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### **EU Parliament adopts resolution on state of AML/CFT legislation implementation**

The EU Parliament has adopted a [resolution](#) on the state of implementation of the EU anti-money laundering and counter terrorist financing (AML/CFT) legislation. In the resolution, MEPs state their concern over the number of Member States who have still not implemented the fourth Anti-Money Laundering Directive (AMLD 4) and over their expectation that many will also

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fail to meet the transposition deadline for AMLD 5. They highlight a lack of cooperation and information sharing between national authorities and Financial Intelligence Units as a key obstacle to preventing money laundering and terrorist financing in Member States. The MEPs therefore call for Member States to:

- implement agreed AML/CFT rules into national law; and
- ensure that beneficial ownership registers for corporate and other legal entities are ready by 10 January 2020 and those for trusts and similar legal arrangements are ready by 10 March 2020.

The MEPs also urge the EU Commission to:

- consider whether a regulation would be a more appropriate legal act than a directive, when considering any future revisions to the AML legislation;
- carry out its planned AMLD 4 completeness and correctness checks as soon as possible and to open infringement procedures where necessary; and
- apply a transparent process with clear benchmarks for third countries identified as high-risk and deficient as regards AML.

## **ISDA consults on final parameters for benchmark fallback adjustments**

The International Swaps and Derivatives Association (ISDA) has launched a [consultation](#) to finalise the methodologies for the adjustments that will be made to derivatives fallbacks in the event certain interbank offered rates (IBORs) are permanently discontinued.

The consultation seeks input on the final parameters related to the adjustments that will apply to alternative risk-free rates (RFRs) if derivatives fallbacks are triggered. The adjustments reflect the fact that the IBORs are currently available in multiple tenors, but the RFRs identified as fallbacks are overnight rates. The IBORs also incorporate a bank credit risk premium and a variety of other factors, while RFRs do not.

This consultation follows two earlier consultations, which set out options for the adjustments that will apply to the relevant risk-free rates (RFRs) if fallbacks are triggered for derivatives referencing nine IBORs. ISDA has published a [report](#) by The Brattle Group that summarises the results of the second of those consultations, which focused on US dollar LIBOR, Canada's CDOR and Hong Kong's HIBOR.

The Brattle Group reports that the overwhelming majority of respondents preferred the 'compounded setting in arrears rate' to address the difference in tenors and the 'historical mean/median approach' to address the difference in risk premia.

Comments on the consultation are due by 23 October 2019. ISDA intends to make relevant adjustments to the 2006 ISDA Definitions to incorporate fallbacks for new IBOR trades and to publish a protocol to enable market participants to include fallbacks within legacy IBOR contracts by the end of 2019, with implementation in 2020.

## **FCA chief executive discusses FCA's Brexit preparations**

Andrew Bailey, the Chief Executive of the Financial Conduct Authority (FCA), has [given an update](#) on the FCA's ongoing preparations for Brexit. The preparations, which take into account the possibility of a no deal exit, include:

- working with HM Treasury and the Bank of England (BoE) to ensure that EU financial services legislation is effectively onshored by exit date. In the event of a UK exit from the EU without a transitional period, the FCA intends to provide transitional relief from regulatory requirements for a period of up to a year using its Temporary Transitional Power;
- concluding new memoranda of understanding (MoUs) with the EU markets, insurance and banking authorities which will take effect in a no-deal outcome; and
- taking on responsibilities from the European Securities and Markets Authority (ESMA) relating to credit rating agencies and trade repositories and also in respect of MiFID2.

Mr. Bailey also discussed issues that still required further action, which include the share trading obligation (STO), the derivatives trading obligations (DTO), clearing and uncleared derivatives.

## **MiFID2: FCA publishes findings of multi-firm review of research unbundling reforms**

The FCA has published the [findings](#) from its multi-firm review of research unbundling reforms implemented under MiFID2.

From January 2018, asset managers were required to pay for research separately from execution services, and either charge clients transparently or pay for research themselves. Between July 2018 and March 2019 the FCA met with buy-side firms, sell-side firms and independent research providers to assess how these changes had been implemented.

The review found that, while a number of changes indicate the new rules have steered the market towards the intended outcomes, research valuation and pricing are still evolving.

Amongst other things, the FCA's review found that:

- most buy-side firms have chosen to absorb research costs, resulting in around GBP 70 million of savings for investors in UK-managed equity portfolios in its sample in H1 2018 compared with H1 2017;
- asset managers' research valuation models have different levels of sophistication, particularly in evaluating the quality of research. The FCA expects firms to refine models to ensure they are acting in the best interest of their clients; and
- a wide range of sell-side research pricing levels, which the FCA attributes to an ongoing process of price discovery. The FCA intends to monitor for potential competition concerns and will take action if needed.

The FCA believes that further changes to sell-side pricing models and competition in the research market may be influenced by evolving approaches to price discovery, refinements to valuation and budgeting approaches on the buy-side. As a result, the FCA believes that further work will be necessary to assess the impact of these reforms in 2020/21.

## **FCA issues follow up statement on opportunistic strategies in credit derivatives markets**

The FCA has issued an [update](#) to its joint statement issued in June 2019 with the US Securities and Exchange Commission (SEC) and the US Commodity Futures Trading Commission (CFTC) on opportunistic strategies in the credit derivatives markets.

The June 2019 statement outlined concerns regarding the pursuit of opportunistic strategies that may adversely affect the integrity, confidence and reputation of the credit derivatives markets and market more generally and announced the intention of the three agencies to work together to address these concerns and foster transparency.

In September 2019 the International Swaps and Derivatives Association (ISDA) released a protocol that aims to address certain issues relating to narrowly tailored credit events. The ISDA protocol makes amendments to the 2014 ISDA Credit Derivatives Definitions relating to the Failure to Pay definition and to the Outstanding Principal Balance definition.

While the FCA welcomes the publication of the protocol, it believes it does not go far enough in addressing the issues raised in the joint June 2019 statement, such as opportunistic strategies that do not involve narrowly tailored credit events. The FCA expect to see further industry efforts to improve the functioning of the credit derivatives markets and welcomes continuing engagement with market participants.

## **PRA consults on probability of default and loss given default estimation**

The Prudential Regulation Authority (PRA) has launched a consultation ([CP21/19](#)) on its proposed approach to implementing the European Banking Authority's (EBA's) regulatory products relating to probability of default estimation, loss given default estimation and the treatment of defaulted exposures in the Internal Ratings Based (IRB) approach to credit risk.

CP21/19 proposes to update the PRA's expectations in supervisory statement 'Internal Ratings Based (IRB) approaches' (SS11/13) to implement the EBA's regulatory products that relate to probability of default and loss given default estimation and the treatment of defaulted exposures.

Comments are due by 18 December 2019.

## **BaFin publishes circular on criteria for exemption from auditing obligations for external capital management companies**

The German Federal Financial Supervisory Authority (BaFin) has published its [Circular 10/2019 \(WA\)](#) on the criteria for the exemption from auditing obligations for external capital management companies pursuant to section 38 paragraph 4 sentence 2 of the German Capital Investment Code (Kapitalanlagegesetzbuch, KAGB) according to section 38 paragraph 4 sentence 6 KAGB.

The circular clarifies that an exemption from the auditing obligations does not apply in respect of the requirements of section 84 of the German Securities Trading Act (Wertpapierhandelsgesetz, WpHG) (safeguarding of client financial instruments). Otherwise, an exemption is generally to be granted if

there are no general exclusion criteria (e.g. where a previous audit revealed deficiencies) and the capital management company provides the services and ancillary services pursuant to section 20 paragraph 2 nos. 1 to 3 or paragraph 3 nos. 2 to 5 KAGB exclusively to professional clients. If these services are (also) provided to private customers, an exemption can only be considered if the total volume of investments managed for private customers and the share certificates held in safe custody for private customers do not exceed EUR 5 million in aggregate.

An exemption is usually granted for a period of two years and subject to the condition that the capital management company is obliged to notify BaFin immediately of any significant changes with regard to the type and scope of its securities transactions.

### **BaFin publishes guidance note on examination of securities prospectuses for comprehensibility**

BaFin has published a [guidance note](#) on the examination of securities prospectuses for comprehensibility.

The note provides initial guidance on how to apply the new European requirements for the examination of prospectuses with regard to their comprehensibility in practice. The guidance note is intended to assist market participants in preparing comprehensible prospectuses and thus contribute to an efficient prospectus review process.

The background to this is the prospectus regime that has been in place since 21 July 2019 under the EU Prospectus Regulation and a possible need to adapt the language and structure of prospectuses to the format previously used by issuers.

BaFin intends the guidance note to provide initial assistance in implementing these requirements. At the same time, BaFin reserves the right to amend its administrative practice in this regard to develop further in the future.

### **Polish Financial Supervisory Authority issues standpoint on selected issues related to entry into force of EBA guidelines on outsourcing and their being incorporated in banks' activity**

The Polish Financial Supervisory Authority (PFSA) has issued a [standpoint](#) intended to present the approach banks should adopt with regard to outsourcing in the meaning of the European Banking Authority's (EBA's) guidelines in the context of interactions with national law. The standpoint does not relate to the issue of outsourcing in mortgage banks or the terms concerning employment, which are the subject of separate tasks at the Office of the PFSA.

The Office of the PSA expects banks to adjust to the EBA's guidelines by 30 June 2020.

### **Polish Financial Supervision Authority publishes supplement to its standpoint of 21 December 2018 on requirements to document inducements**

The PFSA has published a [supplement](#) to its December 2018 standpoint on inducements. In the new bulletin, the PFSA provides explanations concerning the documentation of the justifiability and legality of funds transferred by fund



managers to distributors of participation units in investment funds in respect of the provision of additional services or services improving the quality of services provided.

### **FSC announces launch of new electronic securities system**

The Financial Services Commission (FSC) has [announced](#) the launch of Korea's new electronic securities system, which requires all securities certificates of shares and bonds to be recorded on an electronic register for the purpose of making the market paperless as well as eliminating risks of counterfeit or theft of securities and preventing tax evasion.

The FSC notes that while the current securities depository system facilitates the circulation of securities, contributing to the growth of securities transactions and the development of Korea's capital markets, it falls short of eliminating inefficiencies in the issuance of securities and the exercise of rights as it still requires the presence of physical securities. The launch of the new system follows the proclamation of the Electronic Securities Act, which was established in 2016 to eliminate such inefficiencies and promote transparency in securities transactions.

In particular, the new electronic securities system is intended to:

- shorten procedures for the issuance of securities, making it easier for companies to raise funds in capital markets;
- help investors exercise their rights and be better informed of distributions of dividends or capital increases;
- make it possible to build up big data on the issuance and circulation of securities, enabling fintech innovation using such data; and
- enhance transparency in capital markets.

### **Federal agencies request comment on proposed rulemaking to amend swap margin requirements for non-cleared swaps**

The Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Farm Credit Administration (FCA) and the Federal Housing Finance Agency (FHFA) are [requesting comment](#) on a proposed rule that would revise the agencies' regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (swap margin rule). The rulemaking would make the following changes to the swap margin rule:

- support relief by allowing legacy swaps to be amended to replace existing interest rate provisions based on certain interbank offered rates (IBORs) and other interest rate benchmarks;
- modify the swap margin rule's requirements for inter-affiliate swaps;
- allow for an additional initial margin compliance period for certain smaller counterparties, and clarify the existing trading documentation requirements in the swap margin rule; and

- modify the swap margin rule to permit amendments caused by certain routine life-cycle activities that covered swap entities may conduct for legacy swaps without triggering margin requirements.

Comments can be submitted on or before thirty days after publication in the Federal Register.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Shanghai-London Stock Connect – An overview of the rules and requirements**

The last quarter of 2018 saw the publication of a number of new rules and regulations by the China Securities Regulatory Commission (CSRC), the Shanghai Stock Exchange (SSE) and London Stock Exchange, which together provide the regulatory framework for the introduction of the Shanghai-London Stock Connect programme. This briefing paper provides an overview of the rules and requirements.

[https://www.cliffordchance.com/briefings/2019/09/shanghai-london\\_stockconnectanoverviewofth.html](https://www.cliffordchance.com/briefings/2019/09/shanghai-london_stockconnectanoverviewofth.html)

### **Schuldschein loans in cross-border restructurings**

Schuldschein loans are no longer the sole preserve of German Mittelstand borrowers and have started to play an increasingly prominent role in cross-border restructurings. This briefing paper examines some of the key issues that all parties will need to be aware of in relation to a restructuring involving Schuldschein loans. These considerations will also be relevant to parties considering a 'new money' Schuldschein transaction.

[https://www.cliffordchance.com/briefings/2019/09/schuldschein\\_loansincross-borderrestructurings.html](https://www.cliffordchance.com/briefings/2019/09/schuldschein_loansincross-borderrestructurings.html)

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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