INTERNATIONAL REGULATORY UPDATE 16 – 20 NOVEMBER 2020

- **Securitisation Regulation: Delegated Regulation on fees for securitisation repositories published in Official Journal**
- **Coronavirus: ECON Committee publishes MiFID2 Quick Fix amendments**
- **Data reporting service providers: ESMA consults on fees and criteria**
- **CCP resolution: FSB issues guidance on financial resources and announces further work**
- **Coronavirus: FSB reports to G20 Leaders on impact of pandemic and its response**
- **FSB publishes 2020 resolution report**
- **FSB reviews progress on reforming major interest rate benchmarks**
- **ICE Benchmark Administration to consult on ceasing publication of GBP, EUR, CHF and JPY LIBOR**
- **CDOR benchmark administrator announces cessation of 6-month and 12-month CDOR tenors from May 2021**
- **Brexit: SI updating 'exit day' references in financial services instruments published**
- **CRR: PRA publishes Dear CFO letter on prudential treatment of legacy instruments**
- **Brexit: BoE and PRA update temporary transitional power guidance regarding CRD5 and BRRD2**
- **SI allowing HMT to modify insolvency law applicable to payments and e-money institutions published**
- **FCA consults on benchmark powers**
- **UK regulators issue joint statement on timelines for implementation of prudential reforms**
- **Treasury Committee consults on future of financial services**
- **HMT consults on UK listing regime**
- **MaBail-in: BaFin consults on new version of its circular regarding minimum requirements for feasibility of bail-in**
- **Brexit: BaFin issues statement on marketing of UK funds in Germany**
- **CSSF issues communiqué on application of EBA guidelines on**

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product oversight and governance arrangements

- **CSSF issues circular adopting EBA guidelines on determination of weighted average maturity of contractual payments due under tranche in accordance with CRR**
- **CSSF highlights ESMA statement regarding upcoming end of transition period for derivatives reported under EMIR and SFTR**
- **CSSF-CODERES circular on calculation of 2021 ex-ante contributions to Single Resolution Fund published**
- **FINMA proposes to revise circular on video and online identification**
- **FINMA sets out strategic goals for 2021 – 2024**
- **Australian Government consults on draft subordinate legislation under insolvency reforms to support small businesses**
- **Australian Government consults on payments system review issues paper**
- **Coronavirus: APRA updates FAQs on banking**
- **Recent Clifford Chance briefings: Post-Brexit market access, sustainable finance, climate regulation, and more. Follow this link to the briefings section.**

Securitisation Regulation: Delegated Regulation on fees for securitisation repositories published in Official Journal

Commission Delegated Regulation (EU) 2020/1732 of 18 September 2020 supplementing the Securitisation Regulation with regard to fees charged by the European Securities and Markets Authority (ESMA) to securitisation repositories has been published in the Official Journal.

The Delegated Regulation will enter into force on 9 December 2020.

Coronavirus: ECON Committee publishes MiFID2 Quick Fix amendments

The EU Parliament's Economic and Monetary Affairs (ECON) Committee has published the report it adopted on 29 October 2020 setting out 'quick fix' amendments to MiFID2.

The amendments, which form part of the Capital Markets Recovery Package aimed at facilitating the EU's economic recovery from the COVID-19 pandemic, are aimed at simplifying information requirements and supporting the growth of euro-denominated derivatives markets.

The report has been tabled for its first reading in the EU Parliament.

Data reporting service providers: ESMA consults on fees and criteria

ESMA has published two consultations relating to data reporting service providers (DRSPs).

Following the European Supervisory Authorities' (ESAs') review, the authorisation of DRSPs will move from competent authorities to ESMA from January 2022. ESMA's consultations are seeking stakeholder feedback on its technical advice to the EU Commission on certain derogation criteria for DRSPs and fees for DRSPs that will be supervised by ESMA.

In its consultation on technical advice for the Commission, ESMA is seeking feedback on the criteria to identify authorised reporting mechanisms (ARMs) and approved publications arrangements (APMs) that, by way of derogation from MiFIR on account of their limited relevance for the internal market, will be subject to authorisation by an EU Member State competent authority from January 2022.

ESMA's consultation on supervisory fees seeks input on its proposals for application and authorisation fees for DRSPs, as well as an annual supervisory fee.

Comments to both consultations are due by 4 January 2021.

CCP resolution: FSB issues guidance on financial resources and announces further work

The Financial Stability Board (FSB) has published guidance on financial resources to support central counterparty (CCP) resolution and on the treatment of CCP equity in resolution.

Addressed to resolution authorities and crisis management groups, the guidance:

- proposes steps to guide authorities in assessing the adequacy of a CCP's financial resources and the potential financial stability implications of their use; and
- provides a framework for authorities to evaluate the exposure of CCP equity to losses in recovery, liquidation and resolution and how, where possible, the treatment of CCP equity in resolution could be adjusted.

An accompanying press release announces that the Chairs of the FSB, Committee on Payments and Market Infrastructures (CPMI), the International Organization of Securities Commissions (IOSCO) and of the FSB Resolution Steering Group propose to conduct further work on CCP financial resources through their respective committees.

Planned for 2021, this work will consider the need for, and develop if appropriate, international policy on the use, composition, and amount of financial resources in recovery and resolution to further strengthen the resilience and resolvability of CCPs in default and non-default loss scenarios, including assessing whether any new types of pre-funded resources would be necessary to enhance CCP resolvability.

Coronavirus: FSB reports to G20 Leaders on impact of pandemic and its response

The FSB has submitted to the G20 Leaders two reports and a letter from its Chair considering the impact of the coronavirus pandemic and the FSB's response.

The first report provides a holistic review of the market turmoil experienced in March 2020. It concludes that the market saw unprecedented levels of

economic shock and related liquidity stress in March, resulting in a fundamental repricing of risk, a heightened demand for safe assets and a large and persistent imbalance in the demand for, and supply of, liquidity. Banks' stronger capital and liquidity positions due to post-crisis reforms, the resilience of central counterparties and the intervention of central banks all helped mitigate the liquidity stress, while dealers' difficulties in absorbing large sales of assets and the substantial sales of US Treasuries by non-bank investors and foreign holders exacerbated the stress.

The second report focuses on the financial stability impact of, and policy responses to, the pandemic. The FSB notes that, while global financial conditions have overall continued to ease, risks remain high. In particular, the second wave of the pandemic, combined with government containment measures, and the subsequent potential for sharp shifts in investor sentiment and the deterioration of the credit quality of non-financial borrowers, all pose substantial risks to financial stability. The effectiveness of the policy response to the pandemic critically depends on measures taken remaining in place as long as necessary. The FSB emphasises the importance of using analytical tools, such as stress testing, to assess potential solvency risks and inform adjustments in policy. It also calls for continued close international cooperation to help maintain global financial stability, keep markets open and functioning, and preserve the financial system's capacity to finance growth.

In his letter to the G20 Leaders, FSB Chair Randal K. Quarles summarises the findings of the two reports and sets out key responses to the financial stability vulnerabilities highlighted by coronavirus.

FSB publishes 2020 resolution report

The FSB has published its 2020 report on the implementation of resolution reforms. The report details the progress made by FSB members in implementing reforms and summarises findings from the FSB's monitoring of resolvability across the banking, financial market infrastructure and insurance sectors, and examines the impact of the COVID-19 pandemic on resolution planning.

FSB reviews progress on reforming major interest rate benchmarks

The FSB has published a progress report on the implementation of reforms to major interest rate benchmarks.

The report covers reforms to LIBOR, EURIBOR and TIBOR, as well as reviewing progress in other currency areas. The report includes a review of proposals by authorities and national working groups to help manage an orderly wind-down of LIBOR and, in particular, provide a legislative solution for tough legacy contracts. The FSB encourages market participants proactively to progress their transition efforts and plans, particularly through active conversion and the insertion of robust and workable fallbacks where feasible. Additionally, all market participants are encouraged to cease use of LIBOR as a benchmark in all new activity across global markets as soon as possible.

ICE Benchmark Administration to consult on ceasing publication of GBP, EUR, CHF and JPY LIBOR

ICE Benchmark Administration (IBA) has announced that it intends to consult on ceasing the publication of all GBP, EUR, CHF and JPY LIBOR settings.

The forthcoming consultation relates to IBA's intention to cease the publication of the following LIBOR settings after 31 December 2021:

- GBP - all tenors (overnight, 1 week, 1, 2, 3, 6 and 12 months)
- EUR - all tenors (overnight, 1 week, 1, 2, 3, 6 and 12 months)
- CHF - all tenors (spot next, 1 week, 1, 2, 3, 6 and 12 months)
- JPY - all tenors (spot next, 1 week, 1, 2, 3, 6 and 12 months)

This follows feedback received from the panel banks, and discussions with the Financial Conduct Authority (FCA) and other official sector bodies. IBA expects to be able to make further announcements regarding USD LIBOR when discussions with the FCA, other official sector banks and the panel banks conclude.

IBA has emphasised that its statement is not, and must not be taken to be, an announcement that IBA will continue or cease the publication of any LIBOR settings after 31 December 2021. IBA expects to make separate announcements in this regard following the outcome of the consultations, and subject to any rights of the FCA to compel IBA to continue publication.

The International Swaps and Derivatives Association (ISDA) has published a statement to confirm that IBA's statement does not constitute an index cessation event under the IBOR Fallbacks Supplement or the ISDA 2020 IBOR Fallbacks Protocol and will not trigger the fallbacks under the supplement or protocol or have any effect on the calculation of the spread.

CDOR benchmark administrator announces cessation of 6-month and 12-month CDOR tenors from May 2021

Refinitiv Benchmark Services (UK) Limited (RBSL), the benchmark administrator for the Canadian Dollar Offered Rate (CDOR), has announced the cessation of the calculation and publication of the 6-month and 12-month CDOR tenors from 17 May 2021 onwards.

This follows a consultation held in September 2020 on possible changes to CDOR.

RBSL has confirmed that the last day of publication for the 6-month and 12-month CDOR tenors will be 14 May 2021. The 1-month, 2-month and 3-month tenors will not be affected by this action.

Following the consultation, RBSL has also confirmed that at this stage it has not taken a decision regarding the introduction of a delay in the publication of individual contributions to CDOR. RBSL intends to consider this possible change in further detail.

Bloomberg has also published a statement announcing that under the IBOR Fallback Rate Adjustments Rule Book, a 'Tenor Cessation Trigger Date' has occurred. The Spread Adjustment Fixing Date for the Relevant Tenors is 12 November 2020.

ISDA has published guidance for parties to over-the-counter derivative transactions that are affected by RBSL's announcement on the cessation of 6-month and 12-month CDOR tenors.

Brexit: SI updating 'exit day' references in financial services instruments published

The Financial Services and Economic and Monetary Policy (Consequential Amendments) (EU Exit) Regulations 2020 (SI 2020/1301) have been made and laid before the UK Parliament.

SI 2020/1301 substitutes references to 'exit day' (31 January 2020) with 'IP completion day' in 50 financial services EU exit instruments so that they refer instead to the end of the transition period on 31 December 2020.

The SI was made according to the negative procedure on 17 November and, if not annulled by Parliament, comes into force on 30 December 2020.

CRR: PRA publishes Dear CFO letter on prudential treatment of legacy instruments

The Prudential Regulation Authority (PRA) has published a Dear CFO letter requesting firms take remedial actions to address issues arising from the planned prudential treatment of legacy instruments before the Capital Requirements Regulation I (CRR I) transition period ends on 31 December 2021.

The letter follows a recent European Banking Authority (EBA) Opinion (EBA/Op/2020/17) on the same topic and sets out the PRA's similar concerns, namely subordination provisions and flexibility of distribution payments creating risks to the eligibility of firms' own funds and eligible liabilities instruments.

Among other things, the PRA notes that it expects affected firms to undertake a risk-based approach and assess appropriate remedial actions before the end of the CRR I transition period, and that a firm's choice of remedial action may depend on a number of factors, including call options, governing law, issuing entity and market conditions.

The PRA also notes that firms intending to keep affected legacy instruments as non-regulatory capital and non-eligible liability instruments beyond the end of the CRR I transition period should include in their action plan a reasoned analysis of any prudential risks, including concerns for resolvability or insolvency, and potential actions to mitigate those risks.

Firms are requested to share an action plan with their usual supervisory contact by 31 March 2021.

Brexit: BoE and PRA update temporary transitional power guidance regarding CRD5 and BRRD2

The Bank of England (BoE) and the PRA have published a statement and guidance documents on the application of the temporary transitional power (TTP), which allows the UK's regulators to delay or phase-in onshoring changes to UK regulatory requirements after the end of the transition period on 31 December 2020 until 31 March 2022.

The statement concerns the application of the TTP to CRD5 and BRRD2 derived legislation. The BoE and PRA note that transitional relief will only

apply to a small number of relevant obligations and that firms must ensure that they are ready to comply with changes to domestic law and PRA rules being made to implement CRD5 and BRRD2. The PRA also reiterates its intention not to grant transitional relief in respect of contractual recognition of bail-in (CROB) rules and stays rules, except in relation to phase two liabilities as referenced in relation to CROB.

Updated versions of file-specific guidance documents on the application of the TTP have also been published, covering:

- PRA Rulebook;
- CRR;
- Solvency II;
- Securitisation Regulation;
- Bank Recovery and Resolution; and
- financial market infrastructures (FMIs), including EMIR and MiFIR.

SI allowing HMT to modify insolvency law applicable to payments and e-money institutions published

The Payment Services and Electronic Money (Amendment) Regulations 2020 (SI 2020/1275) have been made and laid before the UK Parliament.

SI 2020/1275 amends the Payment Services Regulations 2017 (SI 2017/752) (PSRs) and the Electronic Money Regulations 2011 (SI 2011/99) (EMRs) to, among other things, provide HM Treasury (HMT) with an enabling power to create new insolvency regulations and rules for the payments and e-money sector.

Noting the success of the existing Special Administration Regime (SAR) for investment banks, HMT intends to use the power to create a Special Administration Regime for payments and e-money institutions (pSAR), which would give insolvency practitioners an expanded toolkit, allowing them to keep insolvent institutions operational and to prioritise the return of client assets to consumers.

The SI is intended to develop the UK's implementation of the EU's Payment Services Directive (PSD2) and the E-Money Directive (EMD) in relation to the safeguarding of user funds.

The SI was made according to the negative procedure on 12 November and, if not annulled by Parliament, comes into force on 8 December 2020.

HMT did not formally consult on the SI but intends to run a full consultation on the regulations and rules creating the pSAR.

FCA consults on benchmark powers

The Financial Conduct Authority (FCA) has launched two consultations on its potential approach to the use of proposed new powers to ensure an orderly wind down of LIBOR.

The proposed powers would be granted to the FCA under the Benchmarks Regulation (BMR), as amended by the Financial Services Bill introduced into the UK Parliament on 21 October 2020. The exercise of these proposed powers would be subject to a decision by IBA to cease publication of LIBOR.

The FCA is consulting on its proposed policy in relation to:

- designating an unrepresentative benchmark using new powers under proposed Article 23A; and
- requiring changes to a critical benchmark, including its methodology, using new powers under proposed Article 23D.

Following the feedback received, the FCA intends to publish statements of policy on its approach in due course.

The FCA plans to consult in Q2 2021 on its approach to the exercise of its powers under the proposed Article 21A and Article 23C. The FCA also intends to conduct a further consultation in 2021 in relation to any decision to exercise the proposed Article 23D power in respect of LIBOR.

UK regulators issue joint statement on timelines for implementation of prudential reforms

HM Treasury (HMT), the FCA and the PRA have issued an update to industry on planned timelines for introducing the UK's Investment Firms Prudential Regime (IFPR) and implementation of those Basel 3 reforms which make up the UK equivalent to the outstanding elements of the EU's Capital Requirements Regulation (CRR2).

The regulators have a targeted implementation date of 1 January 2022 for both regimes, following feedback from industry in relation to these specific proposals and in response to the September 2020 Regulatory Initiatives Grid.

HMT expects to have the relevant secondary legislation in place in good time, and the regulators intend to provide industry with as much sight of the final rules as possible ahead of the implementation date.

Treasury Committee consults on future of financial services

The House of Commons Treasury Committee has launched, and published a call for evidence on, its inquiry into the future of financial services after the end of the transition period.

The inquiry will broadly examine how financial services regulations should be made and scrutinised by Parliament, how regulators are funded and the extent to which financial services regulation should be consumer-focussed and include wider public policy issues. In particular, evidence is sought on:

- how the UK financial services sector can take advantage of the UK's new trading environment;
- changes that should be made to the regulatory framework;
- what the Government's financial services priorities should be when negotiating trade agreements with third countries;
- whether the current regulatory barriers that apply to third countries should be maintained;
- how to facilitate and promote the emergence of fintech and new competition;

- the progress made by Government and regulators in facilitating equivalence agreements with third countries, and whether an alternative mechanism would better serve the UK market's interests;
- protecting the independence of regulators; and
- balancing lighter touch regulation with prudential safeguards.

The call for evidence closes on 8 January 2021.

HMT consults on UK listing regime

HMT has published a call for evidence and terms of reference relating to the review of the UK listing regime.

The listings review, which is to be chaired by Lord Hill, broadly aims to improve the flexibility and proportionality of the UK's regulatory system to encourage more high-quality UK equity listings and public offerings.

The call for evidence concerns the scope and objectives of the review set out in the terms of reference and seeks views, in particular, on potential changes or alternative measures in relation to:

- the rules concerning free floats, dual class share structures and track record requirements;
- prospectus requirements; and
- dual and secondary listing, including the entry requirements for the UK's premium listing segment.

Views are also sought on any other immediate issues the review should consider, including whether there are any non-regulatory, non-legislative immediate actions the UK Government or regulators could take to promote listings in UK markets.

The call for evidence closes on 5 January 2021. The review intends to report to HMT in early 2021.

MaBail-in: BaFin consults on new version of its circular regarding minimum requirements for feasibility of bail-in

The German Federal Financial Services Supervisory Authority (BaFin) has announced that it plans to revise its circular regarding the minimum requirements for the feasibility of a bail-in (MaBail-in) and published a draft for consultation.

The original MaBail-in circular was published by BaFin on 4 July 2019. The planned new version of MaBail-in addresses all institutions under the direct responsibility of BaFin as the national resolution authority for which no insolvency scenario has been defined as a liquidation strategy.

The draft contains guidelines for the management information systems of the institutions affected to provide at any time information that is essential for the effective and efficient implementation of the resolution instruments of the participation of the holders of relevant capital instruments and the participation of creditors according to sections 89 and 90 of the German Act on the Recovery and Resolution of Credit Institutions (Gesetz zur Sanierung und Abwicklung von Kreditinstituten, SAG). In addition, it includes requirements for the technical-organisational features to provide the information within 24 hours of the resolution authority's request.

The MaBail-in will be extended in a number of respects. For example, additional data points will be required to further develop the external bail-in implementation and to extend data delivery to all bail-in eligible liabilities, with respect for the principle of proportionality. A collection of frequently asked questions will also be included.

Brexit: BaFin issues statement on marketing of UK funds in Germany

BaFin has issued a statement on the marketing of UK funds in Germany. At present, UK funds are marketed in Germany on the basis of section 310 of the German Capital Investment Act (Kapitalanlagegesetzbuch, KAGB) for UCITS and section 323 of the KAGB for special AIFs by means of passport procedures. At the end of the transition period on 31 December 2020, this possibility and therefore the right to distribute will cease to exist. If these funds are to be further marketed in Germany after the end of the transitional period, they will each have to follow a bilateral third country distribution notification procedure on the basis of section 320 KAGB for former UK-UCITS or sections 329/330 KAGB for special AIFs. A distribution notification procedure for corresponding UK funds may also be carried out before the end of the transition period to allow continued distribution without interruption.

CSSF issues communiqué on application of EBA guidelines on product oversight and governance arrangements

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a communiqué to highlight the recent publication of the EBA's second report on the application of the guidelines on product oversight and governance (POG) arrangements.

In its communiqué, the CSSF states that the EBA report:

- highlights findings from the EBA's second assessment of the way in which financial institutions have applied the EBA guidelines on POG arrangements and includes a number of good practice examples; and
- concludes that many financial institutions do not sufficiently ensure that consumers' needs are met in line with the POG guidelines.

Therefore, the CSSF, in line with the EBA, encourages financial institutions to ensure that the interests, objectives and characteristics of consumers are taken into account when applying POG arrangements, in order to avoid negative effects on the consumer.

The CSSF expects all entities that are subject to the supervision of the CSSF and offer retail banking products to consider the good practices identified by the EBA and, where applicable, to improve their application of the POG guidelines.

CSSF issues circular adopting EBA guidelines on determination of weighted average maturity of contractual payments due under tranche in accordance with CRR

The CSSF has issued Circular 20/756 dated 9 November 2020 to inform the relevant stakeholders that it complies with and applies the European Banking Authority (EBA) guidelines on the determination of the weighted average

maturity (WAM) of the contractual payments due under the tranche in accordance with point (a) of Article 257(1) of the Capital Requirements Regulation (CRR).

The CSSF reminds stakeholders that the calculation of risk-weighted exposure amounts of securitisation positions is subject to the requirements laid down in Chapter 5 of Part Three of the CRR. In particular Chapter 5 introduces a hierarchy of methods and common parameters for the calculation of risk-weighted exposure amounts of securitisation positions.

When determining their credit risk mitigation for securitisation positions subject to the standardised approach, institutions may measure the maturity of a tranche (MT) in accordance with the methods laid down in Article 257 of the CRR. In accordance with the mandate in Article 257(4), the EBA guidelines specify the methodology for measuring the WAM of the contractual payments due under the tranche referred to in point (a) of Article 257(1) of the CRR.

The CSSF circular applies to credit institutions and CRR investment firms incorporated under Luxembourg law, as well as to Luxembourg branches of third country credit institutions and CRR investment firms that have adopted the WAM approach instead of the final legal maturity approach when calculating the risk-weighted exposure amounts for the specific purpose of determining the capital requirement of a securitisation position.

The circular entered into force on 9 November 2020.

CSSF highlights ESMA statement regarding upcoming end of transition period for derivatives reported under EMIR and SFTR

The CSSF has published a press release highlighting an ESMA statement dated 10 November 2020. In its statement, ESMA addressed issues affecting the reporting, recordkeeping, reconciliation, data access, portability and aggregation of derivatives reported under Article 9 of the European Market Infrastructure Regulation (EMIR) and Article 4 of Securities Financing Transactions Regulation (SFTR), following the end of the Brexit transition period on 31 December 2020.

The CSSF stresses that it expects counterparties to follow the clarifications provided in ESMA's statement and draws their attention to certain elements.

CSSF-CODERES circular on calculation of 2021 ex-ante contributions to Single Resolution Fund published

The CSSF has, acting for the Luxembourg Resolution Board (Conseil de Résolution) on behalf of the Single Resolution Board (SRB), issued circular 20/11 dated 18 November 2020 on the data collection for the 2021 ex-ante contributions to the Single Resolution Fund (SRF).

The circular is addressed to all credit institutions incorporated in Luxembourg and subject to the Single Resolution Mechanism Regulation (EU) 806/2014. Luxembourg branches of credit institutions established outside the EU are not in the scope of the circular, as they will be covered by the Luxembourg Resolution Fund (rather than by the SRF). Luxembourg branches of credit institutions which have their head office in another Member State of the EU are covered by their head office.

In order to determine the annual contribution to be paid by each credit institution in 2021, the SRB requests a certain amount of information via a template attached to the circular (together with the relevant instructions on how the template has to be filled in and returned to the CSSF).

The requested data collection for the 2021 ex-ante contributions to the SRF has to be sent to the CSSF by 15 January 2021 at 24:00 CET at the latest.

In cases where the required information is not transmitted correctly within the indicated deadline, the SRB may use estimates or its own assumptions for the calculation of the 2021 contribution of the concerned credit institution and in specific cases it may assign the credit institution the highest risk adjusting multiplier for the calculation.

The data required are identical to the data requested for the 2020 ex-ante contribution in Circular CSSF-CODERES 19/09, except that (i) a new field 2B1 has been introduced and institutions are requested to select 'No' by default (the CSSF will then contact them individually) and (ii) for field 2C1, the SRB emphasises that the computation must be on a quarterly basis for the reference year so that a yearly average of these quarters can be reported.

Finally, each credit institution that directly or as part of a group falls under direct ECB supervision, unless it is subject to the lump-sum payment, must make available certain additional assurance documents, which have to be sent to the CSSF by 17 February 2021 at the latest.

FINMA proposes to revise circular on video and online identification

The Swiss Financial Market Supervisory Authority (FINMA) is proposing to amend the due diligence requirements for client onboarding via digital channels to take account of technological developments. To this end, it is revising its Circular 2016/7 'Video and online identification'.

With the proposed amendments, financial intermediaries should be enabled to automate their identification processes further and to improve their scalability while maintaining at least the same security level. Therefore, as an additional option for online identification, the scanning of the client's biometric passport chip is proposed.

FINMA has launched a consultation on the proposed changes, which will end on 1 February 2021.

FINMA sets out strategic goals for 2021 – 2024

FINMA has published its strategic goals for the period from 2021 to 2024. These have been approved by the Federal Council. The ten goals show how FINMA intends to fulfil its legal mandate and where its focus will lie. The goals concern various areas of client and system protection, but also operational topics.

Among other things, FINMA has indicated that:

- it will continue to focus on supervised institutions' stability, in particular strong capitalisation and liquidity (goal 1), and on further mitigating the 'too big to fail' problem (goal 4). FINMA will also seek to ensure that the financial system remains as robust and client-oriented as possible, despite structural challenges (goal 5);

- it will orient its supervisory work to have a lasting positive impact on financial institutions' conduct, particularly with regard to combating money laundering and suitability, cross-border and market conduct issues (goal 2). The areas of risk management and corporate governance are now listed as a separate goal (goal 3);
- innovation will remain a core element for FINMA in all areas (goal 6). It will apply existing rules to innovative business models and products by taking a pragmatic and forward-looking approach, and will ensure that these have a fair chance on the market;
- sustainability is enshrined in a new goal (goal 7). FINMA will give particular consideration to climate-related financial risks in its supervisory work and urge financial institutions to tackle these risks transparently;
- it will make the case for risk-reducing, proportional and less complex regulation in the Swiss financial centre, which is also equivalent to international standards (goal 8);
- it will use its resources in an efficient and risk-based way in order to fulfil its extended legal mandate. New technologies will be used to help realise gains in efficiency and effectiveness (goal 9); and
- effective, efficient and internationally recognised financial market supervision requires highly qualified managers and employees. These are the focus of the new strategic goal 10.

Australian Government consults on draft subordinate legislation under insolvency reforms to support small businesses

The Australian Government has launched a public consultation on the draft Insolvency Practice Rules (Corporations) Amendment (Corporate Insolvency Reforms) Rules 2020 and the draft Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020, which together form the subordinate legislation to the Corporations Amendment (Corporate Insolvency Reforms) Bill 2020 that was introduced to give effect to the changes to Australia's insolvency framework announced on 24 September 2020.

The subordinate legislation has been designed to meet the needs of small businesses by reducing the complexity and costs in the new insolvency processes established under the Bill in response to the economic impact of COVID-19. In particular:

- the purpose of the draft rules is to amend the conditions and requirements relating to the registration of liquidators, and to make other amendments to give effect to the new small business restructuring practitioner to be established by the Bill. The draft rules also seek to allow meetings relating to the external administration of a company to be held using alternative technology; and
- the purpose of the draft regulations is to amend the Corporations Regulations 2001 to enable the new debt restructuring and simplified liquidation regimes proposed to be established by the Bill. The draft regulations also make further consequential amendments to the Corporations Regulations 2001 that are required as a result of the Bill.

The draft rules and draft regulations will commence on 1 January 2021, subject to the passing of primary legislation, in order to ensure that more small

businesses continue to benefit from the new processes as temporary relief to protect financially distressed businesses expires at the end of 2020.

Comments on the consultation are due by 24 November 2020.

Australian Government consults on payments system review issues paper

The Australian Treasury has launched a public consultation on the Payments System Review Issues Paper, which follows an announcement by the Prime Minister of Australia and the Treasurer on 29 September 2020 regarding the JobMaker Digital Business Plan, which included a suite of measures designed to accelerate Australia's recovery from the economic impact of the COVID-19 pandemic.

A key element of this plan includes a review of the regulatory architecture of the Australian payments system to ensure it remains fit-for-purpose and is capable of supporting continued innovation for the benefit of consumers, businesses and the broader economy. The Treasurer announced on 21 October 2020 that Scott Farrell would lead the review and provide a report to the Australian Government by April 2021.

The issues paper forms the first step in this review, by posing questions which are designed to address how Australia's regulatory architecture can best serve end-users with the creation of a framework that encourages competition and innovation, while ensuring payments can be made in an efficient, low-cost and secure manner without compromising the stability of the system.

Comments on the consultation are due by 31 December 2020.

Coronavirus: APRA updates FAQs on banking

The Australian Prudential Regulation Authority (APRA) has updated its set of frequently asked questions (FAQs) on banking during the COVID-19 pandemic by adding a new Question 12 to the FAQs. The new FAQ is intended to outline APRA's expectations for authorised deposit-taking institutions (ADIs) in relation to the credit risk capital treatment of loans covered by the Coronavirus Small and Medium-sized Enterprises (SME) Guarantee Scheme.

In particular, the new FAQ provides that the Coronavirus SME Guarantee Scheme (both phases) established by the Commonwealth Government may be regarded as an eligible guarantee by the Australian Government for risk-weighting purposes. For both secured and unsecured lending, the uncovered portion of the exposure must be risk-weighted according to the risk weight applicable to the original counterparty. In relation to the covered portion of the exposure:

- ADIs utilising the standardised approach may apply a risk weight appropriate to the Australian Government in accordance with Attachment A to APS 112 Capital Adequacy: Standardised Approach to Credit Risk; and
- ADIs utilising the Internal Ratings-Based approach may apply a risk weight derived by using the relevant substitution approach in accordance with the requirements specified in APS 113 Capital Adequacy: Internal Ratings-based Approach to Credit Risk.

RECENT CLIFFORD CHANCE BRIEFINGS

The Post-Brexit Patchwork – EU market access rules for UK firms

On 31 December 2020, at the end of the Brexit transition period, UK firms will lose the passporting rights on which they currently rely to provide financial services in other EU jurisdictions. Instead, UK firms will need to consider the rules of each EU Member State to determine whether, and the extent to which, they will be able to continue providing services to clients in that jurisdiction.

This step change in UK firms' market access rights arises as a result of the UK leaving the EU single market. While the existing EU financial services regulatory framework includes numerous third-country regimes based on equivalence, none come close to replicating single market membership. Instead, UK firms will need to navigate a patchwork of national licensing regimes and face restrictions on cross-border business and many other impediments compared with the market access rights that an EU firm would have.

This briefing provides an overview of this post-Brexit patchwork of EU market access rules for UK firms.

https://www.cliffordchance.com/briefings/2020/11/the-post-brexit-patchwork--eu-market-access-rules-for-uk-firms.html

Pay in UK Listed Companies – Investment Association Pay Expectations for 2021

The Investment Association (IA) has published an update of its 'Principles of Remuneration' for 2021 along with an updated version of its April 2020 guidance on the impact of COVID-19 on executive pay.

The impact of COVID-19 remains a focus, with the IA acknowledging the significant challenges that companies are still facing. The IA expects that RemCos will want to 'sensitively balance' incentivising executive performance at a time where management is being asked to demonstrate significant leadership and resilience. RemCos are reminded that executives should not however be 'isolated' from the impact of COVID-19 in a way that is not consistent with the approach taken for the general workforce and should also be aware of the pandemic's impact on society.

Outside of COVID-19, the reduction of executive directors' pensions contributions to align with the majority of the workforce also remains an area of focus for the IA.

This briefing provides a summary of the key areas for UK listed companies for 2021.

https://www.cliffordchance.com/briefings/2020/11/pay-in-uk-listed-companies--investment-association-pay-expectati.html

The UK's National Security and Investment Bill – key points and implications

The UK Government has published its National Security and Investment Bill. The draft legislation will create a new, standalone screening regime, allowing the Government to review acquisitions of certain interests in legal entities,

assets and intellectual property and to prohibit such transactions, or impose remedies on them, if it identifies national security concerns.

Mandatory filing obligations will apply to qualifying transactions in 17 sensitive sectors, with all other transactions subject to a voluntary filing regime and possibilities for the Government to review unnotified transactions up to five years after they have closed. Once the legislation has passed, the Government will also be able to retrospectively review any transactions that closed on or after 12 November 2020.

This briefing discusses the key points and implications of the Bill.

https://www.cliffordchance.com/briefings/2020/11/the-uk-s-national-security-and-investment-bill--key-points-and-i.html

The UK, sustainable finance and climate regulation – the next steps

On 9 and 10 November the UK Government and regulators made a number of coordinated announcements about the UK's plans for climate regulation and commitment to the ESG agenda. Over the past few months climate resilience, similarly to other policy initiatives, has not been the focus of the Government and financial regulators whose priority has been the COVID-19 pandemic as they sought to support livelihoods and limit damage to the UK economy. However, last week's announcements bring climate resilience and the transition to net zero carbon back to the top of the legislative and regulatory agenda.

This briefing summarises the key points made and outlines some initial high-level thoughts.

https://www.cliffordchance.com/briefings/2020/11/the-uk--sustainable-finance-and-climate-regulation--the-next-ste.html

Acquisition and Disposition Financials Under Regulation S-X 3-05 and 3-14 – Spotlight on the New Analysis for REIT Registrants

On 20 May 2020, the Securities Exchange Commission formally adopted amendments to the Regulation S-X financial disclosure requirements for probable and completed acquisitions and dispositions of significant businesses under Rule 3-05 and real estate operations under Rule 3-14. Importantly, the amended rules largely harmonize Rule 3-14 to Rule 3-05 where no unique industry considerations warrant a different treatment. These rule changes will be effective on 1 January 2021. Earlier compliance is permitted.

This briefing focuses on the analysis an SEC REIT registrant will face in connection with an acquisition of a target, especially in the context of a securities offering. It also includes a simplified flow chart to guide the acquiror's analysis for acquisitions in the context of a securities offering.

https://www.cliffordchance.com/briefings/2020/11/Acquisition-and-Disposition-Financials-Under-Regulation-S-X-3-05-and-3-14-Spotlight-on-the-New-Analysis-for-REIT-Registrants.html

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SEC adopts rules to modernize exempt offerings to promote capital raising

On 2 November 2020, the Securities and Exchange Commission amended its rules to modernize and harmonize its exempt offerings framework to promote capital raising while preserving investor protections. The SEC recognized the growing appeal of private investments and the existing complexity of its exempt offering framework and adopted this comprehensive and integrative framework to broaden access to capital markets for issuers and to the exempt offering market for investors. The amendments will impact offerings under Section 4(a)(2), Regulation D, Regulation S, Regulation A, Regulation Crowdfunding and all other exempt private offerings.

This briefing discusses the amended rules.

https://www.cliffordchance.com/briefings/2020/11/SEC-Adopts-Rules-to-Modernize-Exempt-Offerings-to-Promote-Capital-Raising.html