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Brexit: EU Parliament adopts resolution on state of play

The EU Parliament has adopted a [resolution](#) on the state of play of the UK's withdrawal from the EU.

Amongst other statements, in the resolution the EU Parliament:

- notes its continued support for an orderly exit based on the Withdrawal Agreement;
- notes its readiness to revert to a Northern Ireland-only backstop;
- discusses alternative arrangements for the Irish border and sets out conditions for accepting such arrangements; and
- indicates that it would support an extension of the Article 50 period if there are reasons and a purpose for such an extension, and suggests examples of what that purpose could include.

Securitisation Regulation: EBA consults on proposed STS framework for synthetic securitisation

The European Banking Authority (EBA) has launched a consultation on a [draft report](#) on a simple, transparent and standardised (STS) framework for synthetic securitisation under Article 45 of the Securitisation Regulation.

The draft report is intended to set out a list of STS criteria to be considered when labelling a synthetic securitisation.

The proposed list of STS criteria includes requirements on STS similar to those applied to traditional non-asset-backed commercial paper (ABCP) securitisation as well as meeting a number of synthetic-specific requirements, such as those on:

- mitigating counterparty credit risk;
- addressing structural features of the securitisation transaction; and
- ensuring that the framework only targets balance sheet synthetic securitisation.

The draft report also provides an analysis of the possible introduction of a defined differentiated regulatory treatment of the STS synthetic securitisation.

Comments are due by 25 November 2019.

Sustainable Finance: EU Council agrees negotiating position on proposed unified EU taxonomy

The Committee of Permanent Representatives (Coreper) has endorsed the EU Council's [negotiating position](#) on the EU Commission's proposed framework to facilitate sustainable investment.

The proposed framework, which aims to develop a unified EU-wide classification system or taxonomy for environmentally sustainable economic activities, is intended to address two key points:

- reducing fragmentation resulting from market-based initiatives and national practices; and
- reducing 'greenwashing' or the practice of marketing financial products as 'green' or 'sustainable', when in fact they do not meet basic environmental standards.

The EU Parliament adopted its first reading position on 28 March 2019. Both co-legislators are now in a position to start trilogue negotiations.

MiFID2: ESMA publishes update to annual transparency calculations for equity and equity-like instruments

The European Securities and Markets Authority (ESMA) has [published](#) updated annual transparency calculations for equity and equity-like instruments.

In July 2019 ESMA advised that European trading venues were not bound by tick sizes derived from its June 2019 calculations for third-country shares with an average daily number of transactions lower than one on the most relevant market. This resulted from ESMA identifying a problem with the updated calculations which appeared to affect the results for shares whose main pool of liquidity is in a third country while having less than one transaction a day on average on the most relevant market in the EU.

ESMA has made available updated results of the annual transparency calculations which reflect late corrections of the underlying data used to perform the calculations by reporting entities. ESMA has now confirmed that from 30 September 2019, European trading venues are bound by the tick sizes derived from its 23 September 2019 publication for third-country shares with an average daily number of transactions lower than one on the most relevant market in the EU which are shares considered to be third-country shares for which the trading venue with the highest turnover is located in a country outside the EEA.

The updated results of the annual transparency calculations apply from 30 September 2019 until 31 March 2021.

IOSCO publishes thematic report on suitability requirements with respect to distribution of complex financial products

The International Organization of Securities Commissions (IOSCO) has published the [final report](#) on its thematic review of suitability requirements with respect to the distribution of complex financial products.

IOSCO's Assessment Committee (AC) reviewed the legislative, regulatory and policy measures reported as being in place by 29 IOSCO members and found that a majority of participating jurisdictions had implemented suitability requirements generally in line with the principles.

Other key findings from the report include:

- participating jurisdictions generally did not have bespoke requirements specifically for complex products;
- what constitutes a complex product differs amongst jurisdictions;
- many participating jurisdictions do not require intermediaries to consider product riskiness or complexity in connection with classifying some customers;
- most jurisdictions have standards for dealing fairly with customers and for dealing with conflicts of interest;
- the robustness of suitability regimes appears to correlate to levels of market development and participation; and

- fintech development in respect of digital advisors and online platforms has created new suitability-related challenges.

IOSCO urges jurisdictions to consider enhancing disclosure requirements to help customers make informed investment decisions and understand the advice they receive from intermediaries.

Brexit: FCA updates directions under Temporary Transitional Power

The Financial Conduct Authority (FCA) has published [updated draft directions](#) under its Temporary Transitional Power (TTP). The TTP gives the FCA flexibility in applying post-Brexit requirements, allowing firms to transition to a new UK regulatory framework. The directions would come into effect on exit day if the UK leaves the EU without an implementation period.

The main updates relate to the following areas:

- extending the proposed duration of the directions issued under the TTP from 30 June 2020 to 31 December 2020;
- updating the provisions relating to prudential requirements to reflect new HM Treasury legislation and FCA exit instruments published since 29 March 2019. The FCA's policy approach has not changed;
- revoking certain directions in relation to payment services, provided by EEA credit institutions in the financial services contracts regime, as these are no longer needed because of legislative amendments made by HM Government; and
- applying a standstill direction to allow EEA central banks and the European Central Bank to continue to rely upon their status as exempt persons until 31 December 2020.

The FCA does not expect to make significant changes to the draft directions in advance of exit day.

PRA finalises policy on strengthening individual accountability

The Prudential Regulation Authority (PRA) has published a [policy statement](#) entitled 'Strengthening individual accountability: Resolution assessments and reporting amendments' (PS20/19).

PS20/19 provides feedback to responses to CP12/19 and contains the PRA's final policy in respect of amendments to:

- the prescribed responsibility for recovery plans and resolution packs contained in the Allocation of Responsibilities part of the PRA Rulebook;
- supervisory statement 'Strengthening individual accountability in banking' (SS28/15); and
- the form 'Senior Managers Regime: Statement of Responsibilities'.

In the absence of feedback questioning the proposed changes set out in CP12/19, the PRA will implement these proposals with a small modification to the revised wording for SS28/15. This decision also reflects the PRA's publication of its final rules and PS15/19 'Resolution assessment and public disclosure by firms' setting out the PRA's requirements in respect of resolution assessments.

In respect of SS28/15, the PRA has amended the illustrative text to refer to the senior manager with a prescribed responsibility covering resolution assessments overseeing the 'report of the' resolution assessment being presented to the management body for approval before submission to the PRA. This would better align the wording with Part 3 of the Resolution Assessment Part of the PRA Rulebook and the wording of 'Resolution assessment and public disclosure by firms' (SS4/19). The PRA has also added a cross reference to the Resolution Assessment part of the Rulebook.

All changes outlined in PS20/19 will take effect from 9 December 2019.

French national risk analysis approved

The Anti-Money Laundering and Anti-Terrorist Financing Advisory Council (Conseil d'orientation de la lutte contre le blanchiment de capitaux et le financement du terrorisme, COLB) has [approved](#) the National Risks Analysis (Analyse nationale des risques, ANR) of money laundering and terrorist financing (ML-TF) in France. The Autorité de contrôle prudentiel et de résolution (ACPR), a member of the COLB, participated in the drafting of the document which aims to identify, at national level, the main threats, vulnerabilities and the resulting level of risk in terms of ML-FT. The ANR is a reference document for the risk analysis performed by businesses subject to anti-money laundering and anti-terrorist financing obligations.

German Federal Council issues statement on draft law implementing Fifth Anti-Money Laundering Directive

The German Federal Council (Bundesrat) has published a [statement](#) on the [draft law](#) implementing the Fifth Anti-Money Laundering Directive (Directive 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU) into German law.

In particular, the Directive envisages the following measures:

- expansion of the group of obliged entities, particularly in the area of virtual currencies;
- standardisation of the enhanced due diligence measures to be taken with regard to high-risk third countries;
- specification of the group of 'politically exposed persons' through lists issued by Member States and the EU Commission on public functions; and
- extension of public access to the electronic transparency register and integration of the European transparency registers.

With respect to cryptographic values, the Bundesrat appreciates the intention of creating a financial markets and anti-money laundering related supervisory framework by way of the draft law. However, it criticises the fact that the definition of 'cryptographic values' as currently contemplated therein does not fit in consistently with the provisions of the German Banking Act (Kreditwesengesetz) but creates certain terminological overlaps.

The Bundestag therefore suggests clarifying the provisions in the draft law amending the KWG with respect to cryptographic values, in particular to consider:

- expressly stipulating that the provisions of the KWG relating to custody business (section 1 (1) sentence 1 no. 5 KWG) and limited custody business (section 1 (1a) sentence 1 no. 12 KWG) prevail over the new provisions for cryptographic custody business if a cryptographic value also qualifies as a security; and
- expressly stipulating – as intended by the draft law pursuant to its reasons chapter – that the inclusion of ‘cryptographic values’ as financial instruments is designed as a catch-all provision i.e. the rules relating to specific financial instruments (e.g. debt instruments) will apply to the extent a cryptographic value qualifies as such financial instrument.

BaFin consults on draft guidance notice on sustainability risk management

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has launched a [consultation](#) on its draft guidance notice on sustainability risk management.

By way of this guidance notice, BaFin intends to provide supervised entities with orientation on dealing with the increasingly important topic of sustainability risks. BaFin sees its guidance notice as a compendium of good practices that should be applied by supervised entities, taking into account the principle of dual proportionality. The guidance notice is therefore an addition to the Minimum Requirements for Risk Management for credit institutions, insurance companies and capital management companies.

Within the consultation, BaFin is particularly interested in opinions on practicability, the examples cited in the draft and potential consequences and interdependencies.

BaFin will accept written comments until 3 November 2019.

BaFin publishes English version of guidance on outsourcing to cloud service providers

BaFin has published an English version of its November 2018 [guidance](#) on outsourcing to cloud service providers.

The guidance represents a joint assessment by BaFin and the Deutsche Bundesbank of outsourcing to cloud service providers. It is addressed to credit institutions, financial services institutions, insurance undertakings, pension funds, investment services enterprises, capital management companies, payment institutions and e-money institutions.

The guidance does not, however, establish any new requirements, but reflects current supervisory practice in such instances of outsourcing.

In addition, BaFin and the Deutsche Bundesbank wish to raise awareness among supervised entities for dealing with cloud services and the related regulatory requirements which remain unaffected.

Consob and IVASS consult on implementation of Insurance Distribution Directive

Consob and IVASS have launched a [consultation process](#) on a set of proposed provisions intended to fully implement Directive 2016/97/EU on insurance distribution (IDD). The aim of the consultation is to gather the opinions of insurance and financial market operators on the rules that each of the two authorities is required to adopt on the basis of the allocation of powers laid down by the regulatory framework.

Consob's proposed amendments to its Intermediaries' Regulation concern the rules of conduct and information obligations with which institutions (including banks and investment firms) must comply in the distribution of insurance investment products. In particular, the proposal consists of a complete revision of the ninth book of the Intermediaries' Regulation in order to implement the IDD.

With regard to IVASS, the proposal consists of amendments to the regulations on corporate governance, distribution and disclosure of insurance products (nos. 38/2018, 40/2018 and 41/2018) and the adoption of a new regulation on the governance and control of insurance products (product oversight governance or POG).

Comments must be submitted by 31 October 2019.

Bank of Italy publishes updates on statistical and supervisory reporting obligations applicable to credit and financial institutions

The Bank of Italy has [published](#) a set of updates to its circulars on individual and consolidated statistical and supervisory reporting obligations applicable to credit and financial institutions. In particular, these updates are as follows:

- 12th update of Circular no. 272 of 30 July 2008;
- 18th update of Circular no. 217 of 5 August 1996;
- 20th update of Circular no. 189 of 21 October;
- 22nd update of Circular no. 148 of 2nd July 1991;
- 25th update of Circular no. 115 of 7 August 1990; and
- 71st update of Circular no. 154 of 22 November.

APRA responds to submissions on amendments to margin requirements for non-centrally cleared derivatives

The Australian Prudential Regulation Authority (APRA) has released its [responses](#) to the feedback it received on its August 2019 consultation paper on proposed revisions to its prudential standard entitled 'CPS 226: Margining and risk mitigation for non-centrally cleared derivatives' ([CPS 226](#)) to extend the phase-in implementation timeline for initial margin requirements, substituted compliance and other minor amendments. The proposed changes will be applicable to all authorised deposit-taking institutions, general insurers, life insurers and registrable superannuation entity licensees.

Amongst other things, APRA has confirmed that it is proceeding with its proposal to amend the prudential standard CPS 226 to:

- delay the final implementation phase for initial margin requirements by one year from 1 September 2020 to 1 September 2021 and, in doing so, increase the qualifying level of aggregate average notional amount (AANA) of non-centrally cleared derivatives applicable from 1 September 2020 from AUD 12 billion to AUD 75 billion;
- defer the application of margin requirements to APRA covered entities with an AANA of non-centrally cleared derivatives greater than AUD 12 billion to 1 September 2021; and
- clarify that an APRA covered entity is not required to have initial margin documentation, custodial arrangements and operational processes in place for posting and collecting initial margin in cases where the bilateral initial margin amount for a particular trading relationship is less than the AUD 75 million initial margin threshold.

Regarding substituted compliance and other matters, APRA has decided, amongst other things, to:

- amend the list of foreign bodies whose margin requirements are approved for substituted compliance with the margin requirements in the prudential standard CPS 226 to include the United Kingdom's (UK's) PRA and FCA, provided that the PRA and the FCA's margin requirements are substantively unchanged following the UK's withdrawal from the European Union; and
- broaden the scope of genuine amendments to any amendments made solely for the purpose of addressing benchmark reforms, rather than just interest rate benchmark reforms.

APRA has also released the final revised version of the prudential standard CPS 226, which will take effect upon its registration on the Federal Register of Legislation.

HKMA enhances investor protection measures relating to investment, insurance and mandatory provident fund products

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to announce [enhanced investor protection measures](#) relating to the sale of investment, insurance and mandatory provident fund products by authorised institutions. The enhancement follows a holistic review of these measures by the HKMA and mainly relates to the following:

- physical segregation of retail activities;
- audio-recording of face-to-face sale processes;
- risk disclosure for subsequent transaction(s) on comparable products;
- pre-investment cooling-off period;
- holistic assessment for vulnerable customers; and
- treatment for different customer segments.

The HKMA requires authorised institutions to comply with its enhanced guidance in the circular as soon as practicable and no later than 12 months

from the date of the circular, with the exception of the holistic assessments for vulnerable customers, which should be implemented no later than 18 months from the date of the circular. Authorised institutions are also required to provide sufficient training to all relevant staff before the implementation and thereafter on an ongoing basis.

SFC proposes to regulate trustees and custodians of public funds

The Securities and Futures Commission (SFC) has launched a [public consultation](#) on a proposal to regulate depositaries of SFC-authorized collective investment schemes (CIS). The proposed regulatory regime is intended to provide better protection for scheme assets and help safeguard the interests of retail investors.

Under the current regulatory framework, when a CIS applies for authorisation, the SFC requires the appointment of a depositary acceptable to the SFC. Depositaries are not licensed by or registered with the SFC and the SFC does not have direct powers to supervise or take disciplinary action against them.

Under the proposed regime, depositaries operating in Hong Kong would be licensed by or registered with the SFC for a new type of regulated activity, 'Type 13 regulated activity', and be subject to the ongoing supervision of the SFC or the HKMA. The proposed regime covers depositaries for SFC-authorized unit trusts, mutual funds, open-ended fund companies, real estate investment trusts and pooled retirement funds, but excludes mandatory provident fund products.

Comments on the consultation are due by 31 December 2019.

RECENT CLIFFORD CHANCE BRIEFINGS

Stablecoins – A snapshot of global regulation

Facebook's proposed stablecoin, Libra, is dominating the headlines. However, growing interest means increased regulatory and political scrutiny. As digital assets transcend national borders, what does this mean for those interested in issuing or participating in a stablecoin project? This briefing paper discusses stablecoins and the regulation that accompanies them.

https://www.cliffordchance.com/briefings/2019/09/stablecoins_a_snapshotofglobalregulation.html

A prorogation that never was

Parliament might have thought it was prorogued but, if so, Parliament was wrong according to the Supreme Court. Parliament can resume its sittings, if it wishes to do so. But what impact the Supreme Court's decision will have on Brexit is more speculative. This briefing paper discusses the decision and its consequences.

https://www.cliffordchance.com/briefings/2019/09/a_prorogation_thatneverwas.html

Why Hong Kong is China's sanctions hot spot

The Financial Action Task Force (FATF) issued its much anticipated Mutual Evaluation Report (MER) of Hong Kong on 4 September 2019. Among its

recommendations, the MER encouraged Hong Kong to closely monitor its exposure to proliferation financing, especially from North Korea. It is the latest reminder that there are sanctions risks lurking under Hong Kong's compliant surface that are bigger than you might think. This briefing paper discusses the report.

https://www.cliffordchance.com/briefings/2019/09/why_hong_kong_is_china_sanctions_hotspot.html

US Treasury Department issues proposed rules implementing new CFIUS regulations under FIRRMA

Pursuant to the Foreign Investment Risk Review Modernization Act of 2018, the United States Treasury Department's Office of Investment Security has issued proposed rules implementing the changes FIRRMA brought to the Committee on Foreign Investment in the United States. Among the changes, the proposed rules extend CFIUS' jurisdiction to 'covered investments' that do not provide foreign investors with control, provide for a 'white list' process for favouring investors from certain countries in the CFIUS review process, and set out rules for real estate transactions. Comments on the proposed rules are due by 17 October 2019.

This briefing paper discusses the proposed rules.

https://www.cliffordchance.com/briefings/2019/09/u_s_treasury_department_issues_proposed_rule.html

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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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