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EU Commission adopts Delegated Regulation lowering net short positions notification threshold

The EU Commission has adopted a Delegated Regulation amending Article 5(2) of the Short Selling Regulation (SSR) to permanently lower the notification threshold of net short positions in shares from 0.2% to 0.1%.

The Delegated Regulation has been adopted following the expiry of temporary emergency decisions adopted by the European Securities and Markets Authority (ESMA) to lower the threshold in response to the COVID-19 pandemic, as well as the publication of an ESMA opinion in May 2021 noting that the lower threshold significantly improved transparency and monitoring of significant net short positions resulting in increased regulatory efficiency.

The Delegated Regulation enters into force on the twentieth day following its publication in the Official Journal.

Investment firms: EU Commission adopts RTS on prudential requirements

The EU Commission has adopted three Delegated Regulations setting out regulatory technical standards (RTS) relating to the prudential treatment of investment firms under the Investment Firms Regulation (IFR).

The Delegated Regulations set out RTS specifying:

- the amount of total margin for calculation of the K-factor 'clear margin given' (K-CMG);
- the notion of segregated accounts; and
- the methods for measuring the K-factors referred to in Article 15.

The Delegated Regulations enter into force on the twentieth day following their publication in the Official Journal.

PSD2: RTS on supervisory cooperation and information exchange between competent authorities published in Official Journal

Commission Delegated Regulation (EU) 2021/1722 supplementing the Payment Services Directive (PSD2) with regard to RTS specifying the framework for cooperation and the exchange of information between competent authorities of the home and host Member States in the context of supervision of payment institutions and electronic money institutions exercising cross-border provision of payment services has been published in the Official Journal.

The framework is intended to enhance cooperation between competent authorities and ensure consistent and efficient supervision of payment institutions providing payment services in other Member States by specifying the method, means and details of cooperation, including the scope and treatment of information to be exchanged.

The Delegated Regulation will enter into force on 18 October 2021.

MiFID2/MiFIR Review: ESMA publishes final report on algorithmic trading

ESMA has published a final review report on the impact of requirements regarding algorithmic trading including high-frequency trading (HFT) set out in the Markets in Financial Instruments Directive (MiFID2).

In the absence of any fundamental issues, the report sets out recommendations aimed at simplifying the regime and making it more efficient, covering topics such as:

- the concepts of algorithmic trading and direct electronic access (DEA);
- the authorisation regime for EU and non-EU algorithmic trading firms (including HFT firms);
- the organisational requirements for investment firms, including the notification and testing requirements and self-assessment exercises;
- the organisational requirements for trading venues, including the self-assessment exercises, circuit breakers, fee structures, order to trade ratios, and market outages;
- MiFID2 provisions indirectly relating to algorithmic trading activities, including tick size and market making; and
- recent market developments, including speedbumps and the asymmetry of private and public feeds.

ESMA has submitted the report to the EU Commission for consideration and intends to publish specific consultations on potential amendments to existing technical standards.

Credit ratings: ESMA publishes opinion on legislative changes to improve access

ESMA has published an opinion recommending improvements to the way in which credit ratings are accessed and used in the EU.

In its opinion, ESMA notes that the usability of credit ratings published on credit rating agencies' (CRAs') websites and the European Rating Platform (ERP) is limited as they cannot be accessed in a machine-readable format or downloaded in sufficient numbers to be used for regulatory purposes.

To address these issues, ESMA suggests that the CRA Regulation should be amended by either:

- changing the scope of the CRA Regulation to expressly include the distribution of machine-readable and downloadable credit ratings to subscribers; or
- developing the disclosure requirements of the CRA Regulation so that published credit ratings can be used for regulatory reporting purposes without subscribing to a fee-paying data licence.

FSB launches new financial stability surveillance framework

The Financial Stability Board (FSB) has launched a new financial stability surveillance framework aimed at improving the effectiveness and timeliness of the identification of vulnerabilities in the global financial system.

The new framework, which focuses on the accumulation of imbalances rather than shocks, covering vulnerabilities that are currently material and that may become material in the next two to three years or over a longer time horizon, embodies four key principles:

- focus on vulnerabilities that may have implications for global financial stability;
- scan vulnerabilities systematically and with a forward-looking perspective while preserving flexibility;
- recognise differences among countries; and
- leverage the comparative advantages of the FSB while avoiding duplication of work.

The framework also includes a common terminology defining key concepts and a common taxonomy of vulnerabilities.

The FSB intends regularly to communicate its view on vulnerabilities through its annual reports.

BoE publishes Dear CEO letters on outsourcing to public cloud

The Bank of England (BoE) has published a series of letters to the CEOs of central counterparties (CCPs), recognised payment system operators (RPSOs), specified service providers (SSPs), and central securities depositories (CSDs) on its expectations regarding material outsourcing to the public cloud. The letters highlight the BoE's existing supervisory framework regarding material outsourcing arrangements, including the use of the public

cloud and cloud service providers (CSPs), as it applies to each type of financial markets infrastructure firm (FMI).

The BoE calls on the FMIs to:

- follow existing regulatory requirements. For CCPs this includes those set out in Article 35(1) of the UK European Market Infrastructure Regulation (UK EMIR) (which applies when CCPs wish to outsource risk management related activities to the public cloud). For CSDs this includes those set out in Article 19 of the UK CSD Regulation (UK CSDR) (which applies when CSDs wish to outsource the delivery of their core services to the public cloud);
- follow existing guidance, including the Committee on Payments and Market Infrastructures (CPMI) and International Organization of Securities Commissions' (IOSCO's) principles for financial markets infrastructure, the BoE's recently published policy on operational resilience, and any relevant international standards;
- notify the BoE before entering into, or significantly changing, any material outsourcing, or sub-outsourcing arrangements so that the arrangements can be checked for compliance with the relevant regulations;
- notify the BoE of any substantive changes that could affect compliance with the conditions for authorisation, such as changes to their risk profile and that of their clearing systems as a result of participants outsourcing the connectivity gateway and security solutions used to access the FMIs' services to the public cloud; and
- introduce new or enhance existing control standards and rules to manage risks arising from outsourcing arrangements, including potentially requiring participants to gain the FMIs' approval before outsourcing.

The BoE notes that it intends to consult on proposed expectations and policies for FMIs with regard to outsourcing, and in particular the use of the cloud, shortly.

UK EMIR: BoE publishes policy statement and consults on further amendments to derivatives clearing obligation

The BoE has launched a consultation on its proposal to add Overnight Index Swaps (OIS) that reference TONA to the scope of contracts which are subject to the derivatives clearing obligation. The BoE has also published a policy statement containing its final policy on modifying the scope of contracts subject to the derivatives clearing obligation, which was set out in the consultation published in May 2021 titled 'Derivatives clearing obligation – modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205'.

The policy statement maintains the modifications proposed in the May consultation, specifically to:

- remove from the scope of the clearing obligation contracts referencing EONIA, JPY LIBOR and GBP LIBOR;
- add certain contracts referencing €STR; and
- extend the maturity of contracts referencing SONIA.

The Bank's final policy has been implemented via amendments to the onshored Commission Delegated Regulation (EU) 2015/2205 supplementing EMIR with regard to RTS on the clearing obligation (known as binding technical standards (BTS) 2105/2205).

The policy statement also includes the BoE's response to feedback received to the May consultation.

In the May consultation, the BoE did not propose to add to the clearing obligation any replacement contracts for those referencing JPY LIBOR. However, following recent announcements by the Japanese authorities, due to which trading and liquidity in interest rate derivatives contracts referencing JPY LIBOR have begun to migrate to contracts referencing TONA, the BoE considers that it is now appropriate to add TONA OIS contracts to the clearing obligation as a replacement for contracts referencing JPY LIBOR.

The BoE is consulting on its proposal to introduce a clearing obligation for OIS that reference TONA, to come into force on or shortly after 6 December 2021. The TONA OIS contract type in the clearing obligation will cover broadly the same maturity range as the JPY LIBOR contracts it is replacing. However, the minimum maturity of the TONA OIS contract type will be 7 days (as opposed to 28 days for the JPY LIBOR contracts currently in place), which reflects differences in the types of transactions these contract types have historically been used in.

Comments are due by 27 October 2021. The BoE intends to make and publish the amendment to BTS 2015/2205 by the end of November 2021. The BoE also intends to continue keeping the scope of the clearing obligation under review, including by monitoring developments in the ongoing transition in USD interest rate derivatives markets, with a view to consult in 2022.

FCA consults on use of synthetic LIBOR rates

The Financial Conduct Authority (FCA) has launched a consultation (CP21/29) on legacy use and restricted new use of synthetic LIBOR rates, and has published a number of related documents on arrangements for the orderly wind-down of LIBOR.

The FCA has published notices confirming its decisions to compel ICE Benchmark Administration (IBA) to continue publishing 1-, 3- and 6-month sterling and Japanese yen LIBOR using a synthetic methodology based on term risk-free rates for the duration of 2022. This follows a consultation (CP21/19) launched by the FCA in June 2021.

CP21/29 sets out the FCA's proposed decision on which legacy contracts can use these synthetic LIBOR rates from 1 January 2022. The FCA is proposing to permit legacy use of synthetic sterling and Japanese yen LIBOR in all contracts except cleared derivatives at least for the duration of 2022. Clearing houses plan to transition all cleared sterling, Japanese yen, Swiss franc, and euro LIBOR contracts to risk-free rates by end-2021.

The FCA also proposes to prohibit most new use of overnight, 1 month, 3 month, 6 month and 12 month US dollar LIBOR after end-2021.

This follows a consultation (CP21/15) launched in May 2021 on the FCA's proposed policies on the exercise of new powers introduced through amendments to the UK Benchmarks Regulation under the Financial Services Act 2021. The FCA has published a feedback statement (FS21/10) and final

statements of policy for Article 21A and Article 23C under the UK Benchmarks Regulation.

Comments on CP21/19 are due by 20 October 2021. The FCA intends to specify before year-end which legacy contracts are permitted to use these synthetic LIBOR rates.

CRR: PRA consults on domestic liquidity sub-groups

The Prudential Regulation Authority (PRA) has published a consultation paper on its proposed rules for the application of prudential liquidity requirements to domestic liquidity sub-groups (DoLSubs) and its proposed revisions to the PRA's approach to granting a DoLSub permission.

The consultation proposes to permit the inclusion in a DoLSub of firms that are subsidiaries of a common immediate UK qualifying parent undertaking that is not a bank or PRA-designated investment firm. It also proposes to revise the conditions to qualify for a DoLSub permission and the factors that the PRA will take into account when considering DoLSub applications.

The proposals would result in changes to the Liquidity (CRR) Part of the PRA Rulebook and the statement of policy 'Liquidity and funding permissions'.

The consultation is relevant to:

- PRA-authorised UK banks;
- PRA-designated UK investment firms;
- building societies; and
- UK financial or mixed financial holding companies that are immediate parent undertakings of any of the above.

Comments are due by 12 October 2021.

Interchange Fee Regulation: PSR publishes guidance on monitoring and enforcing compliance

The Payment Systems Regulator (PSR) has published revised guidance on the Interchange Fee Regulation (IFR) replacing the earlier version published in 2020. The revised guidance reflects the principal changes arising from the UK's withdrawal from the EU and other changes to the regulatory framework.

The guidance is intended to reflect the different scope of the UK IFR compared to the EU IFR and the amendments to the RTS Regulation. It also removes expired provisions including Chapter 4 and references to weighted average interchange fees.

The publication of the guidance follows the PSR's consultation in April 2021. The PSR has not made any major changes to the guidance following responses to the consultation.

The guidance will be of interest to card scheme operators subject to the UK IFR, parties contracting with card schemes and/or processing entities, third-party card payment processors, and merchants that accept card payments.

Amended Remuneration Ordinance for Institutions enters into force

An amended version of the German Remuneration Ordinance for Institutions (Institutsvergütungsverordnung, InstitutsVergV) has come into force.

The amendments were introduced by way of the 'Third Ordinance to amend the Remuneration Ordinance for Institutions', which was issued by the German Federal Financial Supervisory Authority (BaFin) on 20 September 2021 in consultation with Deutsche Bundesbank and after having heard the central associations representing the institutions.

The amendments were necessary to reflect the European Capital Requirements Directive (CRD5) and the resulting Risk Reduction Act (Risikoreduzierungsgesetz) by which it was implemented into German law.

BaFin applies ESMA guidelines on marketing communications for funds distribution

BaFin has announced that it will apply the ESMA guidelines on marketing communications under the Regulation on cross-border distribution of funds in its supervisory practice. The guidelines are intended to ensure that marketing communications are identifiable as such and are, amongst other things, fair, clear, and not misleading.

ESMA issued the guidelines in line with its obligation under the Regulation on cross-border distribution of funds (Regulation (EU) 2019/1156 of 20 June 2019) to ensure that EU Member States apply these requirements in a consistent and coherent manner.

The guidelines specify the requirements for marketing communications within the European financial system set out in the Regulation and also provide examples of documents which qualify as marketing communications addressed to investors or potential investors in undertakings for the collective investment in transferable securities (UCITS) and alternative investment funds (AIFs).

Financial disclosure: Consob confirms intention to comply with ESMA guidelines

The Commissione Nazionale per le Società e la Borsa (Consob) has confirmed its intention to comply with the ESMA guidelines for the implementation of financial reporting rules.

ESMA's guidelines apply to the activity aimed at implementing the financial reporting rules under the Transparency Directive in order to ensure that the financial information contained in the harmonised documents provided by issuers whose securities are admitted to trading on a regulated market comply with the obligations arising from the Transparency Directive.

Included in the scope is the financial reporting of issuers already listed on a regulated market and subject to the Transparency Directive under the provisions of the same Directive. Depending on the case, financial reporting of issuers from third countries that use a legal framework for financial reporting that is declared equivalent to IFRS in accordance with Commission Regulation 1569/2007 may also be included.

CSSF and CODERES issue circular on calculation of 2022 ex-ante contributions to Single Resolution Fund

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), and the Luxembourg Resolution Board (Conseil de Résolution, CODERES) on behalf of the Single Resolution

Board (SRB), have issued circular (21/13) on the data collection for the 2022 ex-ante contributions to the Single Resolution Fund (SRF).

The circular is addressed to all credit institutions established in Luxembourg and subject to Regulation (EU) 806/2014, with the exception of Luxembourg branches of credit institutions established outside the EU. Luxembourg branches of credit institutions which have their head office in another Member State of the EU are covered by their head office.

In order to determine the annual contribution to be paid by each credit institution in 2022, the SRB is requesting certain information via a template attached to the circular (together with the relevant instructions on how the template has to be filled in and returned to the CSSF).

The requested data collection for the 2022 ex-ante contributions to the SRF has to be sent to the CSSF by 14 January 2022 at 24:00 CET at the latest.

In cases where the required information is not transmitted correctly within the indicated deadline, the SRB may use estimates or its own assumptions for the calculation of the 2022 contribution of the concerned credit institution and in specific cases, it may assign the credit institution to the highest risk adjusting multiplier for the calculation.

The data required are identical to the data requested for the 2021 ex-ante contribution in Circular CSSF-CODERES 20/11. The transmission of data has to be performed this year via Excel sheet from the credit institutions to the CSSF.

Finally, each credit institution that directly or as part of a group falls under direct ECB supervision, unless it is subject to the lump-sum payment, must make available certain additional assurance documents, which have to be sent to the CSSF by 25 February 2022 at the latest. The circular notes in this respect that from this year, upon instructions from the SRB, only Agreed Upon Procedures (AUP) where an external auditor confirms specific data (see Annex 5) are accepted. A sign-off of at least one of the members of the banks' authorised management is no longer sufficient for the banks concerned.

CSSF issues circular on application of ESMA guidelines on MiFID2/MiFIR obligations on market data

The CSSF has issued a new circular (21/783) which informs the public that the CSSF will fully apply the ESMA guidelines on the MiFID2/MiFIR obligations on market data.

Circular 21/783 is addressed to, and shall apply as of 1 January 2022, to all regulated markets, market operators, credit institutions, investment firms and market operators operating a multilateral trading facility (MTF) or an organised trading facility (OTF), approved publication arrangements (APAs) and systematic internalisers (SIs) when making public market data for the purpose of the pre-trade and post-trade transparency regime under MiFID2/MiFIR.

The ESMA guidelines are intended to ensure a uniform understanding of the requirement to provide market data on a reasonable commercial basis including the disclosure requirements, as well as the requirement to provide the market data 15 minutes after publication (delayed data) free of charge.

CSSF issues circular on revised EBA guidelines on money laundering and terrorist financing risk factors

The CSSF has issued a new circular (21/782) on the adoption by the European Banking Authority (EBA) of revised guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing (ML/TF) risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of Directive (EU) 2015/849 (EBA/GL/2021/02).

The guidelines were published by the EBA on 1 March 2021. They will become applicable as of 26 October 2021 and will repeal and replace the joint guidelines previously issued by the three European Supervisory Authorities in June 2017.

The CSSF's circular notes that the guidelines needed to be updated due to the change of the applicable legislative framework in the EU following the entry into force of Directive (EU) 2018/843 (AMLD5) and the emergence of new ML/TF risks.

The circular further notes that the guidelines continue to provide guidance on the different ML/TF risk factors credit and financial institutions should consider when assessing their risks and specify how they can adjust anti-money laundering and counter-terrorist financing customer due diligence measures commensurate with the level of risk associated with a business relationship or occasional transaction.

The CSSF has indicated that the guidelines:

- take account of the new and emerging risks (e.g. emerging risks related with the use of RegTech solutions for customer due diligence purposes or terrorist financing);
- contain more guidance on the identification of beneficial owners and enhanced customer due diligence related to high-risk third countries;
- stress that credit and financial institutions should enhance in particular their understanding of (risks related to) tax crimes;
- specify that an effective risk-based approach should not result in systematically exiting or discontinuing to offer services to certain categories of customers associated with higher ML/TF risk ('de-risking' approach) and that credit and financial institutions should carefully balance the need for financial inclusion with the need to mitigate ML/TF risk; and
- contain additional (new) sectoral guidelines regarding crowdfunding platforms, providers of currency exchange services, corporate finance, payment initiation services providers and account information service providers.

The CSSF has emphasised that the risk factors and the due diligence measures described in the guidelines are not exhaustive. However, credit and financial institutions should be able to take informed decisions commensurate with the ML/TF risks based on the guidelines in order to manage their business relationships and occasional transactions efficiently.

Credit and financial institutions need to apply the changes to future business relationships and to existing customers at appropriate times in the context of the ongoing processes of risk assessment and mitigation.

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CSSF issues circular on survey of amount of covered deposits held on 30 September 2021

The CSSF, acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued CSSF-CPDI Circular 21/27 regarding the survey of the amount of covered deposits held as of 30 September 2021.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions), and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The circular further draws members' attention to the provisions of the CSSF-CPDI circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus accounts. The volume of eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) are to be reported where FGDL members wish to ensure deposit protection for relevant beneficiaries and in order to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members are requested to provide the data at the level of their legal entity, including branches located within other Member States, by 22 October 2021 at the latest.

In order to transmit these data, institutions should complete the table attached to the circular, which is also available on the CSSF's website. The file containing the data must be duly completed and sent out no matter the circumstances in which the entity may find itself. The file shall respect the special surveys naming convention, as defined by CSSF circular 08/344, and shall be submitted through secured channels (E-File/SOFiE).

A member of the authorised management, i.e. the member in charge of the FGDL membership in accordance with CSSF circular 13/555, must review and approve the file prior to its transmission to the CSSF.

FINMA approves first crypto fund

The Swiss Financial Market Supervisory Authority (FINMA) has, for the first time, approved a Swiss fund that invests primarily in cryptoassets, that is to say in assets based on the blockchain or distributed ledger technology. Distribution of this fund is restricted to qualified investors.

In order to facilitate serious innovation, FINMA seeks to apply the existing provisions of financial market laws in a consistently technology-neutral way, i.e. in keeping with the 'same risks, same rules' principle. In doing so, it intends to ensure that new technologies are not being used to circumvent the existing rules and that the protective goals of financial market legislation are preserved. Noting that cryptoassets involve particular risks, FINMA has also tied the approval to specific requirements in the present case. For instance, the fund may only invest in established cryptoassets with a sufficiently large trading volume. Furthermore, the investments must be made through established counterparties and platforms that are based in a member country of the Financial Action Task Force (FATF) and are subject to corresponding

anti-money laundering regulations. Finally, there are specific requirements with regard to risk management and reporting for the institutions involved in the management and custody.

FINMA recognises adjustments to AMAS self-regulations as minimum standard

FINMA has recognised the adjustments to the self-regulations by the Asset Management Association Switzerland (AMAS) as a minimum standard, which reflect the entry into force of the Financial Institutions Act (FinIA) and the Financial Services Act (FinSA).

The revised rules of conduct and the revised guidelines concerning real estate funds, fund performance, asset valuation, money market funds and total expense ratio will enter into force on 1 January 2022. The two existing guidelines on distribution and key investor information document (KIID) will be withdrawn following expiry of the statutory transitional periods as their content is covered by the FinSA. The existing transparency guideline has been integrated into the rules of conduct.

As part of its revision, AMAS has in particular deleted the rules of conduct at the point of sale from its self-regulations as these are now included in the FinSA and apply generally. In addition to minor adjustments in the areas of liquidity risk management, business continuity management and investor complaint management, the mandating of a legal entity as a valuation expert for real estate funds has been incorporated.

HKMA provides guidance on distribution of investment and insurance products through non-face-to-face channels

The Hong Kong Monetary Authority (HKMA) has issued a circular to provide guidance with a view to facilitate authorised institutions (AIs) in distributing investment and insurance products through non-face-to-face channels in a customer-friendly manner whilst according protection to customers. In particular, the circular provides guidance regarding:

- non-face-to-face channels (including the appropriateness of non-face-to-face service mode for certain customers), handling of transactions with vulnerable customers (VCs), and controls and monitoring;
- the applicability of some existing requirements, such as VC assessment, companion requirement and pre-investment cooling-off period, in certain non-face-to-face channels; and
- system controls for assessing the justifications for transactions with mismatch(es) or exception(s) under the online environment such that the transactions may proceed.

The circular also provides practical examples to illustrate how AIs may put the requirements into practice. Further, it reminds AIs to comply with the 'Guidelines on online distribution and advisory platforms' issued by the Securities and Futures Commission when distributing investment products through online platforms, as well as the Insurance Authority's circular dated 5 August 2020 on 'Sandbox application for the distribution of long-term insurance policies via video conferencing tools' when distributing long term insurance products through video-conference.

The HKMA requires AIs to comply with the relevant requirements as soon as practicable and in any case not later than 12 months from the date of issuance of the circular.

Cross-Industry Committee on JPY Interest Rate Benchmarks consults on treatment of tough legacy contracts in Japan

The Cross-Industry Committee on Japanese Yen (JPY) Interest Rate Benchmarks has launched a public consultation on the treatment of 'tough legacy contracts' referencing JPY LIBOR governed by Japanese law in relation to loan and bond transactions.

The consultation is intended to summarise the results of the Committee's discussions to date on legacy contracts that cannot feasibly be transitioned away from JPY LIBOR (tough legacy contracts) and on the possibilities and associated risks in applying synthetic yen LIBOR to those tough legacy contracts. In particular, the consultation is seeking comments on:

- contracts that fall within the category of tough legacy contracts and for which the use of synthetic yen LIBOR may be considered; and
- matters that contracting parties should keep in mind when considering the use of synthetic yen LIBOR.

Comments on the consultation are due by 19 October 2021.

Cross-Industry Committee on JPY Interest Rate Benchmarks issues statement regarding cessation of initiation of new interest rate swaps referencing JPY LIBOR

The Cross-Industry Committee on JPY Interest Rate Benchmarks has issued a statement on the cessation of the initiation of new linear and non-linear interest rate swaps referencing JPY LIBOR (new interest rate swaps). Amongst other things, the statement provides that:

- the initiation of new interest rate swaps maturing after the end of 2021 ceased at the end of September 2021, except for transactions intended for risk management of existing positions. In addition, financial institutions will not be precluded from executing transactions that would result in increasing LIBOR exposure for their customers and not required to confirm their customers' purposes of trade – market participants have been encouraged to proceed with the transition of interest rate swaps referencing JPY LIBOR as soon as practicable, including transactions of which the initiation is not included in the scope of the cessation; and
- quoting conventions (including trade execution) of the interest rate swaps (non-linear products) referencing JPY LIBOR, carried out in the interbank market via voice brokers, ceased altogether immediately after the close of the market on 30 September 2021 – each voice broker publishing these quoting conventions has been expected to make appropriate preparations as soon as practicable, taking into account the impact on end users including those arising from the cessation of the brokers' screen.

MAS revises certain notices in consequence to commencement of Significant Infrastructure Government Loan Act 2021

The Monetary Authority of Singapore (MAS) has revised the following notices as a result of the commencement of the Significant Infrastructure Government Loan Act 2021 on 3 August 2021:

- Notice on Risk Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences (SFA 04-N13);
- Notice regarding Obligations of Primary Dealers in Singapore Government Securities (SGS) market (Notice 761);
- Notice on Issuance of Covered Bonds by Banks Incorporated in Singapore (Notice 648);
- Notice on Minimum Liquid Assets and Liquidity Coverage Ratio (Notice 649);
- Notice on Minimum Liquid Assets (Notice 613); and
- Notice on Minimum Liquid Assets and Liquidity Coverage Ratio (Notice 1015).

The Significant Infrastructure Government Loan Act 2021 is intended to enable financing by borrowing to meet the Government's commitment to Singapore's future by investing in nationally significant infrastructure and their related facilities in which initial or further investment is vital to supporting or is likely to materially improve national productivity or Singapore's economic, environmental, or social sustainability.

The revised notices were effective from 28 September 2021.

MAS revises compliance toolkit for licensed and exempt trust companies, exempt persons providing trust services and approved CIS trustees

The MAS has revised its existing compliance toolkit that provides guidance to licensed and exempt trust companies, exempt persons providing trust services and approved collective investment schemes (CIS) trustees on the various approvals, notifications, and other regulatory submissions to the MAS.

Amongst other things, the revised compliance toolkit provides clarification on the reporting requirements relating to approvals and notifications for an approved CIS trustee to:

- seek the MAS' approval to permit a person to act as its executive officer and/or director, if the person is involved in circumstances set out in section 292A(1)(i) to (vi) of the Securities and Futures Act (SFA);
- amongst others, seek the MAS' consent to transfer the whole or any part of the business to a transferee;
- lodge with the MAS a report setting out details of the transfer and furnish such supporting documents as may be specified;
- seek the MAS' approval for the summary of the transfer if intended to be served on participants of CIS; and

- notify the MAS where an approved trustee: (a) is or is likely to become insolvent, (b) is or is likely to become unable to meet its obligations, or (c) has suspended or is about to suspend payments.

MAS revises Notice on Appointment of Director, Chairman, Member of Nominating Committee and Key Executive Person for Insurers

The MAS has revised Notice 106 on Appointment of Director, Chairman, Member of Nominating Committee, and Key Executive Person for Insurers and has issued Circular No. ID 14/21 to inform insurers of these amendments.

Currently, paragraph 8 of the Notice 106 requires insurers to notify the MAS of any proposed arrangement relating to a director or key executive person at least one month before it takes effect. In the notification, insurers are required to provide details and reason for the proposed arrangement, and an assessment of the board of directors on whether the proposed arrangement could result in a conflict of interest or hamper the director or key executive person in discharging his/her statutory duties.

Under the revised Notice 106, the MAS has removed this notification requirement in relation to proposed arrangements for directors. This is in consideration that prior to every annual general meeting, the board of directors or nominating committee has the responsibility to assess whether the directors remain qualified for office under regulations 13(2)(b) and 22(2)(b) of the Insurance (Corporate Governance) Regulations 2013.

While the notification requirement in relation to a key executive person's proposed arrangement remains, the requirement in Notice 106 has been amended to allow insurers to notify the MAS as soon as practicable in the event that it is not possible for them to be aware of the additional appointment at least one month before it takes effect.

The MAS has also indicated that the Key Appointment Holders (KAH) e-service module on MASNET was launched on 27 September 2021. For this, Notice 106 has been amended to require insurers to submit KAH applications via the KAH e-service module on MASNET. Moreover, Appendix A of Notice 106 has also been replaced with the new application form found in the KAH e-service module.

The amendments to Notice 106 were effective from 27 September 2021.

APRA releases updated schedule of policy priorities for 2021

The Australian Prudential Regulation Authority (APRA) has announced an updated schedule of policy priorities for the fourth quarter of 2021.

APRA's decision to reprioritise its annual policy agenda (released in February 2021) is intended to enable regulated entities to focus on implementing key policy reforms to strengthen financial resilience, as well as managing the impact of COVID-19. Amongst other things, the priorities will be:

- completing the bank capital reforms, with three final standards for capital adequacy to be released in November 2021 and to apply from January 2023 onwards;
- consulting on reforms to the insurance capital framework;

- updating superannuation standards for insurance in super and investment governance, ahead of a more comprehensive review of other key standards next year to ensure a sharper focus on the best financial interests duty;
- consulting on new standards for financial contingency planning and resolution, to be released in November 2021 for an extended consultation; and
- releasing final guidance on managing the financial risks of climate change, as well as an information paper setting out APRA's framework for the use of macroprudential policy tools.

APRA has indicated that it will provide a full update on the policy agenda for 2022-2023 in early 2022.

RECENT CLIFFORD CHANCE BRIEFINGS

Delivering a climate trade agenda – summary of recommendations

The urgency of the climate crisis requires greater focus on how international trade and investment policy can support climate action. International trade is estimated to account for 20-38% of global emissions but, until recently, there have been limited efforts to harness trade policy to achieve climate objectives. As businesses increasingly pursue their own net zero targets, the upcoming COP26 meeting in November 2021 and WTO Ministerial in December 2021 provide opportunities for governments to accelerate these efforts through mutually supportive trade and climate policies.

To better understand how trade policy can support businesses to reduce emissions, Clifford Chance, in collaboration with the World Economic Forum (WEF), interviewed over 30 global companies about their trade and climate strategies. The resulting white paper, 'Delivering a climate trade agenda: Industry insights', brings together industry perspectives on trade policy priorities, as well as offering eight recommendations for climate-focused trade policy that is fair, transparent, and has technology and innovation at its core.

The report identifies numerous ways in which businesses can prepare for, and support, recommended climate-trade initiatives.

https://www.cliffordchance.com/briefings/2021/09/delivering-a-climate-trade-agenda--summary-of-recommendations.html

A new dawn for restructurings in France

From 1 October 2021 debtors needing to restructure in France have had access to a new framework. The most significant change is the availability of the new accelerated safeguard procedure, which is designed to offer a streamlined rescue mechanism, allowing debtors to restructure within 4 months and without the unanimous consent of all creditors.

This briefing discusses the new framework.

https://www.cliffordchance.com/briefings/2021/09/-a-new-dawn-for-restructurings-in-france.html

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Singapore to amend and level playing field for cross-border financial business arrangements

The regulatory framework in Singapore for cross-border financial business arrangements between Singapore financial institutions (FIs) and their foreign offices at present depends on the type of entity that is delivering the service to customers in Singapore. Foreign branches of Singapore FIs in such arrangements are subject to more stringent conduct and representative requirements, compared to foreign related corporations (FRCs) of Singapore FIs in such arrangements. This is about to change.

This briefing discusses the coming amendments.

https://www.cliffordchance.com/briefings/2021/09/singapore-to-amend-and-level-playing-field-for-cross-border-fina.html