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EU Commission publishes proposals for AML/CFT legislative package

The EU Commission has published a package of legislative proposals intended to strengthen the EU's anti-money laundering and counter the financing of terrorism (AML/CFT) rules. The package comprises:

- a regulation establishing a new EU AML/CFT Authority (the AMLA);
- a regulation on AML/CFT, containing directly-applicable rules on areas such as customer due diligence and beneficial ownership;
- a sixth directive on AML/CFT (AMLD6), which will replace the existing Directive 2015/849/EU (AMLD4 as amended by AMLD5); and
- a revision of Regulation 2015/847/EU on transfers of funds intended to assist the tracing of cryptoasset transfers.

Key elements of the proposals include:

- establishing the AMLA by 2023 (with a view to starting most of its activities in 2024);
- introducing more detailed rules on customer due diligence, beneficial ownership and the powers and tasks of supervisors and FIUs;
- expanding the scope of EU AML/CFT rules to cover the entire crypto sector, which will include requiring cryptoasset transfers to be fully traceable and prohibiting anonymous cryptoasset wallets;
- introducing an EU-wide limit of EUR 10,000 for cash payments (national limits under EUR 10,000 can remain in place); and
- establishing black and grey lists of third countries identified by the Financial Action Task Force, or separately by the EU, as posing significant money laundering risks and applying mitigating measures as appropriate.

The package is published alongside several other legislative proposals, including a proposal for a directive on the access of competent authorities to centralised bank account registries through a single access point. The new directive would extend the access to the bank account registers single access point, which will be established by AMLD6 and operated by the Commission, to any authorities designated by Member States as competent for the prevention, detection, investigation or prosecution of criminal offences under Directive (EU) 2019/1153.

EU Commission consults on functioning of securitisation framework

The EU Commission has launched a consultation on the functioning of the EU securitisation framework, as mandated under Article 46 of the Securitisation Regulation.

Among other things, the Commission is seeking stakeholder feedback on:

- whether the regulation has been successful in achieving its objectives;
- the functioning and impact of the provisions regarding private securitisations;
- whether the information provided to investors under the regulation is appropriate, sufficient and proportionate for their due diligence purposes;
- certain proposals designed to improve clarity around the regulation's jurisdictional scope;
- whether there is a need for an equivalence regime in the area of simple, transparent and standardised (STS) securitisations;
- whether the requirement to disclose information on environmental performance and sustainability should be extended to other securitisations other than just those with residential loans or auto loans or leases as the underlying exposure; and
- whether there is a need for establishing a system of limited licensed banks performing the functions of securitisation special purpose entities (SSPEs).

Comments are due by 17 September 2021.

EBA consults on amendments to technical standards on currencies with constraints on availability of liquidity assets

The European Banking Authority (EBA) has launched a consultation on proposed amendments to its implementing technical standards (ITS) on currencies with constraints on the availability of liquid assets. Article 419 of the Capital Requirements Regulation (CRR) specifies a number of derogations applicable to these currencies for the purpose of the calculation of the liquidity coverage ratio (LCR).

In light of its recent data analysis, which demonstrates that there is no longer a shortage in the supply of liquid assets in the NOK currency, the EBA is proposing to remove NOK from the ITS list. It is not proposing to amend the corresponding regulatory technical standard (RTS) which specifies the use of derogations and the conditions of their application, as doing so will result in an empty list. Instead, the EBA intends to update the RTS if, during a future assessment, it observes that there is a currency that should be added to the list.

Comments are due by 16 October 2021.

MiFID2: ESMA consults on remuneration requirements

The European Securities and Markets Authority (ESMA) has launched a consultation on draft guidelines on certain aspects of the MiFID2 remuneration requirements.

The draft guidelines are intended to clarify and foster convergence in the implementation of certain aspects of the new requirements, replacing the existing ESMA guidelines on the same topic issued in 2013. The consultation paper builds on the text of the 2013 guidelines, which have been substantially confirmed, while those parts now incorporated into the MiFID2 framework have been removed. In addition, the consultation paper:

- takes into account new requirements under MiFID2;
- provides additional details on some aspects that were already covered under ESMA's 2013 guidelines; and
- incorporates the results of supervisory activities conducted by national competent authorities on the topic.

ESMA will consider the responses it receives to the consultation paper by 19 October 2021 and expects to publish a final report and final guidelines by the end of Q1 2022.

MiFID2: ESMA reports on use of sanctions and measures by national competent authorities

ESMA has published its third report on the use of sanctions and measures by national competent authorities (NCAs) under MiFID2.

The report contains an overview of the applicable legal framework and information on the sanctions and measures imposed by NCAs in accordance with Article 71(4) of MiFID2 from 1 January to 31 December 2020.

The report notes that NCA activity in this area increased in 2020 compared to 2018 and 2019, both in terms of the total number of sanctions and measures and the amount of fines. Overall, in 23 (out of 30) EU/EEA Member States,

NCAs imposed a total of 613 sanctions and measures in 2020 for an aggregated value of about EUR 8.4 million, compared to 371 sanctions and measures and about EUR 1.8 million, issued by NCAs of 15 EU/EEA Member States, in 2019.

Basel Committee consults on changes to process for reviewing G-SIB assessment methodology

The Basel Committee on Banking Supervision (BCBS) has published for consultation its proposals to amend the process of reviewing the assessment methodology for global systemically important banks (G-SIBs) under the Basel Framework.

Currently, the BCBS reviews the G-SIB assessment process on a three-year cycle. It is now proposing to replace that cycle with ongoing monitoring and review. The new process, introduced by a technical amendment to the framework, will include monitoring:

- recent developments in techniques or new indicators that could be used for the assessment of systemic risk;
- emerging evidence on the effectiveness of the G-SIB regime; and
- structural changes that could impact the effectiveness of the regime.

If this monitoring work identifies material unintended consequences or deficiencies with respect to the framework's objectives, then the BCBS will consider changes to the regime.

Comments on the proposals are due by 3 September 2021.

UK MiFIR/BMR: draft Markets in Financial Instruments, Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations laid for sifting

HM Treasury (HMT) has laid a draft copy of the Markets in Financial Instruments, Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations 2021 for sifting. The regulations would be made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018 and are intended to address deficiencies in relation to the retained Benchmarks Regulation (BMR) and MiFIR as well as the Financial Promotions Order 2005.

In particular, the draft regulations would:

- remove the non-discriminatory access regime for exchange-traded derivatives (ETDs);
- amend two Commission delegated regulations to ensure the efficacy of the regulatory framework for the transparency and comparability of low carbon benchmarks; and
- amend certain exemptions to the financial promotions regime for relevant markets in order to ensure that they apply to UK markets.

If made as drafted, the regulations would enter into force on 13 October 2021. A 'de minimis' impact assessment has been published alongside the draft regulations and explanatory memorandum.

HM Treasury consults on AML/CFT regulatory and supervisory regime and amendments to MLRs

HMT has launched a call for evidence on the UK's AML/CFT regulatory and supervisory regime. The regulatory regime review focuses in particular on the Money Laundering Regulations (MLRs) and the Office for Professional Body AML/CFT Supervision (OPBAS) Regulations.

HMT is seeking feedback on:

- the overall effectiveness of the regimes and their scope;
- whether key elements of the regulations are operating as intended; and
- the structure of the supervisory regime, including the work of OPBAS to improve the effectiveness and consistency of professional body AML supervisors (PBSs).

Alongside the call for evidence, HMT has also published for consultation its proposed amendments to the MLRs through a new statutory instrument to be laid in Spring 2022. These amendments are designed to ensure that the UK continues to meet the international standards set by the Financial Action Task Force (FATF) and to clarify certain areas in light of feedback received following the implementation of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020.

Key proposals include:

- introducing exemptions for particular payment service providers (PSPs) and other market participants that present low ML/TF risk;
- permitting AML/CFT supervisors to request access to suspicious activity reports (SARs) submitted by their supervised populations;
- amending certain definitions to better align with the Financial Services and Markets Act and Regulated Activities Order;
- expanding the scope to cover the risks of potential breaches, non-implementation or evasion of the targeted financial sanctions related to proliferation financing;
- implementing the FATF 'travel rule' for cryptoasset transfers, which would require cryptoasset exchange providers and custodian wallet providers to send and record certain information on the transfer's originator and beneficiary; and
- making minor amendments designed to improve the effectiveness of supervisors' information sharing and gathering activities.

Comments on both consultations are due by 14 October 2021.

HM Treasury consults on SM&CR for financial market infrastructures

HMT has published a consultation on its intention to create a Senior Managers and Certification Regime (SM&CR) for financial market infrastructures (FMIs) supervised by the Bank of England (BoE).

Views are broadly sought on the overall intention to introduce a regulatory framework for individual accountability within FMIs, as well as any specific considerations for FMIs, namely central counterparties (CCPs), central

securities depositories (CSDs), recognised payment systems, and specified service providers to these recognised payment systems.

HMT proposes to grant the BoE new powers, analogous to the existing powers which the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) have in respect of the existing SM&CR for banks, insurers and other authorised persons under the Financial Services and Markets Act 2000 (FSMA), to implement, supervise and enforce:

- a senior managers regime, including establishing a statutory requirement for senior managers to take reasonable steps to prevent and/or stop regulatory breaches in their areas of responsibility;
- a certification regime, which would require firms to certify, both on recruitment and annually thereafter, any individual who performs a specified function that could cause significant harm to the FMI or its users as fit and proper; and
- conduct rules for all employees, which set minimum, high-level requirements regarding the conduct of individuals where necessary or expedient for advancing the BoE's financial stability objective.

HMT notes that the BoE would publicly consult on new rules in advance of them coming into effect.

Comments are due by 22 October 2021.

HM Treasury responds to call for evidence on overseas framework

HMT has published a response to the December 2020 call for evidence on the framework for overseas access to UK markets.

The response sets out a summary of feedback received and outlines the Government's views and proposed next steps, which include:

- conducting a review of the overseas regulatory perimeter in relation to the territorial scope of the prohibition on carrying on a regulated activity in the UK and the restriction on financial promotions capable of having an effect in the UK; and
- following the above review, consulting on potential changes to the UK's regime for overseas firms and activities in Q4 2021.

FCA consults on UK PRIIPs regulation and KIDs RTS

The FCA has published a consultation paper on proposed changes to the scope of the onshored Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation and to the RTS on key information documents (KIDs).

The proposals, which aim to mitigate potential harm to retail investors, include:

- introducing rules to clarify the scope of the UK PRIIPs Regulation in relation to corporate bonds;
- introducing interpretative guidance on the meaning of PRIIPs being 'made available' to retail investors; and
- amending the KIDs RTS.

The FCA intends to make final rules, issue guidance and amend the RTS by the end of 2021, with any changes coming into effect on 1 January 2022.

The consultation closes on 30 September 2021.

FCA publishes Dear Chair letter on ESG and sustainable investment funds

The FCA has published a letter to chairs of authorised fund managers (AFMs) setting out guiding principles that explain the FCA's pre- and post-authorisation expectations for funds with an ESG and sustainability focus.

Noting a high volume of applications for authorisation of funds with a sustainable focus, many of which are poor-quality, the letter seeks to provide further clarity on how regulatory requirements apply in the context of ESG investments.

The guiding principles are targeted at FCA authorised investment funds that make specific ESG-related claims, not those that integrate ESG considerations into mainstream investment processes, and comprise of a general principle of consistency and three supporting principles setting out how rules apply in the context of the design, delivery and disclosure of responsible and sustainable investment funds.

The principles, annexed to the letter, have been developed with reference to existing regulatory requirements and complement recent FCA proposals to implement climate-related disclosure rules, as well as obligations applicable to some UK authorised firms under the EU's Sustainable Finance Disclosure Regulation (SFDR) in relation to their cross-border business.

FCA and Bank of England encourage market participants in switch to RFRs in LIBOR cross-currency swaps market from 21 September

The FCA and the BoE have issued a statement indicating that they support and encourage liquidity providers in the LIBOR cross-currency swaps market to adopt new quoting conventions for interdealer trading based on risk-free rates (RFRs) instead of LIBOR from 21 September 2021. This is intended to facilitate a further shift in market liquidity toward RFRs and follows engagement with UK market participants, including liquidity providers and interdealer brokers (IDBs), to determine support for a change in the quoting conventions of LIBOR cross-currency swaps in the interdealer market. In the period leading up to 21 September 2021, the FCA and the Bank of England intend to continue to engage with market participants and relevant international authorities to determine whether market conditions allow the switch to proceed smoothly.

UK Resolution Regime: BoE consults on MREL and publishes operational guide on bail-in

The BoE has published a consultation paper reviewing its approach to setting a minimum requirement for own funds and eligible liabilities (MREL) and an operational guide on executing bail-in.

The consultation paper is the second stage of the MREL Review, following a December 2020 discussion paper, and seeks views on revisions to the BoE's MREL statement of policy, including:

- resolution strategy thresholds and the calibration of MREL within those thresholds;
- MREL eligibility; and

- intragroup MREL issues.

Comments on the consultation paper are due by 1 October 2021. The BoE intends to make changes by the end of 2021 in the form of a revised statement of policy to apply from January 2022.

The operational guide provides practical, technical information on the processes and arrangements that may be involved in the BoE's execution of a bail-in resolution, covering pre-resolution contingency planning, the resolution weekend, the bail-in period, and the end of bail-in and exit from resolution. Template resolution instruments have been annexed to the guide to give an indication of how a bail-in might be operationalised.

The publications are accompanied by a statement on the UK's resolution regime by Dave Ramsden, Deputy Governor for Markets and Banking, providing an overview of progress made and the two resolution publications.

PRA publishes modification for material risk takers

The PRA has published a direction for and guidelines on modification by consent for CRR firms to exclude employees from identification as material risk takers (MRTs).

The modification is available in respect of employees who meet the pay based criteria but are deemed not to have a material impact on the firm's risk profile.

The PRA will consider any applications on a case-by-case basis. Where granted, the modification has effect in respect of the relevant performance year, with a new application required for each performance year.

PRA publishes policy statement on higher paid material risk taker definition

The PRA has published a policy statement containing its feedback to responses to its consultation paper on remuneration and the correction to the definition of 'higher paid material risk taker'.

The PRA received two responses to the consultation and has decided to publish the policy as proposed. The policy statement also contains amendments to the remuneration part of the PRA Rulebook and an updated supervisory statement on remuneration.

The policy statement will be of interest to PRA-authorised banks, building societies, and PRA-designated firms, and the changes outlined in it took effect from 23 July 2021.

BaFin consults on circular on minimum requirements for feasibility of a bail-in

The German Federal Financial Services Supervisory Authority (BaFin) has launched a consultation (12/2021) on a draft circular on the minimum requirements for the feasibility of a bail-in (Mindestanforderungen zur Umsetzbarkeit eines Bail-in - MaBail-in), which extends the previous circular of April 2021.

The draft circular provides specifications for the management information systems (including technical set-up) of the institutions concerned, which are required for the provision of information on instruments of ownership regarding the efficient implementation of the resolution tools.

While MaBail-in previously only covered institutions and group entities designated as resolution entities in the resolution plan, it now generally covers institutions and group entities for which the resolution plan does not provide for resolution actions, provided they are part of a resolution group or relevant third-country subsidiaries. This is to ensure the transfer of losses within the resolution group (from subsidiaries to the resolution entity) or within the third-country group (from third-country subsidiaries established in Germany to the respective legal entity in the third country).

BaFin has invited comments on the draft circular by 18 August 2021.

Bank of Italy, Consob, IVASS and Ministry of Economy and Finance announce formation of FinTech Committee

The Bank of Italy, Consob, IVASS and the Ministry of Economy and Finance have announced the entry into force of the decree regulating the operations and powers of the 'FinTech Committee', a steering committee set up at the Ministry of Economy and Finance, and the conditions and methods for carrying out the experimentation in Italy of tech-finance activities.

The experimentation will allow fintech operators to test innovative solutions, benefiting from a simplified transitional regime and in constant dialogue with the supervisory authorities: Bank of Italy, Consob, IVASS. At the same time, the authorities responsible for regulation will be able to observe the dynamics of technological development and identify the most appropriate and effective regulatory interventions to facilitate the development of fintech, limiting the spread of potential risks from the outset.

In order to access the trial, operators will have to submit to the relevant supervisory authority projects relating to services, products or processes in the banking, financial or insurance sector and bring benefits to end users or contribute to market efficiency. Projects should be sufficiently advanced for testing as well as economically and financially viable.

The supervisory authorities will provide indications specifying the criteria for admission to the experimentation established by the decree and will, by September 2021, determine the time window for sending applications for admission to the 2021 sandbox.

Bank of Italy amends supervisory provisions on banks' corporate governance

The Bank of Italy has published an update consisting of amendments to specific aspects of the regulatory framework intended to strengthen banks' governance arrangements in line with CRD5 and better to align the current provisions with the evolving European and local regulatory provisions.

At the same time, the Bank of Italy has implemented Article 88(1)(4) and (5) of the Capital Requirements Directive as amended by Directive (EU) 2019/878 (CRD5) on lending to key officers and their related parties, requiring banks to comply within six months of the entry into force of the provisions. For this purpose, 'members of the management body' are defined as persons performing administrative, managerial and control functions.

Bank of Italy updates its supervisory regulations on internal controls of banks and financial intermediaries

The Bank of Italy has issued an update to its supervisory regulations on internal controls of banks (Circular No. 285/2013). The supervisory

regulations for financial intermediaries (Circular No. 288/2015) have also been amended. In particular, the regulations have been amended to take into account the provisions of the European Banking Authority (EBA) guidelines on loan origination and monitoring (EBA/GL/2020/06), which are implemented as supervisory guidelines. The interventions ensure the link between the provisions on corporate governance, the system of internal controls and the credit risk management process contained in the local regulatory framework and those of the EBA guidelines, which specify aspects of the internal governance of intermediaries relating to the lending stage and throughout the life cycle of loans.

Luxembourg Central Bank Regulation 2021/No. 30 of 12 July 2021 published

The Luxembourg Central Bank (BCL) has adopted a new Regulation 2021/No. 30 of 12 July 2021 on payments statistics, which repeals and replaces BCL Regulation No. 9 of 4 July 2011 as amended by BCL Regulation 2015/No. 20 of 24 August 2015 on the collection of data on payment instruments and transactions. The Regulation was published in the Luxembourg official journal (Mémorial A) on 14 July 2021, with a corrigendum on 15 July 2021.

The Regulation amends the rules on reporting obligations of statistical information regarding payments to the BCL. Amongst other things, it clarifies that agents that are subject to an ECB exemption also benefit from derogations under the Regulation and provides a detailed list of what information is subject to collection. It is supplemented by the 'BCL Manual', which specifies the practical details concerning the implementation of the obligations set out in the Regulation. The 'BCL Manual' is published on the BCL website and may be regularly updated by the BCL.

The Regulation further highlights that the collection of elements of the payment statistics referred to in Regulation (EU) 2020/2011 are to be transmitted considering a reference period starting on January 2022. The first transmission of payment transaction data will take place in February 2022 and the first transmission of fraudulent payment transaction data will take place in April 2022 for data from January 2022.

The Regulation entered into force on 14 July 2021.

CSSF issues circular on implementation of ESMA guidelines on outsourcing to cloud service providers

The Luxembourg financial sector supervisory authority (CSSF) has issued its Circular 21/777, which implements the ESMA guidelines on outsourcing to cloud service providers by amending the scope of CSSF Circular 17/654, as amended, on IT outsourcing relying on a cloud computing infrastructure (Circular 17/764).

Circular 21/777 notes that Circular 17/654 already contains certain regulatory requirements and guidelines equivalent to those provided for by the ESMA guidelines. However, the CSSF notes that the scope of Circular 17/654 is somewhat different to that of ESMA's guidelines, in particular to the extent that Circular 17/654 does not apply to all the entities covered by the guidelines.

To this end, Circular 21/777 extends the scope of CSSF Circular 17/654, so that it also applies to the following new entities:

- alternative investment fund managers as defined under Article 4(1)(b) of the AIFMD (i.e. not only those falling within the scope of CSSF Circular 18/698 on the authorisation and organisation of Luxembourg investment fund managers that were already subject to Circular 17/654) as well as depositaries of alternative investment funds as defined under Article 21(3) of the AIFMD;
- UCITS and UCITS management companies as defined under Article 2(1)(b) of the UCITS Directive (i.e. not only those falling within the scope of CSSF Circular 18/698 that were already subject to Circular 17/654) as well as depositaries of UCITS as defined under Article 2(1)(a) of the UCITS Directive;
- central counterparties as defined in Article 2(1) of EMIR, including central counterparties from Tier 2 third countries in accordance with article 25(2a) of EMIR which are subject to specific EMIR requirements;
- data reporting services providers within the meaning of Article 4(1), point 63 of MiFID and market operators of trading venues within the meaning of Article 4(1), point 24 of MiFID;
- central securities depositories within the meaning of Article 2(1), point 1 of CSDR; and
- administrators of critical benchmarks as defined in article 3(1)(25) of the Benchmarks Regulation.

Circular 21/777 will apply as of 31 July 2021. However, in respect of the above new entities, the CSSF has specified that Circular 17/654 will apply to all cloud outsourcing arrangements that are entered into, renewed or amended on 31 July 2021 or after such date.

These aforementioned entities should also review and amend accordingly all existing cloud outsourcing arrangements in order to be compliant with the requirements of Circular 17/654 by 31 December 2022 at the latest. Where the review of the cloud outsourcing arrangements of critical or important functions is not finalised by 31 December 2022, the relevant entities should inform their competent authority of this fact, including the measures planned to complete the review or the possible exit strategy.

Polish Financial Supervision Authority sets out position regarding obligation to notify transactions under Article 19(1) of MAR with regard to phantom shares

The Polish Financial Supervision Authority (PFSA) has published an update on its standpoint regarding the obligation to notify transactions under Article 19(1) of MAR with regard to phantom shares.

The PFSA has indicated that phantom shares do not fall within the definition of a financial instrument or a derivative instrument if they have been awarded to persons discharging managerial functions as a variable component of remuneration, are not subject to negotiation and dependent on the fulfilment of specific conditions both by the issuer and the manager, and this is why they are not subject to the reporting obligations under Article 19(1) of MAR.

China releases amendments to risk control guidelines for settlement of pledged repurchase transactions

The China Securities Depository and Clearing Co., Ltd (CSDCC), Shanghai Securities Exchange (SSE) and Shenzhen Securities Exchange (SZSE) have jointly released the 'Risk Control Guidelines for Settlement of Pledged Repurchase Transactions' (2021 Amended Version) (the Pledged Repo Guidelines), which took effect upon release.

Amongst other things, the following key aspects of the Pledged Repo Guidelines are worth noting:

- compared with the previous version, the Pledged Repo Guidelines now clarify their application to both CSDCC's settlement participants and end investors. CSDCC may directly suspend the relevant trading facility or terminate the trading permit of investors for breach of the Pledged Repo Guidelines;
- concerning the scope of the financing parties under the pledged repurchase transactions, the Pledged Repo Guidelines expand the list by adding domestic market participants who have become significantly more active in recent years (e.g. subsidiaries of securities companies and futures companies). In addition, normal corporate entities will need to meet a higher standard of minimum net assets of RMB 20 million (compared with RMB 10 million in the previous version), financial assets of RMB 10 million, and investment experience of at least two years to become eligible; and
- the financing parties are required to exercise reasonable control over the concentration ratio of credit bonds (i.e., fixed income instruments other than treasury and local government bonds, policy financial bonds and government-backed bonds) issued by the same issuer in the collateral pool (calculated at par value, the Single Issuer Concentration Ratio). If the average daily outstanding repurchase size in the last month is less than RMB 200 million, the Single Issuer Concentration Ratio may not be higher than 50%; otherwise, the Single Issuer Concentration Ratio may not be higher than 30%.

The Pledged Repo Guidelines will be phased in over a 24-month transitional period.

HKMA revises SPM module on group-wide approach to supervision of locally incorporated authorised institutions

The Hong Kong Monetary Authority (HKMA) has revised its supervisory policy manual (SPM) module entitled 'CS-1 Group-wide Approach to Supervision of Locally Incorporated Authorised Institutions'. The SPM module has been revised primarily to:

- reflect the current supervisory approach and practices adopted by the HKMA in relation to a locally incorporated authorised institution where it forms part of a banking, financial or commercial group;
- incorporate relevant principles in international standards concerning the supervision of financial conglomerates; and

- cater for consequential changes arising from amendments to the Banking Ordinance, relevant rules made under the Ordinance and supervisory guidelines.

SFC issues statement on unregulated virtual asset platforms

The Securities and Futures Commission (SFC) has issued a statement urging investors to be careful if they plan to invest in stock tokens offered on unregulated platforms. The SFC warns that where the stock tokens are 'securities', marketing and/or distributing such tokens, whether in Hong Kong or targeting Hong Kong investors, constitute a 'regulated activity' and require a licence from the SFC unless an applicable exemption applies.

The SFC notes that stock tokens are likely to be 'securities' under the Securities and Futures Ordinance and if so, they are subject to the regulatory remit of the SFC. If an investor trades on a platform that is unregulated, there may not be any due diligence or audit conducted by an independent third party to confirm the truthfulness of the representation that the relevant stock token is actually backed by an equivalent depository portfolio of the underlying share.

Intermediaries are reminded to observe the SFC's circular to intermediaries on compliance with notification requirements published in June 2018, which provides that if intermediaries intend to provide any financial services in virtual assets, they will be expected to notify and discuss their plans with the SFC at an early stage to avoid adverse regulatory consequences.

HKMA publishes consultation draft SPM module on climate risk management

HKMA has published its consultation draft SPM module on climate risk management. In developing the SPM module, the HKMA has taken into account the findings of the Financial Stability Board, Basel Committee on Banking Supervision and Network for Greening the Financial System, as well as certain practices in the industry in managing climate-related risks.

The SPM module is intended to provide guidance to authorised institutions on the key elements of climate-related risk management. It also sets out the HKMA's approach to, and expectations in, reviewing authorised institutions' climate-related risk management. The HKMA intends to allow a 12-month period for the implementation of the requirements set out in the SPM module. The HKMA notes that it may approach individual authorised institutions to understand their work plan and progress during the period.

The consultation period will end on 20 August 2021.

Australian Government consults on draft legislation for Compensation Scheme of Last Resort

The Australian Government has launched a public consultation on draft legislation for the Compensation Scheme of Last Resort (CSLR). Recommendation 7.1 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was that the three principal recommendations to establish a Compensation Scheme of Last Resort made by the Supplementary Final Report of the Review of the financial system external dispute resolution and complaints framework (Ramsay Review) should be carried into effect.

The establishment of the Compensation Scheme of Last Resort is intended to support ongoing confidence in the financial system's dispute resolution framework by facilitating the payment of limited compensation to eligible consumers who have received a determination for compensation from the Australian Financial Complaints Authority (AFCA) which remains unpaid.

The CSLR operates to create a pool of funds from which eligible claimants who have suffered loss or damage as a result of inappropriate action of a financial firm can access compensation even if, for example, the financial firm has become insolvent. Other key features of the scheme have been set out in the draft legislation, which includes the ability to authorise an operator of the scheme, eligibility requirements, compensation available for each eligible AFCA determination, the levying framework to fund the scheme, and the governance of the scheme.

To support the draft legislation, the Government has also released a proposals paper, which outlines the Government's proposals in relation to various aspects of the CSLR. These aspects include scope, payment arrangements, funding arrangements, governance and mechanisms to maintain the integrity of the scheme.

The Government has indicated that the legislation establishing the CSLR will be introduced during the Spring 2021 sittings with further consultations to be undertaken in relation to regulations and other aspects of the scheme design.

Comments on the consultation are due by 13 August 2021.

Australian Government consults on financial accountability regime

The Australian Government has launched a public consultation on a draft Bill for the Financial Accountability Regime (FAR). Recommendations 3.9, 4.12, 6.6, 6.7 and 6.8 of the Financial Services Royal Commission called for the extension of the Banking Executive Accountability Regime to all APRA-regulated entities, with joint administration by the Australian Prudential Regulatory Authority (APRA) and Australian Securities and Investments Commission (ASIC). The FAR is the Government's implementation of these Financial Services Royal Commission recommendations.

The regime is designed to improve the risk and governance cultures of Australia's financial institutions by imposing a strengthened responsibility and accountability framework for those institutions and the directors and the most senior and influential executives (accountable persons) of those institutions. The FAR seeks to impose four core sets of obligations:

- accountability;
- key personnel;
- deferred remuneration; and
- notification.

The Government has indicated that the regime will apply to authorised deposit-taking institutions and their authorised non-operating holding companies from the later of 1 July 2022 or six months after its commencement. Once the regime has taken effect for such bodies, the Banking Executive Accountability Regime will be repealed.

The Government has also released an information paper on joint administration, a policy paper on prescribed responsibilities and positions, and a Questions and Answers document for consultation.

Comments on the consultation are due by 13 August 2021.

APRA releases update on key policy settings for capital framework reforms

APRA has published a letter for authorised deposit-taking institutions (ADIs) to provide an update on key policy settings for the capital framework reforms, which are effective from 1 January 2023.

APRA recently published a roadmap for finalising reforms to the bank capital framework, which are due to come into effect from January 2023. The bank capital reforms are intended to strengthen the financial resilience of the industry and the new framework embeds the industry's level of capital with higher capital buffers providing greater flexibility for periods of stress.

The letter provides an update on the December 2020 consultation on the ADI capital framework, with a targeted data study to be provided separately to participating ADIs. The updated policy settings have been outlined in the annexes to the letter, which also include responses to a range of other technical issues raised by ADIs in the consultation.

APRA has indicated that, while the letter does not represent a formal consultation, ADIs can provide further feedback on the proposed policy settings by 20 August 2021. In addition, to understand the impact of these revisions, APRA will conduct a further quantitative impact study (QIS). The QIS will be optional for ADIs and conducted on a best-efforts basis, with responses also due by 20 August 2021.

Consistent with the roadmap, APRA intends to release final prudential standards in November 2021, which will come into effect from 1 January 2023.

ASIC consults on draft Cost Recovery Implementation Statement 2020-21

ASIC has published its draft Cost Recovery Implementation Statement (CRIS) for 2020-21. ASIC is required to publish a CRIS each year under the Australian Government Cost Recovery Guidelines.

The Cost Recovery Guidelines set out the framework under which the Australian Government and ASIC design, implement and review regulatory charging activities. Under the guidelines there are two types of cost recovery charges. The characteristics of the activity determine whether the costs will be recovered through:

- cost recovery levies – charges imposed when a good, service or regulation is provided to a group of individuals or organisations, rather than to a specific individual or organisation; or
- cost recovery fees – fees charged when a good, service or regulation is provided directly to a specific individual or organisation.

The CRIS outlines ASIC's estimated regulatory costs for 2020-21 and provides details about how these will be recovered as industry levies under the industry funding model. The indicative levies published in the CRIS are based on ASIC's planned regulatory work and associated costs for the 2020–21 financial year. Final industry levies will be based on ASIC's actual

regulatory costs and the business metrics submitted by entities in each subsector.

ASIC has indicated that the final levies will be published in December 2021 and invoiced in January 2022.

Comments on the draft CRIS are due by 13 August 2021.

ASIC releases reference checking and information sharing protocol for financial advisers and mortgage brokers

ASIC has released a reference checking and information sharing protocol that will give effect to the Financial Services Royal Commission's recommendations to improve reference checking in the financial advice and mortgage broking industries.

In finalising the protocol, ASIC took into account industry feedback on the proposals in the November 2020 consultation paper 'Implementing the Royal Commission Recommendations: Reference checking and information sharing' (CP 333).

The protocol sets out obligations for Australian financial services (AFS) and credit licensees to undertake a reference check and share information on an individual seeking to be employed or authorised as a financial adviser or mortgage broker. The reforms are intended to promote better information sharing about the performance history of financial advisers and mortgage brokers by focusing on compliance, conduct and risk management.

To help licensees comply with the new reference checking requirements, ASIC has published an information sheet and examples of references as a guide. Other consequential updates to existing ASIC guidance have also been made to reflect the new requirements.

ASIC has also released Report 694 which highlights the key issues raised in submissions to ASIC on CP 333 and details ASIC's responses on those issues.

RECENT CLIFFORD CHANCE BRIEFINGS

EU financial services horizon scanner, July 2021

This financial services horizon scanner identifies and summarises key EU legislative and non-legislative initiatives that are likely to impact firms providing financial services in the EU, grouped thematically.

The horizon scanner has been prepared as of July 2021 and also sets out projected timelines for the finalisation and implementation of relevant legislative initiatives, covering approximately the next 2 years.

https://www.cliffordchance.com/briefings/2021/07/eu_financial_serviceshorizonscanner.html

2021 ISDA Interest Rate Derivatives definitions – major upgrade for the digital age

The 2021 ISDA Interest Rate Derivatives Definitions were published on 11 June 2021 and, following a period to allow for market implementation, will be

adopted as the market standard definitional book for interest rate derivatives on 4 October 2021.

The 2021 Definitions represent a major upgrade to the 2006 ISDA Definitions, reflecting a series of significant developments in market practice, regulation and technology which have occurred in the intervening 15 years. Substantive changes have been made to cash settlement provisions; reference bank polls; and the Calculation Agent provisions as well as to the presentation and layout of the floating rate options. The 2021 Definitions will also be available only in electronic format as a single 'main book' on the new MyLibrary digital platform.

This briefing discusses the 2021 Definitions.

https://www.cliffordchance.com/briefings/2021/07/2021-isda-interest-rate-derivatives-definitions--major-upgrade-f.html

FCA consults on extending climate related disclosure requirements and certain ESG matters

On 22 June the FCA published CP21/18, consulting on proposals to extend the application of its climate-related disclosures listing rule to standard listed companies and also seeking views on broader environmental, social and governance (ESG) topics in capital markets.

This consultation has two limbs. The first is focused on the extension of the FCA's TCFD aligned 'comply or explain' listing rule and the second is a more discursive fact finding request seeking views on ESG prospectus disclosure for debt securities and possible regulatory oversight of third party ESG verifiers and ESG rating agencies. The consultation is open until 10 September 2021.

This briefing discusses the consultation.

https://www.cliffordchance.com/briefings/2021/07/fca-consults-on-extending-climate-related-disclosure-requirement.html

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