing the maximum level of SEIS investment and committing to continue the EIS beyond 2025;
- ensuring the regulatory framework supports fintech, including expanding open banking to open finance and bringing forward enabling legislation as soon as possible, adopting a graduated regulatory approach for challenger banks, reducing anti-money laundering burdens for open banking and fintech services, and launching a central bank digital currency (CBDC) pilot within 12 to 18 months; and
- amending disclosure and transparency requirements, including removing the Markets in Financial Instruments Directive (MiFID2) requirement to provide costs and charges reports to professional investors and eligible counterparties, removing the Market Abuse Regulation (MAR) investment recommendation disclosure requirements for wholesale clients, and confining the Packaged Retail Investment and Insurance Products (PRIIPs) key information document disclosure requirement to genuinely complex products and exempting vanilla bonds.

The report also suggests a more proportionate approach to disclosure and reporting requirements under the UK Cross-Border Payments Regulation (CBPR), DGSD, Mortgage Credit Directive (MCD) and Payment Accounts Directive (PAD).

In relation to data protection, it is proposed that the UK GDPR be replaced with a new framework aimed at:

- providing citizens with greater control of their data; and
- removing restrictions on artificial intelligence, such as removing or reforming the restriction on automated decision-making and explicit consent under Article 22 of the GDPR.

The UK Government intends to publish a response to the report in due course.

BaFin publishes supervisory principles on use of algorithms in decision-making processes by financial institutions

The German Federal Financial Services Supervisory Authority (BaFin) has published a set of supervisory principles on the use of algorithms in decision-making processes by the financial institutions it supervises. The guidance is intended to promote the responsible use of big data and artificial intelligence (BDAI) and to facilitate control of the associated risks.

BaFin has indicated that, even though the principles constitute preliminary ideas for minimum supervisory requirements relating to the use of artificial intelligence, they can already serve as guidance for financial entities. They primarily apply to algorithms that exhibit three key features which characterise modern BDAI methods – considerable complexity, short recalibration cycles and a high level of automation.

CSSF amends its FAQ on statuses of PFS with respect to PFS status relating to granting of loans to public

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued an update of its frequently asked questions (FAQ) (Part II) on the statutes of Professionals of the Financial Sector (PSF), together with the related communiqué.

In the revised FAQ, the CSSF provides:

- its interpretation of the notion of 'public' within the meaning of Article 28-4 of the amended law of 5 April 1993 on the financial sector (FSL); and
- details on when the CSSF considers that a lending activity is directed towards the public.

Therefore, in the absence of a legal definition of the term 'public' in the FSL, the CSSF considers that a lending activity is not directed towards the public where:

- loans are granted to a limited circle of previously determined persons; or
- the nominal value of a loan amounts to EUR 3,000,000 at least (or the equivalent amount in another currency) and the loans are granted exclusively to professionals as defined in Article L. 010-1. 2) of the Consumer Code.

In all other cases, the CSSF will carry out an assessment on a case-by-case basis.

CSSF updates FAQs on UCI Law and AIFM Law concerning application of MiFID to Luxembourg investment fund managers

The CSSF has updated the following FAQs to clarify the circumstances in, and the extent to which, MiFID2 may apply to Luxembourg investment fund managers (IFMs), including UCITS management companies and alternative investment fund managers (AIFMs), as well as to their third-party delegates and their investment advisers:

- FAQs on the law of 17 December 2010 on undertakings for collective investment (UCI Law); and
- FAQs on the law of 12 July 2013 on AIFMs (AIFM Law).

The updated FAQs primarily seek to clarify the CSSF's approach with respect to the MiFID licensing requirements and other MiFID rules that may apply to Luxembourg IFMs as delegates in the context of the provision of collective portfolio management functions, and analyse the scope of application of MiFID requirements in case of delegation of these portfolio management and marketing functions to Luxembourg or other EU entities qualifying themselves as authorised IFMs (Delegate IFM) or other EU/non-EU third-party delegates that do not qualify as IFMs (Third-Party Delegate).

The updated FAQs also consider the provision of investment advice to or by Luxembourg IFMs, and clarify that investment advice is not included in the activity of collective portfolio management within the meaning of the UCI Law and AIFM Law, although MiFID rules will, in principle, apply to third parties providing investment advice relating to financial instruments (within the meaning of MiFID) to a Luxembourg IFM that enable it to take an investment decision, as this investment advice would qualify as personal recommendations issued to a client under MiFID.

Finally, the updated FAQs reiterate that third parties may benefit from certain specific or partial exemptions under the law of 5 April 1993 on the financial sector (including more particularly the intragroup service exemption) when they provide investment services under MiFID to Luxembourg IFMs. In any case, however, the third parties must be able to demonstrate that they fall within the scope of an exemption, should they provide such services without an authorisation under the MIFID applicable framework.

IFMs are expected to comply with the CSSF FAQs as soon as possible and by 31 December 2021 at the latest, considering the best interests of investors.

CNMV consults on draft circular on cryptoasset advertising

Following its April 2021 consultation on a future draft circular on cryptoasset advertising, the Spanish Securities Market Commission (CNMV) has now launched a new public consultation on the relevant draft circular, which is intended to:

- develop the rules, principles and criteria which advertising activities for cryptoassets should be subject to;
- define its scope; and
- define the faculties of the CNMV with regard to the supervision and control of cryptoasset advertising in accordance with the provisions of Article 240

bis of the restated text of the Spanish Securities Act, approved by Royal Legislative Decree 4/2015, of 23 October (texto refundido de la Ley del Mercado de Valores aprobado por Real Decreto Legislativo 4/2015, de 23 de octubre).

Comments are due by 31 August 2021.

MAS reissues Notices to Merchant Banks as a result of changes in empowering provision

The Monetary Authority of Singapore (MAS) has cancelled the following Notices under the Monetary Authority of Singapore Act (Chapter 186 of Singapore) (MAS Act) which were applicable to merchant banks, and reissued them under the Banking Act (Chapter 19 of Singapore) (Banking Act), as a result of changes in empowering provision from the MAS Act to the Banking Act:

- Notice 1004 on Credit Facilities to Merchant Bank Directors, Staff and Related Concerns has been cancelled and reissued as Notice 1004 on Exposures and Credit Facilities to Merchant Bank Related Concerns under the Banking Act;
- Notice 1012 on Credit Facilities to a Single Borrower or Group of Borrowers has been cancelled and reissued as Notice 1012 on Credit Facilities to a Counterparty or Group of Companies under the Banking Act;
- Notice 1015 on Minimum Liquid Assets and Liquidity Coverage Ratio has been cancelled and reissued with the same title under the Banking Act; and
- Notice 1111 on Risk Based Capital Adequacy Requirements for Merchant Banks Incorporated in Singapore has been cancelled and reissued with the same title under the Banking Act.

The aforementioned notices have been revised following the December 2020 consultation by the MAS on proposed amendments to Regulations, Notices and Guidelines arising from the Banking (Amendment) Act 2020 and other changes.

The revised MAS Notices are effective from 1 July 2021.

MAS revises Notice on Appointment of Head of Treasury and Register of Dealers

The MAS has renamed its Notice 753 on the ‘Appointment of Head of Treasury and Register of Dealers’ to ‘Register of Dealers’ (MAS Notice 753).

Amongst other things, the MAS Notice 753 has been revised to:

- delete the reference to ‘Head of Treasury’; and
- add a requirement for banks in Singapore to ensure that the dealing activities of its treasury operations are carried out by dealers whose professional behaviour in the market is fit and proper.

The revised MAS Notice 753 is effective from 1 July 2021.

MAS revises Notice on Capital Funds, Net Head Office Funds and Head Office Capital Funds

The MAS has renamed its Notice 601 on 'Capital Funds, Net Head Office Funds and Head Office Capital Funds' to 'Capital Funds and Head Office Capital Funds' (MAS Notice 601).

Amongst other things, the MAS Notice 601 has been revised to delete the reference to net head office funds for the purposes of the definition of 'capital funds' in the Banking Act.

The revised MAS Notice 601 is effective from 1 July 2021.

MAS revises Notice on Collection of Statistical Returns for Credit Cards

The MAS has revised its Notice 759 on the Collection of Statistical Returns for Credit Cards (MAS Notice 759).

Amongst other things, the MAS Notice 759 has been revised to:

- remove references to the ACU and DBU operations of a bank; and
- clarify that the returns in Appendix I and II of MAS Notice 759 are applicable to any credit card, charge card or unsecured credit facility linked to a debit card which is reflected in the books of a card issuer in relation to its operations in Singapore.

The revised MAS Notice 759 is effective from 1 July 2021.

MAS revises Notice on Collection of Statistical Returns for Unsecured Credit Facilities

The MAS has revised its Notice 760 on Collection of Statistical Returns for Unsecured Credit Facilities (MAS Notice 760).

MAS Notice 760 has been primarily revised to clarify the requirements for the preparation of quarterly returns by all banks in Singapore on their unsecured non-card credit facility portfolio.

The revised MAS Notice 760 is effective from 1 July 2021.

MAS revises Notice on Minimum Asset Maintenance Requirements for foreign banks in Singapore

The MAS has revised its Notice 640 Minimum Asset Maintenance Requirements (MAS Notice 640). Amongst other things, the MAS Notice 640 has been revised to:

- remove references to foreign offshore banks and merchant banks;
- update the definition of 'housing loan' and 'scheme member';
- update the asset maintenance requirements for foreign full banks and foreign wholesale banks;
- amend the formula for the computation of asset maintenance ratio; and
- amend the requirements relating to submission of asset maintenance returns.

The revised MAS Notice 640 is effective from 1 July 2021.

MAS revises Notice 637 on Risk-based Capital Adequacy Requirements for Banks Incorporated in Singapore and Notice 656 on Exposures to Single Counterparty Groups for Banks Incorporated in Singapore

The MAS has revised its Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore (MAS Notice 637) and Notice 656 on Exposures to Single Counterparty Groups for Banks Incorporated in Singapore (MAS Notice 656).

The MAS Notice 637 has been revised mainly to:

- reflect that the transitional arrangements for the adoption of the standardised approach for counterparty credit risk (SA-CCR) and the revised capital requirements for bank exposures to central counterparties will cease on 31 December 2021;
- set out an alternative treatment for the measurement of derivative exposures for leverage ratio calculation, using a modified version of SA-CCR; and
- implement other technical revisions to the credit risk framework.

The MAS Notice 656 has been revised mainly to:

- reflect that the transitional arrangements for the adoption of the standardised approach for credit risk under MAS Notice 637 will cease on 31 December 2021;
- refine the definitions of 'counterparty', 'covered bonds', 'multilateral development bank' and 'mortgage institution';
- clarify the treatment for an exempt exposure that is secured by eligible financial collateral or eligible credit protection; and
- set out other technical and editorial revisions.

The revised MAS Notice 637 and MAS Notice 656 are effective from 1 July 2021.

SGX consults on proposed rules changes related to National Stock Exchange International Financial Service Centre – SGX Connect

The Singapore Exchange Derivatives Trading Limited (SGX-DT) and Singapore Exchange Derivatives Clearing Limited (SGX-DC) have launched a public consultation on proposed amendments to their Clearing Rules and Futures Trading Rules in relation to the operation of the National Stock Exchange of India International Financial Service Centre (NSE IFC) – SGX Connect.

The SGX has incorporated in Gujarat International Finance Tec-City a special purpose vehicle, SGX India Connect IFSC Private Limited (SGX-SPV). Under the Connect, SGX-SPV will be admitted as a trading member of NSE IFSC and clearing member of NSE IFSC Clearing Corporation Limited. These arrangements will enable the trading and clearing of Nifty products under the Connect.

Amongst other things, the proposed amendments to the Clearing Rules are intended to:

- set out SGX-DC's capacity as central counterparty for its clearing members' trades arising from the Connect;
- introduce a new source of fund (Connect Layer) as additional financial resources over and above the SGX-DC Clearing Fund, to mitigate additional risk arising from the Connect;
- clarify the set of circumstances (trigger events) arising from the operation of the Connect under which the Connect Layer and the Clearing Fund, if necessary, might be applied; and
- introduce new default management tools, in particular the termination of all positions held by clearing members and SGX-SPV at SGX-DC for the trades arising from the Connect upon the occurrence of a trigger event or in the event that the NSE IFSC – SGX Connect ceases to operate.

The proposed amendments to the FTR are intended to, among other things, clarify the obligations that:

- SGX-DT trading members will have in relation to access to the relevant Nifty-based derivatives contracts (Connect contracts) that will be made available for trading through the Connect; and
- trading members will have pertaining to negotiated large trades in Connect contracts, as well as margining and settlement of Connect contracts.

Comments on the consultation are due by 7 July 2021.

ASIC extends transitional relief for foreign financial services providers following Federal Budget

The Australian Securities and Investments Commission (ASIC) has extended the transitional relief for foreign financial services providers (FFSPs) from the requirement to hold an Australian financial services (AFS) licence, pending the outcome of the Australian Government's consultation about the regulation of FFSPs. The extended relief follows the announcement by the Government that it will consult on regulatory relief for FFSPs as part of the Federal Budget released on 11 May 2021.

The ASIC Corporations (Amendment) Instrument 2021/510 is intended to extend the transitional relief for another 12 months until 31 March 2023. The amendment instrument also delays the commencement of the ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199 until 1 April 2023.

As the Australian Treasury will consult on proposals that affect licensing of FFSPs, ASIC has paused its assessment of licence applications lodged by FFSPs pending the outcome of the Government's announced reforms, unless the applicant requests that it continues with the assessment of their application.

ASIC has also indicated that, during this extended transitional period, it will consider new applications for individual temporary licensing relief or new standard or foreign AFS licence applications from entities that cannot rely on the transitional relief.

ASIC publishes findings from review of 31 December 2020 financial reports

ASIC has announced the results from its review of the financial reports of 85 listed entities for the year ending 31 December 2020. The review was conducted as part of ASIC's ongoing risk-based reviews of financial reports.

The report recommends that directors and auditors focus on impairment of non-financial assets, particularly as businesses navigate through the continuing impact of the COVID-19 pandemic, as ASIC identified some entities with businesses adversely affected by the pandemic that did not appear to give sufficient attention to the reporting of asset values and financial position. In particular, ASIC has highlighted the following key focus areas for 31 December 2020 financial reports:

- impairment and other asset values;
- operating and financial review;
- consolidation accounting;
- lease accounting;
- off-balance sheet arrangements;
- revenue recognition;
- provisions; and
- other matters.

When an entity makes material changes to information previously provided to the market following inquiries made by ASIC, ASIC makes a public announcement. In addition to improving the level of market transparency, these announcements are intended to make directors and auditors of other entities aware of ASIC's concerns so that they can avoid similar issues.

ASIC has also indicated that it will continue to make inquiries where companies appear to have made unrealistic and unsupportable assumptions about future cash flows, and where disclosures did not clearly identify the impact of COVID-19 conditions on the business.

ASIC publishes new market integrity rules for capital

ASIC has made new market integrity rules for capital, which are intended to provide protections for investors and the integrity of the market, whilst simplifying the capital framework for market participants. The ASIC Market Integrity Rules (Capital) 2021 will replace the existing separate rulebooks for securities market participants and futures market participants to create a common set of rules for capital.

Consistent with ASIC's proposals in its consultation paper on proposed changes to ASIC's capital requirements for market participants (CP 302), the capital rules are intended to:

- move futures market participants from the existing net tangible asset regime to a risk-based regime, subject to a minimum core capital requirement of AUD 1,000,000;
- increase the minimum core capital requirement for securities market participants to AUD 500,000;

- include a requirement to calculate an underwriting and sub-underwriting risk amount; and
- simplify the capital requirements by removing redundant rules and forms.

Further, based on the responses to submissions (Report 692) on CP 302, ASIC has decided to:

- introduce an extension of the proposed transition period from six to 12 months;
- modify the proposed liquidity requirements by replacing the proposed 12-month cash flow requirement with a three-month cash flow requirement, together with a requirement to maintain a 12-month liquidity plan;
- include the ability to offset a right-of-use asset against a corresponding lease liability, with the net amount (if positive) to be treated as an excluded asset; and
- adjust various components of the commodity position risk requirements and FX position risk as they apply to principal positions.

ASIC has indicated that market participants will be required to comply with the capital rules from 17 June 2022. Market participants can also provide a written notice to ASIC if they wish to opt into the capital rules before 17 June 2022.

RECENT CLIFFORD CHANCE BRIEFINGS

Climate change litigation in Italy – the dawn of a new era?

Italy had seemed to be one step behind other countries where climate change litigation is concerned, with no climate-related litigation having been commenced in Italy in the past years. However, things may be about to change.

This briefing discusses recent developments in Italy that relate to climate change litigation.

https://www.cliffordchance.com/briefings/2021/06/climate-change-litigation-in-italy--the-dawn-of-a-new-era-.html

New schemes to facilitate the entry of overseas investment managers into Japan

To make Japan an international financial hub, the Japanese Government has established a new system to attract overseas investment managers by reducing some of the barriers to entering the Japan market.

An amendment to the Financial Instruments and Exchange Act (FIEA) was enacted on 19 May 2021 to facilitate the entry of overseas investment managers (OIMs) into Japan's financial market. The amendment to the FIEA was made based on the Japanese Financial Services Agency's 'First Report ー Regulatory Policy: Toward an International Financial Hub' published by the Working Group on Capital Market Regulations of the Financial System Council on 23 December 2020, with the aim of, among other things, expanding and deepening the Japanese market by welcoming OIMs to Japan.

Under the amendment to the FIEA, two new schemes have been established to allow the following two types of OIMs to conduct business in Japan:

- investment managers operating under the supervision of overseas regulatory authorities and having a proven track record; and
- general partners (GPs) of limited partnerships with overseas qualified investors.

This briefing discusses the two new schemes.

https://www.cliffordchance.com/briefings/2021/06/new-schemes-to-facilitate-the-entry-of-overseas-investment-manag.html

SEC enforcement action against First American underscores importance of accurate disclosures of cybersecurity risk

Signalling the increasing risks companies face not just from cybersecurity breaches but also disclosures about those vulnerabilities, the Securities and Exchange Commission announced a settlement with First American Financial Corporation on 15 June 2021, regarding a cybersecurity vulnerability in the company's systems that exposed hundreds of millions of financial documents, many of which contained sensitive personal data such as social security numbers and financial information. First American agreed to an approximately USD 500,000 civil penalty along with an order to cease and desist from committing or causing future violations. Of note, the SEC charges against First American were not based on inadequate cybersecurity; rather, the Commission fined the issuer for inaccurate and incomplete public disclosures stemming from the company's failure to ensure that senior executives were adequately informed of the vulnerability and the resulting risk to the company. The settlement underscores how important it is for senior executives to stay informed about a company's cybersecurity health.

This briefing discusses the enforcement action.

https://www.cliffordchance.com/briefings/2021/06/sec-enforcement-action-against-first-american-underscores-import.html

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