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EU Council adopts conclusions on economic and financial strategic autonomy

The EU Council has adopted conclusions taking stock of progress towards and identifying further work on achieving the EU's economic and financial strategic autonomy while preserving an open economy.

The conclusions further develop elements contained in the EU Commission's January 2021 communication on how it intends to foster the openness, strength and resilience of the EU's economic and financial system, focussing on:

- strengthening the international role of the euro, such as by promoting the EU as a global green finance hub, deepening secondary markets for financial instruments within the EU, in particular for euro-denominated financial derivatives, and continuing exploratory work on the possible introduction of a retail digital euro (central bank digital currency);
- ensuring a strong, competitive and resilient European financial sector, including implementing rules tailored to long-term investment, removing unwarranted barriers to cross-border investments in the single market and tackling excessive reliance on third-country critical services providers, such as central counterparties;
- shielding and strengthening the resilience of financial-market infrastructure, namely against extra-territorial measures by third countries;
- developing an effective mechanism for managing sanctions, including reinforcing the Blocking Statute and introducing an anti-coercion instrument; and

- cooperation with partners, noting that a higher degree of autonomy of the EU financial system is directed towards collaboration with third countries, in order to achieve an open and stable international economic ecosystem, in line with the EU's values.

Digital finance: EU Commission launches new platform to support collaboration between innovative financial firms and supervisors

The EU Commission has announced the launch of the EU Digital Finance Platform, a website intended to facilitate dialogue and collaboration between innovative financial firms and supervisors.

The platform comprises:

- an 'observatory', which includes an interactive map of the EU's fintech sector, an overview of the latest policy developments, relevant events, and a section where participants can share research material; and
- a 'gateway', which is intended to serve as a single access point for supervisors to gain information on national innovation hubs, regulatory sandboxes, and licensing requirements, as well as providing functionality for firms to run cross-border tests on new products or services with the involvement of multiple national authorities.

The EU Commission notes that it intends to expand the functionality of the platform by 2023 based on feedback and requests from its users.

Digital finance: EU Commission issues targeted consultation on digital euro

The EU Commission has launched a targeted consultation on the digital euro. The consultation is intended to build upon the existing consultative work of the European Central Bank (ECB) and seeks to gain further information from relevant experts and authorities on:

- users' needs and expectations for a digital euro;
- the digital euro's role in the EU's retail payments and digital economy;
- how it can be used for retail payments, while still protecting the legal tender status of euro cash;
- its impact on the financial sector and financial stability;
- the application of AML/CFT rules to its framework;
- privacy and data protection considerations; and
- its use for international payments.

In particular, the EU Commission is seeking responses from industry experts and authorities, including payment industry specialists, payment service providers, payment infrastructure providers, developers of payment solutions, merchants and their associations, consumer associations, retail payments regulators and supervisors, and financial intelligence units.

Responses are due by 14 June 2022.

Sustainable finance: EU Commission adopts SFDR RTS

The EU Commission has adopted a delegated regulation setting out regulatory technical standards (RTS) under the Sustainable Finance Disclosure Regulation (SFDR).

The RTS specify the content, methodologies and presentation of the information that must be provided by financial market participants and financial advisers in relation to sustainability-related disclosures in the financial services sector, and are accompanied by annexes setting out templates for the:

- principal adverse sustainability impacts statement (annex 1);
- pre-contractual disclosure for Article 8 financial products (annex 2);
- pre-contractual disclosure for Article 9 financial products (annex 3);
- periodic disclosure for Article 8 financial products (annex 4); and
- periodic disclosure for Article 9 financial products (annex 5).

The delegated regulation has been transferred to the EU Council and Parliament for scrutiny and is scheduled to apply from 1 January 2023.

EU Commission consults on ESG ratings and sustainability factors in credit ratings

The EU Commission has published a call for evidence and targeted consultation on the functioning of the ESG ratings market in the EU and on the consideration of ESG factors in credit ratings.

The call for evidence seeks views to inform an impact assessment of possible policy initiatives aimed at:

- strengthening the reliability and comparability of ESG ratings, in particular by defining ESG ratings, improving transparency of the operations and methodologies of ESG rating providers, improving the comparability of ESG ratings, avoiding potential conflicts of interest, limiting the risks of green- and social-washing, and introducing a supervisory regime; and
- ensuring that relevant ESG risks are captured in credit ratings, in particular by improving transparency of the impact of ESG risks on individual credit ratings, improving transparency of how credit rating agency (CRA) methodologies incorporate sustainability risks, and ensuring those methodologies adequately incorporate all relevant sustainability risks.
- The targeted consultation therefore sets out a questionnaire aimed at informing the Commission of the need for possible EU intervention in relation to:
- the functioning of the ESG ratings market and its potential shortcomings; and
- possible shortcomings relating to the consideration of sustainability factors in credit ratings, and disclosures made by CRAs.

Comments are due by 6 June 2022.

The Commission intends to prepare the impact assessment in 2022 with a view to proposing legislative or non-legislative initiatives in Q1 2023.

MiFID2/EMIR: Implementing Decisions on SEC equivalence published in Official Journal

Commission Implementing Decisions (EU) 2022/551 and (EU) 2022/552 have been published in the Official Journal.

Decision (EU) 2022/551 relates to the equivalence of the regulatory framework of the US for central counterparties (CCPs) that are authorised and supervised by the US Securities and Exchange Commission (SEC). Derivatives traded on these exchanges will now be treated as exchange-traded derivatives under the European Market Infrastructure Regulation (EMIR).

Decision (EU) 2022/551 will apply from 7 April 2022.

Decision (EU) 2022/552 determines that national securities exchanges of the US that are registered with the SEC comply with legally binding requirements which are equivalent to the requirements laid down in the Markets in Financial Instruments Directive (MiFID2) and are subject to effective supervision and enforcement.

Decision (EU) 2022/552 will apply from 21 April 2022.

PSD2: EBA publishes final report on amending RTS on SCA&CSC

The European Banking Authority (EBA) has published its final report on the amendment of the RTS on strong customer authentication and secure communication (SCA&CSC) under the Payment Services Directive (PSD2).

The amendments introduce a new mandatory exemption to SCA that will require account providers not to apply SCA when customers use an account information service provider (AISP) to access their payment account information, provided certain conditions are met. The amendment is intended to reduce frictions for customers using such services and to mitigate the impact that the frequent application of SCA and the inconsistent application of the current exemption have on AISPs' services.

Following a public consultation the EBA has introduced some changes to the draft amending RTS, while retaining the mandatory exemption and the extension of the frequency for the renewal of SCA from every 90 days to every 180 days as proposed. The EBA has clarified that it has made those amendments that it is legally in a position to make to address the issues identified, while further mitigations to address these issues would require changes to the PSD2 itself, which is beyond the EBA's powers.

The EBA expects that the amendments to the RTS will apply 7 months after their publication in the Official Journal.

CRR: EBA issues opinion on EU Commission's proposed amendments to draft RTS on own funds and eligible liabilities

The EBA has published an opinion on the EU Commission's proposed amendments to the EBA's final draft RTS on own funds and eligible liabilities.

The EBA has expressed its disagreement with two substantive changes proposed by the Commission and agrees with the other amendments, which are considered non-substantive.

The Commission first proposed substantive change relates to the provisions covering the notions of direct and indirect funding. However, the EBA considers that the RTS already contain, from a supervisory perspective, the necessary principles or tools needed for capturing all cases of direct or indirect funding without any additional description.

The second substantive change proposed by the Commission relates to the prior permission process for certain types of liquidation entities. The EBA considers that its final draft RTS designed a prior permission regime proportionate to the goals of the Capital Requirements Regulation (CRR) and is of the opinion that no change is warranted.

ESMA publishes final report on Short Selling Regulation review

The European Securities and Markets Authority (ESMA) has published a final report on its review of the Short Selling Regulation (SSR).

The final report proposes targeted amendments in light of emergency measures adopted in response to the COVID-19 crisis and of episodes of high volatility in relation to meme stocks, including:

- streamlining the legal framework for the adoption of emergency measures by relevant competent authorities (RCAs) and ESMA;
- simplifying the supervision of locate arrangements through the introduction of record keeping obligations and harmonisation of sanctions; and
- increasing transparency and promoting standardisation in the disclosure mechanisms of net short positions (NSPs), such as a centralised system for publication and disclosure of NSPs and introducing a statutory requirement on RCAs to periodically disclose aggregated NSPs per issuer.

The report has been submitted to the EU Commission for consideration.

FSB publishes statement on transition away from LIBOR

The Financial Stability Board (FSB) has published a statement welcoming the smooth transition away from LIBOR.

The statement notes that the end of 2021 marked a major milestone in the transition away from LIBOR and the FSB welcomes the smooth transition to robust alternative rates across global markets, primarily overnight risk-free or nearly risk-free rates (RFRs).

Given the significant use of USD LIBOR globally, the FSB emphasises that firms must have plans in place to ensure their preparedness for the cessation of the USD LIBOR panel and reiterates that the continuation of some USD LIBOR settings through to end-June 2023 is intended only to allow legacy contracts to mature.

The FSB encourages firms to maintain momentum in active transition of legacy LIBOR contracts that reference synthetic GBP and JPY LIBOR settings. The FSB also continues to support engagement with emerging market and developing economies to maintain a smooth transition from LIBOR to RFRs, across all global markets.

The FSB plans to conduct a follow-up assessment in H2 2022 to identify any remaining transition and supervisory challenges to support the LIBOR transition effort. The FSB's Official Sector Steering Group (OSSG) will

continue to serve as a forum in 2022 and 2023 for cooperation amongst authorities that have leading roles in interest rate benchmark reforms and transition preparedness.

IOSCO consults on corporate bond markets under stress and good practices concerning exchange traded funds

The Board of the International Organization of Securities Commissions (IOSCO) has launched a consultation on its report on corporate bond markets and drivers of liquidity during COVID-19 induced market stresses. IOSCO has also launched a consultation on good practices for IOSCO members, asset managers, and trading venues to consider in the operation and trading of exchange traded funds (ETFs).

Feedback received on IOSCO's report on the corporate bond markets will inform IOSCO's ongoing review of the sector and future consideration on ways to improve market functioning and the resilience of liquidity supply under stress. Comments are due by 30 June 2022.

IOSCO is also consulting on 11 proposed good practices for ETFs to supplement IOSCO's 2013 Principles for the Regulation of Exchange Traded Funds. The proposed good practices address product structuring (including means of facilitating effective arbitrage and range of assets and strategies for ETF offerings), disclosure, liquidity provision and volatility control mechanisms. Comments are due by 6 July 2022.

HM Treasury sets out package of measures to regulate stablecoins and encourage innovation in financial services

HM Treasury (HMT) has issued a series of statements and publications on its approach and upcoming initiatives relating to cryptoassets.

Firstly, it has published a report setting out its findings and next steps following the consultation it launched in January 2021 on the Government's approach to regulating cryptoassets, and stablecoins in particular. In light of the responses received, HMT intends to proceed with its proposals to bring stablecoins that are used as a means of payment within the UK regulatory perimeter. This will be achieved through amendments to:

- the Electronic Money Regulations 2011 to cover the issuance of stablecoins and the provision of wallet and custody services;
- the Payment Service Regulations 2017 to cover stablecoins as a means of payment;
- Part 5 of the Banking Act 2009 to cover stablecoin activities in cases where the risks posed have the potential to be systemic and so meet the threshold for Bank of England supervision; and
- the Financial Services (Banking Reform) Act 2013 to ensure stablecoin-based payment systems are subject to appropriate competition regulation under the Payment Systems Regulator.
- The report does not set out a specific timeline for these changes, noting that they will be introduced when Parliamentary time allows.

Alongside the proposed regulation of stablecoins, HMT has also announced it that intends to:

- ensure that regulations can accommodate tokenisation and the use of distributed ledger technology (DLT) in financial market infrastructures (FMIs);
- launch an FMI Sandbox by 2023, which will allow firms to test the use of innovative technologies to provide FMI services; and
- issue a consultation on cryptoasset regulation, which will contain specific proposals and will reflect the feedback received to HMT's January 2021 consultation.

Finally, John Glen, Economic Secretary to HMT, delivered a keynote speech during the UK Fintech Week in which he announced the launch of a package of measures intended to drive innovation and competition in the UK financial services sector. These include:

- establishing a new Centre for Finance, Innovation, and Technology (CFIT), with a steering committee led by Ron Kalifa;
- establishing a Cryptoasset Engagement Group to increase collaboration between regulators and the industry and to advise the Government on key issues facing the sector;
- exploring ways of enhancing the competitiveness of the UK tax regime to encourage further development of the cryptoasset market;
- holding a 'CryptoSprint', led by the Financial Conduct Authority (FCA), which will seek practical solutions to the legal, technical and regulatory challenges currently faced by the industry; and
- creating a non-fungible token (NFT) through the Royal Mint.

FCA publishes 2022/25 strategy and 2022/23 business plan

The Financial Conduct Authority (FCA) has launched a new three-year strategy and published its 2022/23 business plan.

Noting an intention to be more focused on outcomes rather than processes, the strategy sets out the FCA's commitments in relation to reducing and preventing serious harm, setting and testing higher standards, and promoting competition and positive change, as well as its overarching expectations for financial services, regulated firms and individuals, consumers, and diversity and inclusion.

The 2022/23 business plan sets out, among other things, the FCA's intended key activities for delivering on its commitments over the coming year, including:

- completing the next phase of its cancellation of firm authorisation project and increasing interventions when firms fail to meet threshold conditions;
- improving the redress framework, such as in relation to claims management companies and pensions transfers;
- reducing harm from firm failure, such as by embedding the new Investment Firms Prudential Regime (IFPR), inputting into developing crypto policies and developing standards for consumer investments firms;

- improving oversight of appointed representatives (ARs);
- reducing and preventing financial crime, including an intention to publish final rules on financial promotions for high-risk investments, including crypto-assets;
- taking assertive action on market abuse;
- an intention to publish finalised rules and guidance on the new consumer duty by the end of July 2022, and to embed the duty at each stage of the regulatory lifecycle;
- embedding consideration of ESG issues in the authorisation process;
- minimising the impact of operational disruptions, including an intention to launch a joint discussion paper with the Bank of England (BoE) and Prudential Regulation Authority (PRA) on critical third parties; and
- starting the transfer of the regulatory framework from legislation into FCA rules through the future regulatory framework.

The FCA has also published a consultation (CP22/7) on the rates for its regulatory fees and levies in the 2022/23 financial year. Comments are due by 12 May 2022.

BaFin consults on revised guidance note on prohibition of blind pool constructions

The German Federal Financial Supervisory Authority (BaFin) has launched a consultation on a new version of its guidance note on the prohibition of blind pools under the German Asset Investment Act (Vermögensanlagengesetz – VermAnlG).

The new version constitutes an extension of the existing guidance note published on 11 August 2021. It formulates – based on the cases currently occurring in practice – the extended criteria for which structures are covered by the blind pool prohibition. It thereby also specifies which information is expected to be included in the prospectuses and investment information sheets, so that an investment object can be considered 'concrete' within the meaning of section 5b para 2 VermAnlG in conjunction with the Asset Investment Prospectus Ordinance (Vermögensanlagen-Verkaufsprospektverordnung - VermVerkProspV) or, for investment information sheets, section 13 VermAnlG.

The new version of the guidance note is intended to ensure that the market continues to be provided with uniform criteria and that only those prospectuses and investment information sheets that meet these criteria are submitted to and approved by BaFin.

BaFin will accept comments until 14 April 2022.

BaFin and Deutsche Bundesbank start LSI stress test 2022

BaFin and the Deutsche Bundesbank have, for the fifth time, launched a stress test to assess the earnings situation and resilience of around 1,300 small and medium-sized banks that are under direct national supervision in Germany (less significant institutions, LSIs).

This exercise, originally planned for 2021, was postponed due to the COVID-19 pandemic to relieve the participating banks. As with previous LSI stress tests, the results are to be used to determine the supervisory capital adequacy recommendation. At the same time, a stress test is carried out at all German building societies, which takes into account the business model of these special institutions.

The LSI stress test 2022 is basically designed in the same way as the LSI stress test 2019, but a key difference is the more extensive consideration of proportionality: if institutions do not exceed certain thresholds in separate risk categories, they are not required to fill out the questionnaire in full. This will relieve in particular those institutions that are classified as small and non-complex institutions.

Banks must submit the data collected in the stress test to the regulator by the end of May 2022. Deutsche Bundesbank and BaFin will then subject the results to quality control and are expected to publish them at the end of September 2022.

Bank of Italy consults on regime governing holdings in banks and other financial institutions

The Bank of Italy has launched a consultation on the regime governing holdings in, amongst others, banks, financial intermediaries, EMIs, IPs, investment firms and investment managers. The public consultation is intended to re-organise the Bank of Italy provisions that regulate acquisitions and variations of qualified shareholdings in these institutions in light of recent amendments made to the Consolidated Banking Act (Legislative Decree 385/1993) and the Consolidated Law on Finance (Legislative Decree 58/1998), as introduced by Legislative Decree no. 182/2021.

This set of provisions is intended to ensure full compliance with the relevant European legal framework including, in particular, the European Supervisory Authorities' joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors.

The consultation will end on 6 May 2022.

CSSF updates circular on telework governance and security requirements for supervised entities

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued Circular 22/804 to update CSSF Circular 21/769 defining the governance and security requirements with respect to the implementation and utilisation by an entity under the CSSF's supervision of work processes based on telework solutions.

The only change to the circular relates to its entry into force; the rest of the circular remains unchanged.

Originally, the circular was foreseen to enter into force on 30 September 2021 (save exceptional circumstances, e.g. the COVID-19 pandemic) whilst the updated version of the circular will enter into force on 1 July 2022. As a reminder, the CSSF stresses in the circular that no approval is required in order to implement, maintain or extend telework solutions for staff in a CSSF supervised entity.

Contractual relationships between the supervised entities and their employees are outside the scope of the circular.

Amongst other things, the circular provides for the following:

- definitions of key terms used, such as for example 'telework', 'privileged users', and 'critical activities';
- general principles, covering in particular requirements relating to (i) robust central administration and sufficient substance requirements, (ii) telework limits and risk assessments, (iii) continuity of the operational functioning of supervised entities, and (iv) ultimate responsibility for the telework;
- compliance with other legal provisions (stating in particular that the use of telework must not contravene mandatory public order provisions and that supervised entities should consider other legal requirements such as tax, companies, professional confidentiality, data protection or social security laws and regulations which differ from prudential requirements in terms of substance and central administration rules;
- baseline requirements (specifying amongst other things that staff members should be able to return to the premises on short notice in case of need and providing a list of criteria to be respected (e.g. telework time should be limited, at least one authorised manager to be on-site all the time, head-office remains the decision-making centre, etc.);
- internal organisation and internal control framework, covering in particular the risk management requirements, obligation to determine a telework policy, monitoring of the compliance with such telework policy, and controls by internal control functions over telework; and
- requirements related to ICT and security risks, specifying rules in terms of inter alia policies and procedures, risk awareness, access rights, remote access devices, telework infrastructure, security of connections, review of the communication chain security, technology watch and logging.

The circular will be reviewed at the latest 12 months after its entry into force, i.e. before 30 June 2023, in order to remedy any abuses or other shortcomings or deficiencies.

CSSF issues communiqué on application of SFDR and Articles 5 and 6 of Taxonomy Regulation

The CSSF has issued a communiqué on the application dates of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR) and on the taxonomy-alignment related product disclosures of Regulation (EU) 2020/852 (Taxonomy Regulation).

In its communiqué, the CSSF brings to the attention of financial market participants and financial advisers the Joint Committee of the European Supervisory Authorities' updated supervisory statement dated 25 March 2022 on the application of SFDR and Articles 5 and 6 of the Taxonomy Regulation regarding the interim period until the application date of the regulatory technical standards on the content, methodologies and presentation of sustainability-related disclosures (RTS).

The CSSF mainly emphasises the following elements:

- SFDR and Taxonomy Regulation product disclosures entry into application without RTS - the ESAs reiterate that the addressees are required to apply

most of the provisions on sustainability-related disclosures laid down in the SFDR from 10 March 2021, while the application of the RTS is delayed to 1 January 2023. This delay in the application of the RTS has no impact on the application of the amendments introduced by the Taxonomy Regulation to the SFDR. Therefore, the taxonomy-alignment related product disclosures apply in respect of the first two environmental objectives from 1 January 2022 according to Article 27(2)(a) of the Taxonomy Regulation;

- guidance during interim period - the CSSF, in accordance with the updated supervisory statement, encourages the addressees to use the draft RTS as a reference for the purposes of applying the provisions of Articles 2a, 4, 8, 9, 10 and 11 of the SFDR and Articles 5 and 6 of the Taxonomy Regulation in the interim period until RTS are adopted by the EU Commission. The supervisory expectation during the interim period before the application of the RTS is that in order to comply with the provision under point (b) of the first subparagraph of Article 5 of the Taxonomy Regulation, an explicit quantification should be provided through the numerical disclosure as a percentage of the extent to which investments underlying the financial product are taxonomy-aligned, which could be accompanied by a qualitative clarification explaining how the financial product addresses the determination of the proportion of taxonomy-aligned investments of the financial product; and
- application timeline for entity-level principal adverse impact statement - the ESAs set out in the annex of their updated supervisory statement the application timeline of specific provisions of the SFDR, the Taxonomy Regulation and the related RTS. The transitional arrangements foreseen by the ESAs for entity-level principal adverse impact (PAI) disclosures would no longer be relevant due to the delay of application of RTS. The first information relating to a reference period to be disclosed in accordance with the RTS should be made in a statement to be published by 30 June 2023 in respect of a reference period corresponding to the calendar year of 2022.

CSSF issues new regulation on setting of countercyclical buffer rate

The CSSF has issued a new regulation (22-02) on the setting of the countercyclical buffer rate for the second quarter of 2022. The regulation was published in the Luxembourg official journal (Mémorial A) on 4 April 2022.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 7 March 2022 (CRS/2022/002) and maintains the countercyclical buffer rate for relevant exposures located in Luxembourg at 0.5% for the second quarter of 2022. This rate has been applicable since 1 January 2021.

The regulation entered into force on 4 April 2022.

CSSF issues circular regarding survey of amount of covered deposits held on 31 March 2022

The CSSF acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued a circular (22/29) regarding the survey on the amount of covered deposits held as of 31 March 2022.

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 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 13 May 2022 at the latest.

In order to transmit these data, institutions are requested to 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 over 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.

CNMV and Notaries General Council enter into MoU regarding access to notarial UBO and PEP registers

The Spanish Securities Market Commission (CNMV) and the Notaries General Council (CGN) have entered into a memorandum of understanding (MoU) regulating the CNMV's access to data on ultimate beneficial owners (UBOs) and publicly exposed persons (PEPs) held at the CGN-managed registers.

Under the MoU, the CGN shall provide the CNMV with direct access to its UBO and PEP registers through an ad hoc IT platform, ensuring confidentiality.

This access is intended materially to simplify and expedite the information verification processes carried out by the CNMV as part of its supervisory and inspection activities (e.g., authorisations, changes in qualifying holdings).

PRC consults on strengthening confidentiality and archives administration of overseas securities offering and listing by domestic companies

The China Securities Regulatory Commission (CSRC), the Ministry of Finance, the National Administration of State Secrets Protection, and the National Archives Administration of China have jointly issued the 'Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies' for public consultation. The draft amended provisions amend CSRC Announcement No.29 [2009] and provide a roadmap on how PRC regulators should regulate

secrecy and archive matters in the context of supervising overseas securities listing/offering by eligible companies.

The draft amended provisions will likely affect (a) PRC companies seeking listing on non-PRC stock exchanges; (b) PRC operating companies of companies indirectly listed on overseas markets (i.e., companies with VIE structure and/or small red-chip structures); (c) investment banks helping PRC companies list on overseas stock exchanges; and (d) accounting firms servicing PRC listed companies.

Among others, the following aspects of the draft amended provisions are worth noting:

- expansion of supervision scope - the draft amended provisions expand their application to govern both (a) domestic joint-stock companies listed on overseas market and (b) domestic operating entities of companies indirectly listed on overseas markets (in-scope entities), which is consistent with the 'Provisions of the State Council on the Administration of Overseas Securities offering and Listing by Domestic Companies (2021 Consultation Draft)';
- enhanced procedural requirement on provision of certain data - when in-scope entities are required to share certain data with securities firms, securities service firms (third-party intermediaries) and overseas regulators, to the extent that such shared data constitute State secrets or are otherwise confidential from a governmental perspective, or the leakage of such data may adversely affect national security or public interest, in-scope entities are required to complete the relevant procedures, including obtaining an approval, making a filing and/or consulting with relevant authorities, as the case may be. In addition, in-scope entities shall keep a written record in respect of implementation of such procedural requirements and enter into a proper non-disclosure agreement with third-party intermediaries;
- control measures on data export - the draft amended provisions provide that (a) accounting files cannot be provided to overseas accounting firms that are not recognised by PRC regulators, and (b) governmental approval is required for exporting any working paper of the listing project and/or any archive file generated by third-party intermediaries when providing services to in-scope entities; and
- cross-border collaboration among regulators - the draft amended provisions also emphasise that any investigation/inspection proceedings against in-scope entities and third-party intermediaries by overseas regulators need to be carried out on the basis of cross-border collaboration among regulators.

The draft amended provisions demonstrate the regulators' determination in safeguarding data sovereignty matters and also echo several CSRC announcements following the Luckin Coffee event (i.e., cross-border collaboration among the regulators is the condition to carry out cross-border investigation and inspection over in-scope entities.)

Comments are due by 17 April 2022.

PBoC consults on draft Financial Stability Law

The People's Bank of China (PBoC) has issued the PRC Financial Stability Law (2022 Consultation Draft) (the draft FSL) for public consultation. The draft FSL aims to establish an overarching regime applicable across the financial sector to prevent, mitigate and address financial risks and establish a detailed, systematic and integrated foundation to safeguard financial stability.

The draft FSL will be highly relevant to PRC financial institutions, shareholders and actual controllers of PRC financial institutions, and creditors and transactional counterparties of PRC financial institutions.

Among others, the following aspects of the draft FSL are worth noting:

- early-stage risk mitigation - upon the occurrence of a financial risk as measured by certain regulatory ratio(s), if a financial institution fails to rectify such risk within the relevant time limit, PRC regulators may take, among others, the following early-stage rectification measures: (a) restriction on high-risk business and suspension of approval on new businesses, (b) restriction on dividend payment and remuneration of directors, supervisors and senior managers, (c) restrictions on asset transfer, control on material transactions and credit extension, and mandatory sale of certain assets to reduce leverage, (d) write-down or conversion of instruments, (e) suspension of approval on establishment of new branches/subsidiaries, (f) supplement capital within a timeline as per the recovery/resolution planning, (g) replacement of the responsible director, supervisor or senior manager or restrict his/her rights, and (h) ordering the responsible shareholder to transfer its equities or restrictions on its shareholder rights.
- resolution powers - according to the draft FSL, resolution measures that can be taken by the regulator against a distressed financial institution include, without limitation: exercising the power and authority to manage its operation; transferring to a third party part or all of its businesses, assets and liabilities; setting up a bridge entity or special purpose vehicle to take over its businesses, assets and liabilities; temporarily suspending the close-out netting of eligible financial transactions (without specifying the timeline of such suspension which is subject to the subsidiary resolution legislation to be separately promulgated); ordering to replace the responsible director, supervisor or senior manager and clawback on their remuneration; write-down of equity or creditor's right and debt-equity conversion; suspending outbound remittance of money by the distressed financial institution and ordering to repatriate its assets outside China; and in terms of systematically important financial institutions, ordering its group entities, domestic or abroad, to provide necessary support so as to maintain the key financial services and functions of the distressed financial institution.
- no creditor worse off - if a creditor or other interested party believes that its proceeds received from the relevant resolution proceedings is less than the amount that would have to be obtained from a bankruptcy liquidation, it may apply for re-examination to the authority implementing the resolution and claim for compensation before a PRC court if it disputes the result of the re-examination.
- the financial stability protection fund - a financial stability protection fund will be established to serve as a reserve to tackle material financial risks.

The fund will be financed by PRC financial institutions, financial infrastructures and other sources provided by the State Council. PBoC may provide liquidity support to the Fund with public funds which should be repaid by, for example, resolution proceeds, income and industrial charges.

- obligations and accountability of shareholders and actual controllers - the draft FSL not only echoes the PRC Company Law in terms of prohibited activities and dividends payment with respect to shareholders, but also clarifies the eligibility requirements and responsibilities applicable to (major) shareholders and actual controllers of PRC companies. The Draft FSL explicitly requires major shareholders and actual controllers to inject capital in accordance with the recovery/resolution planning (the Draft FSL also mentioned that capital replenished based on their commitment to the regulator can also be used, although not superficially providing such capital replenishment commitment as a mandatory obligation) and provides that shareholders' equity interests are subject to write-down powers of the regulator. Shareholders and actual controllers could be subject to confiscation of illegal proceeds, fine or criminal liabilities (depending on the severity) due to their violation.

Comments are due by 6 May 2022.

SFC provides guidance on handling client complaints

The Securities and Futures Commission (SFC) has issued a circular to licensed corporations (LCs) on compliance with regulatory requirements for handling client complaints. In the past few years, the SFC had received a large number of complaints against intermediaries and market activities.

In view of this, the SFC conducted a review of the LCs' complaint handling procedures and identified a number of deficiencies. The SFC reminds LCs that they are expected to ensure compliance with the requirements under paragraph 12.3 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) and part V (5) of the Internal Control Guidelines. The Appendix to the circular sets out the expected regulatory standards in the following areas:

- management oversight and complaint handling policies and procedures;
- disclosure of complaint handling procedures;
- identification and escalation of complaints;
- investigating complaints;
- communicating outcomes to clients; and
- record keeping.

Senior management of LCs are reminded that they bear primary responsibility for ensuring appropriate standards of conduct and adherence to proper policies and procedures. In particular, the SFC highlights the following to senior management of LCs:

- senior management of an LC should designate a Manager-In-Charge (MIC) to oversee complaint handling, and the MIC is expected to be able to demonstrate to the SFC that any complaint has been handled in a timely and appropriate manner upon enquiries from the SFC;

- LCs with a large retail client base should put in place dedicated resources to handle client complaints, such as forming a complaint committee to review and monitor the complaint handling process; and
- LCs' staff should escalate internally to senior management any serious and high-impact cases for prompt handling and investigation, and report to the SFC without delay suspected breaches of the Code of Conduct and other regulatory requirements.

HKMA and SFC conclude consultation on new calculation periods and consult on annual update to Financial Services Providers' list

The Hong Kong Monetary Authority (HKMA) and Securities and Futures Commission (SFC) have published the conclusions to their December 2021 consultation on the addition of new calculation periods under the over-the-counter (OTC) derivatives regulatory regime.

The proposed legislative amendments to the Clearing Rules for adding eight calculation periods will be submitted to the Legislative Council for negative vetting. The amended rules are expected to come into effect on 1 March 2023, subject to the legislative process.

Along with the consultation conclusions, the regulators have also launched a joint consultation on the annual update to the list of Financial Services Providers (FSP List) under the OTC derivatives clearing regime. One new entity is proposed to be included in the FSP List. Comments on the consultation are due by 14 May 2022.

FSA and Bank of Japan publish summary of results of third survey on use of LIBOR

The Financial Services Agency (FSA) and the Bank of Japan (BOJ) have published a summary of the results of their third joint survey on the use of LIBOR. The survey covered financial institutions, including banks, securities companies, and insurance companies.

The key findings of the survey include the following:

- with respect to the transition away from panel-based LIBOR for which the publication was ceased at end-December 2021, the transition of contracts referencing LIBOR is almost complete, and the use of synthetic JPY and GBP LIBOR is expected to be limited; and
- with respect to the transition away from USD LIBOR for which the publication will be ceased at end-June 2023, most of the financial institutions have completed the preparation and planning phase for ceasing new transactions referencing USD LIBOR from January 2022 and, in principle, have actually ceased those new transactions. However, for legacy contracts maturing beyond end-June 2023, many institutions have still not incorporated the fallback provisions.

The regulators require financial institutions to take actions for the transition away from panel-based LIBOR for which the publication was ceased at the end of December 2021, synthetic LIBOR, and USD LIBOR for which the publication will be ceased at the end of June 2023. Based on the results of this survey, the FSA intends to continue monitoring the progress in the transition.

Australian Government responds to final report of Senate's inquiry into foreign investment proposals

The Australian Government has published its response to the Senate Economics References Committee's August 2021 report entitled 'Greenfields, cash cows and the regulation of foreign investment in Australia'.

In particular, the Government's response highlights that the 2021 foreign investment reform package provided a legislative basis for the Government to accept and enforce undertakings made by investors to address concerns with compliance, increased the number of staff working on the foreign investment framework, and strengthened the Australian Treasury's capacity to be an effective foreign investment regulator.

Among other things, the Government has responded that:

- it does not support the recommendation to amend regulations to the effect that undertakings made as part of a foreign investment application can be enforced as conditions on an investment approval and that it considers publishing details relating to these decisions;
- it supports in principle the recommendation that the Government should conduct an audit of the expertise required by foreign investment regulators to thoroughly assess applications against the national interest and establish a plan to staff these organisations accordingly;
- it does not support the recommendation to amend the Foreign Acquisitions and Takeovers Act 1975 in order to enable the publication of foreign investment applications and approvals, including relevant associated information; and
- it does not support the recommendation to make public the decision to grant proposed foreign investments a 'no objection notification' (approval) or an 'exemption certificate', along with a statement of reasons, with an exemption from this publication requirement being available on national security grounds, along with a statement of reasons for the exemption.

APRA consults on amendments to define significant financial institutions

The Australian Prudential Regulation Authority (APRA) has launched a consultation on minor amendments to align and centralise the definition of a significant financial institution (SFI) within the prudential framework.

Among other things, the proposed amendments are intended to:

- ensure consistency in application, with the definition of an SFI aligned across prudential standards;
- create efficiencies, as entities would only need to be determined as an SFI once; and
- establish a platform for broader application of proportionality within the prudential framework over the longer-term.

The aligned definition would be located in the central definitions prudential standards for banking and insurance. For superannuation, SFIs would be defined in each prudential standard that uses the concept. APRA would also retain the flexibility, within individual prudential standards, to subject a non-SFI to the SFI requirements of that particular standard, where appropriate.

Amendments would be made to: Prudential Standards CPS 511 Remuneration, APS 110 Capital Adequacy, APS 112 Capital Adequacy: Standardised Approach to Credit Risk, and APS 115 Capital Adequacy: Standardised Measurement Approach to Operational Risk.

Comments on the consultation are due by 2 May 2022.

RECENT CLIFFORD CHANCE BRIEFINGS

The future of the securitisation regulations in the EU and UK – Brexit and beyond

The UK's withdrawal from the EU continues to present a number of challenges for parties doing cross-channel business. The securitisation regulatory frameworks in the UK and the EU, once unified, have already begun to diverge in substance as well as form. This has meant market participants need to consider which of the regimes apply to them and to their transaction counterparties, and what compromises are necessary to continue to get deals done.

This briefing paper examines some of the divergence that has already happened, considers areas of possible future development of each regime and reviews how market participants are managing the increased complexity that results from having to comply with the new regulatory landscapes.

https://www.cliffordchance.com/briefings/2022/04/the-future-of-the-securitisation-regulations-in-the-eu-and-uk--b.html

FCA finalises amendments to UK PRIIPs regime

On 25 March 2022, the FCA published a policy statement (PS22/2) setting out finalised amendments to the UK PRIIPs regime.

The amendments clarify the scope of the UK PRIIPs regime, replace the requirement for PRIIPs KIDs to contain performance scenarios with a requirement for PRIIPs KIDS to contain performance information and make tweaks regarding the calculation and disclosure of transaction costs. While the revised rules entered into force on 25 March 2022, the FCA has included a transitional period with the result that firms have until 31 December 2022 to ensure that they comply with the new requirements.

This briefing paper discusses the amendments.

https://www.cliffordchance.com/briefings/2022/03/fca-finalises-amendments-to-uk-priips-regime.html

CEOs And CCOs may be required to certify that a compliance program is effective following a DOJ resolution

On 25 March 2022, Assistant Attorney General Kenneth A. Polite Jr. delivered remarks on corporate compliance and enforcement at NYU Law. He reiterated several points that have been made previously by his predecessors, but also referenced a new requirement that will directly impact the Chief Executive and Chief Compliance Officers of companies settling cases with the US Department of Justice.

Polite expounded on DOJ's June 2020 Evaluation of Corporate Compliance Programs, providing details of how DOJ will assess the effectiveness of a company's program. But Polite also announced that his team will consider requiring Chief Executive Officer and Chief Compliance Officer certifications of compliance programs in the resolution of certain enforcement scenarios. He gave the same warning a few days earlier at the ACAMS 2022 Hollywood Conference.

This briefing paper discusses Polite's remarks.

https://www.cliffordchance.com/briefings/2022/04/ceos-and-ccos-may-be-required-to-certify-that-a-compliance-progr.html

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