



INTERNATIONAL REGULATORY UPDATE 01 – 05 JULY 2019

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ECB publishes Dear CEO letter on banks' preparation for interest rate benchmark reforms

The European Central Bank (ECB) has published a [Dear CEO letter](#) to significant banking institutions on their preparation for the imminent transition from the euro overnight index average (EONIA) to the new euro short-term rate (€STR).

The ECB is seeking assurance that senior managers and boards of significant institutions understand the risks associated with these global benchmark reforms and are taking appropriate action to ensure a smooth transition to alternative or reformed benchmark rate ahead of the end-2021 deadline specified in the EU Benchmarks Regulation (BMR).

From 2 October 2019 onwards, EONIA's methodology will be calculated as €STR plus a fixed spread and will be published in the morning of the day

following the day it references (T+1) rather than in the evening of the same day (T) as under its current methodology. The ECB reminds banks that EONIA will be discontinued at the beginning of 2022 and that financial contracts linked to EONIA will need to be reviewed, with a particular focus on contracts that expire after 2021.

The ECB asks banks to provide by 31 July 2019:

- a board-approved summary of its assessment of key risks relating to benchmark reform and a detailed action plan to:
 - mitigate such risks;
 - address pricing issues;
 - implement process changes; and
- contact points at management level in charge of overseeing the implementation of these action plans.

EMMI approved as administrator of EURIBOR under BMR

The European Money Markets Institute (EMMI) has been granted an [authorisation](#) by the Belgian Financial Services and Markets Authority (FSMA) for the administration of EURIBOR under Article 34 of the BMR.

EMMI has conducted in-depth reforms of EURIBOR to meet BMR requirements, including developing a new hybrid methodology and strengthening its governance framework. As a result of the requirements being met and authorisation being given, EURIBOR may be used after 1 January 2020.

EMMI aims to publish the EURIBOR Benchmark Statement within two weeks of its inclusion in the European Securities and Markets Authority (ESMA) register.

EMMI has informed the FSMA of its intention to apply for authorisation as administrator of the EONIA benchmark in September 2019.

EIOPA consults on guidelines on outsourcing to cloud service providers

The European Insurance and Occupational Pensions Authority (EIOPA) has launched a [consultation](#) on proposed guidelines on outsourcing to cloud service providers. The guidelines are intended to clarify how the outsourcing provisions of Solvency II and the EIOPA guidelines on system of governance should be applied in the context of outsourcing to cloud service providers, as well as to promote supervisory convergence regarding the applicable expectations and processes.

Amongst other things, the guidelines cover:

- criteria to distinguish whether cloud services should be considered within the scope of outsourcing;
- principles and elements of governance of cloud outsourcing including documentation and notification requirements;
- pre-outsourcing analysis requirements, such as materiality and risk assessment and due diligence;
- contractual requirements;

- management of access and audit rights and security of data and systems; and
- principle-based instructions for the supervision of cloud outsourcing arrangements.

Comments are due by 30 September 2019.

ESMA withdraws registration of Moody's Investors Service EMEA Limited

ESMA has [withdrawn](#) the credit rating agency (CRA) registration of Moody's Investors Service EMEA Limited (MIS EMEA - UK) as part of Moody's group's contingency plans in relation to Brexit.

MIS EMEA - UK has transferred its rating activity to other affiliated MIS CRAs located in the EU, specifically in Germany, France and the UK.

MiFIR: ESMA ceases binary options prohibition

ESMA has decided not to renew the temporary prohibition of the marketing, distribution or sale of binary options to retail clients.

ESMA took the [decision](#) in light of permanent national product measures which are at least as stringent as ESMA's. As such, the measure automatically expired on 1 July 2019.

ESMA will continue to monitor activities relating to binary options and other related speculative products to determine whether any other EU-wide measures may be needed in the future.

CSDR: ESMA publishes updated Q&As

ESMA has published updated [questions and answers](#) (Q&A) on the implementation of the Central Securities Depositories Regulation (CSDR).

The document has been updated to include a new Q&A on the scope of financial instruments subject to internalised settlement reporting.

Sustainable finance: EU Commission issues call for feedback on EU taxonomy

The EU Commission has issued a [call for feedback](#) on its technical report on the EU taxonomy. In June 2019 the EU Commission's technical expert group on sustainable finance (TEG) published a report setting out a list of economic activities which can make a substantial contribution to climate change mitigation and a framework for evaluating substantial contribution to climate change adaptation.

The TEG is inviting feedback from stakeholder on its report until 13 September 2019.

The TEG will assess the feedback received on its technical report and refine and further develop some incomplete aspects of its proposed technical screening criteria.

At the end of its mandate, which has been extended to end-2019, the TEG will make further recommendations to the Commission on the need to adjust and complement its work on the EU taxonomy.

PRIIPs Regulation: EU Commission adopts Delegated Regulation on aligning transitional arrangement for PRIIP manufacturers

The EU Commission has adopted a [Delegated Regulation](#) amending Delegated Regulation (EU) 2017/653 to align the transitional arrangement for packaged retail and insurance-based investment product (PRIIP) manufacturers offering units of funds referred to in Article 32 of the PRIIPS Regulation as underlying investment options with the prolonged exemption period under that Article.

The transitional arrangements in Article 32 of the PRIIPS Regulation for companies in relation to certain investment funds have been extended by two years to 31 December 2021 under the proposed regulation facilitating the cross-border distribution of collective investment funds. Consequently, those companies will apply that Regulation in respect of those funds as of 1 January 2022.

The Delegated Regulation lays down a transitional arrangement under Delegated Regulation (EU) 2017/653 that allows PRIIPs manufacturers that offer investment funds as the only underlying investment option, or alongside other investment options, to continue using, for the purposes of drawing PRIIPs key information documents (KIDs), key investor information documents drawn up in accordance with Articles 78 to 81 of the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive.

The Regulation will enter into force on the twentieth day following that of its publication in the Official Journal.

EBA reports on implementation of POG guidelines

The European Banking Authority (EBA) has published its first [report](#) on the implementation of its guidelines on product oversight and governance (POG) arrangements.

The EBA issued the guidelines in 2015 to ensure that products are developed and brought to the market in a way that focuses on the needs and interests of the consumer and, in doing so, reduce conduct costs and contribute to market confidence.

The assessment covers a small sample of credit institutions from six Member States. While the EBA found that manufacturers had made positive changes in terms of processes and governance, in a large number of cases it found that customer interests may not receive the same attention as the manufacturer's commercial interests and prudential concerns.

The EBA will consider the findings in the report to identify specific actions which may be needed to address the issues raised.

EBA publishes Q1 2019 update to Risk Dashboard

The EBA has updated its [Risk Dashboard](#) for the first quarter of 2019.

The updated dashboard, based on a sample of risk indicators from 150 European banks, summarises the main risks and vulnerabilities in the EU/EEA banking sector. IFRS 9-related data on asset quality banks' fair value positions as well as information about their sovereign exposures has been included for the first time.

Key findings include:

- European bank's CET1 ratios – fully loaded and transitional - remained unchanged during Q1 at 14.5% and 14.7% respectively;
- the management of non-performing loans (NPLs) improved, with the ratio to total loans declining to 3.1%; and
- only 25% of banks expect improved profitability in the next 6-12 months, and 50% of banks responding to the accompanying risk assessment questionnaire suggested their current earnings did not cover their cost of equity.

FSB publishes technical review of TLAC Standard

The Financial Stability Board (FSB) has published a [review](#) of the technical implementation of the FSB principles and term sheet on the adequacy of total loss-absorbing capacity (TLAC) for globally systemically important banks (G-SIBs) (the TLAC Standard).

The review finds that although there is no current need to modify the Standard and that progress in implementation has been steady and significant by both authorities and G-SIBs, further work remains relating to group-internal distribution of TLAC across home and host jurisdictions, implementation of the BCBS Standard on TLAC Holdings and transparency.

The FSB therefore intends to support the ongoing implementation of the TLAC Standard by:

- continuing to monitor implementation and issuance of TLAC instruments, and reporting annually on progress;
- reviewing the Resolvability Assessment Process (RAP) template to ensure the quantity, quality and group-wide distribution of TLAC resources is considered;
- addressing technical issues identified by authorities and crisis management groups (CMGs), particularly:
 - pre-positioning of internal TLAC at material subsidiaries or subgroups (MSGs) within G-SIB groups and the process of home and host authorities' coordination in calibrating internal TLAC;
 - management of non-pre-positioned TLAC resources to ensure these are readily available to support MSGs;
 - design features and ranking in creditor hierarchy of TLAC instruments, as well as authorities' approaches to reviewing TLAC-eligibility; and
 - monitoring the application of exceptions to subordination and eligibility requirements;
- improving transparency, which the FSB is currently exploring through its [discussion paper](#) on public disclosure of resolution planning and resolvability;
- considering, as part of ongoing work on bail-in execution, any technical issues relating to bail-inability of TLAC, including TLAC issued under third-country law and securities law issues; and
- working with BCBS to consider interactions between going and gone-concern perspectives.

SRB publishes paper on public interest assessment

The Single Resolution Board (SRB) has published a [paper](#) setting out its approach to the public interest assessment (PIA).

The PIA examines whether the resolution of a bank that is failing or likely to fail would be necessary, for example to ensure one or more of the following: maintaining financial stability, protecting covered depositors, and safeguarding public funds by minimising reliance on extraordinary public financial support. If not, resolution actions would not be taken and national insolvency procedures would apply.

The paper sets out the factors the SRB takes into account when conducting a PIA and explains how the SRB applies the criteria as set out in EU law. The publication of the methodology aims to provide more transparency and certainty for banks and the markets.

BIS to establish innovation hub for central banks

The Bank for International Settlements (BIS) has [approved](#) the establishment of a BIS innovation hub aimed at fostering global collaboration on innovative financial technology within the central banking community. The key objectives of the new hub will be to:

- identify and analyse trends in technology that will impact central banking;
- develop public products in the technology space aimed at improving the functioning of the global financial system; and
- act as a focal point for central bank experts on innovation.

In the first phase of implementation, hub centres will be established in Basel and Hong Kong (making use of existing BIS facilities), and then in Singapore. In the second phase, centres will be added across the Americas and Europe.

G20 Leaders publish communiqué following Osaka summit

The G20 leaders have published a [communiqué](#) following their summit in Osaka, Japan on 28-29 June 2019.

The communiqué sets out details of the G20's discussions to foster strong, sustainable, balanced and inclusive growth.

Amongst other things, the leaders note that global growth is projected to pick up moderately later this year, supported by the continuation of accommodative financial conditions and stimulus measures taking effect in some countries. However, growth has remained low and trade and geopolitical tensions have intensified. The leaders have undertaken to continue addressing these risks and take further action as needed.

The leaders have made particular note of the challenges posed by demographic changes, including population aging, and have endorsed the G20 Fukuoka Policy priorities on Aging and Financial Inclusion.

The G20 Leaders have also reiterated their commitment to further strengthening the global financial safety net with a strong, quota-based, and adequately resourced International Monetary Fund (IMF) at its centre.

The G20 Leaders will meet in Saudi Arabia in 2020.

FATF updates anti-money laundering recommendations

The Financial Action Task Force (FATF) has published its [revised International Standards](#) on Combating Money Laundering and the Financing of Terrorism and Proliferation (FATF Standards).

The FATF Standards comprise the Recommendations and their interpretive notes and a related glossary. The Recommendations set out a comprehensive and consistent framework of measures countries can implement in order to combat money laundering and terrorist financing, as well as the proliferation of weapons of mass destruction.

The Standards have been regularly updated since their adoption in February 2019. The recent June 2019 revision inserts a new interpretative note setting out the application of the Standards to virtual asset activities and service providers.

HCCH adopts Convention on recognition and enforcement of foreign judgments

The Hague Conference on Private International Law (HCCH) has adopted the [2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters](#).

Amongst other things, the new Convention aims to:

- reduce transactional and litigation costs in cross-border dealings;
- facilitate rule-based multilateral trade and investment;
- promote better management practices of transaction and litigation risks; and
- shorten timeframes for the recognition and enforcement of a judgment in other jurisdictions.

The Convention applies to the recognition and enforcement of judgments in civil or commercial matters but excludes insolvency, privacy, intellectual property and other specific matters.

The Secretary-General of the HCCH has invited delegates to promote and implement the Convention within the international community.

BCBS publishes assessments of NSFR and large exposures framework

The Basel Committee on Banking Supervision (BCBS) has [published](#) assessment reports on the implementation of the net stable funding ratio (NSFR) and the large exposures framework (LEX) in Australia, Canada and India.

The BCBS found that the NSFR and LEX regulations in each of the jurisdictions are compliant the Committee's global standards.

These assessments form part of the Committee's regulatory consistency assessment programme (RCAP), a series of reports on BCBS members' implementation of Basel Standards. The Committee plans to complete its review of the implementation of the NSFR and LEX standard for all member jurisdictions by March 2021.

UK Government launches Green Finance Strategy

The UK Government has published a [policy report](#) setting out its Green Finance Strategy.

The Green Finance Strategy, aimed at aligning private sector financial flows with clean, environmentally sustainable and resilient growth as well as strengthening the competitiveness of the UK financial services sector, intends to cover three strategic pillars on:

- greening finance by mainstreaming climate and environmental factors as a financial and strategic imperative;
- financing green by mobilising private finance for clean and resilient growth; and
- capturing the opportunity by positioning the UK as a global hub for green finance.

The Financial Conduct Authority (FCA), the Financial Reporting Council (FRC), the Prudential Regulation Authority (PRA) and the Pensions Regulator (TPR) have also published a [joint declaration](#) on climate change welcoming and supporting the Government's Green Finance Strategy.

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2019 laid before Parliament

HM Treasury has laid the [Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2019 \(SI 2019/1067\)](#) before Parliament.

The Order inserts a new article 36FA in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 that introduces a new exclusion from the ambit of article 36A, which specifies credit broking as a regulated activity, for introductions by registered social landlords and housing associations (RSLs) of individuals who seek to enter into a credit agreement to social and community lenders. This instrument enables RSLs to effect fee-free referrals to tenants, or potential tenants, to these social and community lenders without requiring authorisation from the Financial Conduct Authority (FCA).

The Order comes into force on 23 July 2019.

FCA issues reports on safeguarding arrangements of non-bank payment service providers

The FCA has set out the results from its six-month [review of safeguarding arrangements](#) by non-bank payment service providers (PSPs).

The reviewed assessed how well PSPs met the requirements for safeguarding service users' funds in the Payment Services Regulations 2017 (PSRs) and Electronic Money Regulations 2011 (EMRs). The regulations ensure that PSPs protect customer funds by creating a segregated asset pool of relevant funds to pay the claims of electronic money holders of payment service users in priority to other creditors if the PSP becomes insolvent.

The FCA's review found shortcomings relating to:

- firms' safeguarding arrangements, including poor understanding of which funds are relevant and should be segregated and delays in segregating funds following receipt;
- insufficient oversight of arrangements for managing the risks to customer funds;
- the oversight of funds held by agents and distributors; and
- how firms carried out reconciliations.

The FCA has also issued a [Dear CEO letter](#) requiring all firms to review their current safeguarding arrangements and map each of its products or services to determine that the funds held are relevant funds and if additional safeguarding arrangements are required. Firms should attest to the FCA that they are satisfied that they meet the requirements by 31 July 2019.

FCA issues final rules on restrictions for retail binary options and CFDs

The FCA has published a [policy statement](#) (PS19/18) setting out its final rules restricting the sale, marketing and distribution of contracts for difference (CFD) products to retail consumers.

In December 2018 the FCA consulted on proposals that sought to address poor conduct by UK and EEA firms offering CFDs to retail consumers and to reduce harm by limiting the sale of CFDs and other directly substitutable products with excessive risk features.

The FCA's final rules require firms offering CFDs and CFD-like options to retail consumers to:

- limit leverage to between 30:1 and 2:1 depending on the volatility of the underlying asset;
- close out a customer's position when their funds fall to 50% of the margin needed to maintain their open positions on their CFD account;
- provide protections that guarantee a client cannot lose more than the total funds in their account;
- stop offering current and potential customers cash or other inducements to encourage retail consumers to trade; and
- provide a standardised risk warning telling potential customers the percentage of the firm's retail client accounts that make losses.

Affected firms will be required to comply with the new Handbook rules from 1 August 2019 for CFDs and 1 September 2019 for CFD-like options.

FCA publishes regulated fees and levies for 2019/20

The FCA has published a [policy statement](#) (PS19/19) setting out its final periodic fees and levies for 2019/20. The fees cover the:

- FCA;
- Financial Ombudsman Services (FOS) general levy;
- Money Advice Service;
- Pension Wise service;

- Single Financial Guidance Body; and
- illegal money lending levy (IML) expenses of HM Treasury.

Alongside the policy statement, the FCA has also published feedback on the responses received to its consultation paper (CP19/16) setting out its rates proposals.

FCA consults on banning sale to retail clients of investment products that reference certain types of cryptoassets

The FCA has launched a [consultation](#) proposing rules to restrict the sale of derivatives and exchange traded notes (ETNs) that reference cryptoassets to retail consumers. The consultation follows on from the UK Cryptoasset Taskforce's final report, which included, amongst other things, a commitment to consult on a potential ban.

The FCA is of the view that retail consumers are unable to effectively assess the value and risks of cryptoasset-referencing derivatives and ETNs due to the:

- inherent nature of cryptoassets, which have no reliable basis for valuation;
- prevalence of market abuse and financial crime in the secondary market for cryptoassets;
- extreme volatility in cryptoasset price;
- inadequate understanding by retail consumers; and
- lack of a clear need for investment products referencing cryptoassets.

The FCA is therefore proposing to ban the sale, marketing and distribution to retail clients of all derivatives and ETNs that reference unregulated transferable cryptoassets.

Comments are due by 3 October 2019.

FCA publishes Enterprise Act 2000 annual report 2018/19

The FCA has published its [2018/19 annual report](#) under the Small Business, Enterprise and Employment Act 2015 (the Act), which sets out the annual cost to business created by regulation.

Under the Act, the FCA has a statutory requirement to report on any changes it makes that impose or amend a requirement, restriction or condition, set or amend standards or give or amend guidance for business or relate to securing compliance with or enforcement of, such requirements, standards, guidance etc.

The report sets out:

- a list of qualifying regulatory provisions (QRPs) that came into effect or ceased to have effect during the relevant period;
- impact assessments verified by the independent Regulatory Policy Committee (RPC) for those QRPs; and
- a summary of non-qualifying regulatory provisions (NQRPs), i.e., regulatory provisions that fall within exclusions under the Act, which came into effect or ceased to have effect during the relevant period.

The FCA observes that, while reporting on QRPs under the Act gives a picture of costs to business created by regulation, it does not consider the benefits for consumers and end users and only provides a partial view of its work. The FCA believes that any immediate net cost to businesses will be offset by other benefits, including markets with stronger standards.

CMA launches review of Retail Banking Market Investigation Order 2017

The Competition and Markets Authority (CMA) has [launched a review](#) into Part 6 of the Retail Banking Market Investigation Order 2017. The Order was designed to implement CMA recommendations that sought to address competition concerns arising in relation to the supply of personal current accounts (PCAs) and of banking services to SMEs. Part 6 of the Order relates to the programme of overdraft alerts with grace periods for PCA customers.

In December 2018 the FCA announced new rules on overdraft alerts, and in June 2019 the FCA announced reforms to the way banks charge for overdrafts.

Following confirmation from the FCA that it proposes to make its reforms, the CMA has launched its review on the grounds that there is a realistic prospect of finding that a change of circumstances has taken place.

The CMA is [requesting feedback](#) on whether the FCA's proposals constitutes a change in circumstances which would mean that, when they came into effect, would effectively supersede Part 6 of the Retail Banking Market Investigation Order 2017.

Comments to the consultation close on 22 July 2019. The CMA will consider the feedback received before reaching a provisional decision.

BaFin maintains prohibition of binary options for retail clients in Germany

The German Federal Financial Supervisory Authority (BaFin) has [issued](#) a general administrative act (Allgemeinverfügung) regarding a prohibition of binary options for retail clients in Germany. According to the general administrative act, the marketing, distribution and sale of binary options to retail clients in Germany remain prohibited.

The general administrative act takes effect on 2 July 2019 (i.e. upon expiry of the respective product intervention measure imposed by the European Securities and Markets Authority (ESMA)). The full text is published on BaFin's homepage.

The background of the prohibition is the risk to investors as binary options are complex and lack transparency due to the calculation of their performance and the underlying asset. Unlike other financial instruments, trading does not take place in a market where prices result from supply and demand. Instead, the providers set the price themselves, without the possibility for clients to understand it or check its accuracy. Particularly retail investors may find it difficult to assess the risk-return profile due to the extremely short maturities. In addition, the providers of binary options often act as the direct counterparty to their clients' trades. This entails the risk of conflicts of interest arising and being exploited.

BaFin issues general administrative act regarding the domestic countercyclical capital buffer rate

Based on section 10d para 3 of the German Banking Act (KWG) and in line with the recommendations of the Financial Stability Committee, BaFin has [issued](#) a general administrative act (Allgemeinverfügung) raising the domestic countercyclical capital buffer rate from 0 per cent to 0.25 per cent of the total risk exposure amount calculated in accordance with article 92 para 3 of Regulation (EU) Nr. 575/2013. The increase took effect on 1 July 2019 and must be applied to calculation of the institution specific countercyclical capital buffer as from 1 July 2020.

This increase is a preventive measure intended to enhance the resilience of the banking system in light of cyclical systemic risks that have built up as a consequence of the extended period of favourable economic environment.

The general administrative act is addressed to institutions within the meaning of section 1 para 1b of the KWG as well as to groups of institutions, financial holding groups and mixed financial holding groups to which at least one institution belongs that meets the requirements of section 10d para 1 sentence 1 of the KWG at individual institution level as well as to institutions within the meaning of Art. 22 of Regulation (EU) No. 575/2013.

Bank of Spain consults on draft circular on the marketing of banking products and services

The Bank of Spain is [consulting](#) on the content of Draft Circular XX/2019, of XX XXXX on the marketing of banking products and services. Amongst other things, the main goals of the draft Circular include:

- adapting its content to the development of the marketing of banking services sector in connection with the changes to the Order EHA/1718/2010, of 11 June, on the regulation and control of the publicity of banking products and services made by Order ECE/482/2019, of 26 April; and
- reinforcing the rules promoting the control of the risks arising from the marketing activity by companies subject to its scope of application.

In particular, principles applicable to the content and format of such marketing messages are specified. Additionally, internal control procedures and the minimum content of the internal registrar to be kept by each entity is further detailed.

The Draft Circular is subject to public consultation until 23 August 2019.

Resolution of 27 June 2019 of the Spanish National Securities Market Commission (CNMV) on intervention measures regarding binary options and contracts for differences (CFDs).

The Spanish National Securities Market Commission (CNMV) has published [Resolution](#) of 27 June 2019 on intervention measures regarding binary options and contracts for differences ("CFDs"). The Resolution aims to enforce measures enacted by ESMA prohibiting the marketing, distribution or selling of binary options and restricting the marketing, distribution or selling of CFDs to retail investors pursuant to Article 40 of MiFIR.

In order to give stability to the measures established by ESMA, the CNMV has adopted the Resolution towards the implementation of such measures in Spain on an indefinite basis. The Resolution:

- prohibits the marketing, distribution or selling of binary options to retail investors; and
- requires that the marketing, distributing or sale of CFDs to retail investors comply with all of the following requirements:
 - CFD providers must require retail investors to pay the initial guarantee;
 - CFD providers must provide margin close-out protection;
 - CFD providers must provide a negative balance protection;
 - CFD providers must not use incentives; and
 - CFD providers must not send any communications to the retail investor nor publish accessible information on marketing and distribution of CFDs unless a firm specific risk warning is delivered as per annex II of the Resolution.

Chapter I regarding binary options entered into force on 2 July 2019 and Chapter II regarding CFDs will enter into force on 1 August 2019.

Federal Council opens consultation on introduction of new fund category

The Federal Council has [launched a consultation](#) on an amendment to the Collective Investment Schemes Act (CISA) that is intended to create a new, unregulated fund category reserved exclusively for qualified investors.

The new fund category, a so-called Limited Qualified Investor Fund (L-QIF), has been developed as a result of concerns raised by the Swiss financial sector and would not be authorised, approved, or supervised by the Swiss Financial Market Supervisory Authority (FINMA).

The L-QIF would be reserved only for qualified investors, such as financial intermediaries or pension funds, to ensure investor protection. In addition, an L-QIF must be managed by an institution that is supervised by FINMA.

The new fund category is intended to offer a Swiss alternative to similar foreign products and to ensure that more collective investment schemes are launched in Switzerland in the future.

Comments to the consultation close on 17 October 2019.

FINMA amends certain circulars following introduction of fintech licence

The Swiss Financial Market Supervisory Authority's (FINMA) has [published](#) two amended circulars following the introduction of a new FinTech licence and a revision of the provisions relating to the sandbox.

FINMA has relaxed the requirements relating to risk analysis and audit strategy for institutions with a fintech licence compared with larger or more complex companies. Based on the comments received to its earlier consultation, FINMA supplemented and refined the circulars and prescribed an annual audit to ensure compliance with information requirements in relation to non-secured deposits.

The revised circulars entered into force on 1 July 2019.

ASIC consults on relief for foreign providers of funds management services to Australian professional investors

The Australian Securities and Investments Commission (ASIC) has launched a [public consultation](#) proposing to provide licensing relief for foreign financial services providers (FFSPs) of funds management services in Australia to professional investors. The consultation sets out ASIC's proposals to:

- provide funds management relief, under which FFSPs will be exempt from the requirement to hold an Australian Financial Services (AFS) licence to provide services to professional investors in Australia subject to a cap on the scale of activities that may be undertaken in Australia; and
- repeal the licensing relief known as 'limited connection' relief – However, foreign financial services providers may still access the proposed new funds management relief and the licensing exemptions in the Corporations Act 2001 and Corporations Regulations 2001.

The current 'limited connection' relief is due to expire on 30 September 2019. ASIC proposes to extend the relief for a further six months until 31 March 2020 while it consults with stakeholders on the funds management relief and repeal of the 'limited connection' relief, as well as a transition period of six months to 30 September 2020 in case it proceeds with the repeal of the 'limited connection' relief, enabling foreign providers to seek an AFS licence if applicable.

In addition, ASIC has indicated that it intends to implement the foreign AFS licensing regime for FFSPs relying on the licensing relief known as 'sufficient equivalence' or 'passport' relief from 1 April 2020. In this connection, ASIC proposes a transition period of 24 months from 1 April 2020 for FFSPs relying on the sufficient equivalence relief to comply with the new licensing regime, including for example, submitting an application for a foreign AFS licence and having the application assessed by ASIC.

Further, ASIC is not currently proposing to give AFS licensing relief to allow FFSPs to provide financial services to professional investors in Australia where the investor initiates an inquiry about the service (reverse solicitation relief), and seeks further feedback on this issue.

Comments on the consultation are due by 9 August 2019.

HKMA consults on proposal to revise regulations on market risk capital charges in Banking (Capital) Rules

The Hong Kong Monetary Authority (HKMA) has launched a [public consultation](#) to set out its proposal to revise the current regulations on the market risk capital charges in the Banking (Capital) Rules. The consultation paper is intended to outline the HKMA's plans for implementing in Hong Kong the revised market risk framework issued by the Basel Committee on Banking Supervision (BCBS) in January 2019. It covers the new standardised approach, the new internal models approach, the simplified standardised approach, requirements related to the boundary between the trading book and banking book, as well as details on the qualifying criteria for using de-minimis exemptions.

The HKMA intends to implement the new standards by 1 January 2022, in line with the BCBS timeline. Locally incorporated authorised institutions will be required to start regulatory reporting based on the new standards starting from 1 January 2022. The first regulatory reporting date would be 31 January 2022.

The HKMA notes that as the revised market risk capital framework in effect represents a significant overhaul of the current market risk capital framework, it is likely to have impacts on, among other things, the capital charges, systems, data and resources of authorised institutions, particularly for those with material market risk exposures. It has, therefore, strongly recommended all relevant authorised institutions to consider the implications of implementation for their institutions, and start preparing for the local implementation of the revised framework in 2019.

In addition, the HKMA has advised authorised institutions planning to adopt:

- the internal models approach with effect from 1 January 2022 to start discussing their implementation plans with their usual supervisory contact at the HKMA by December 2019, and inform the HKMA of such plans in writing by 31 March 2020;
- the simplified standardised approach with effect from 1 January 2022 to submit a written application to their usual supervisory contact at the HKMA by 31 December 2020. In this regard, the HKMA will notify individual authorised institutions by 29 January 2021 whether they are considered eligible to use the simplified standardised approach; and
- the foreign exchange base currency approach under the standardised approach with effect from 1 January 2022 (this is also applicable to authorised institutions planning to adopt the internal models approach) to submit a written application to their usual supervisory contact at the HKMA by 31 March 2021.

Comments on the consultation are due by 30 September 2019.

SFC updates FAQs on publicly offered investment products

The Securities and Futures Commission (SFC) has updated its series of frequently asked questions (FAQs) on publicly offered investment products by adding the following new questions:

- Questions 12B and 12C to the FAQs on [exchange traded funds \(ETFs\) and listed funds](#); and
- Questions 19B and 19C to the FAQs on [leveraged and inverse products](#).

The new FAQs have been added to clarify whether having a Designated Specialist (under the Hong Kong Exchanges and Clearing Limited's market making rules) for ETFs (including leveraged and inversed products) would satisfy the market making requirements under the SFC's Code on Unit Trusts and Mutual Funds.

Public consultation on appropriate choice and usage of Japanese Yen interest rate benchmarks

The Cross-Industry Committee on Japanese Yen (JPY) Interest Rate Benchmarks (the "Committee") has launched a [public consultation](#) on the

appropriate choice and usage of JPY interest rate benchmarks. The consultation is intended to outline the outcome of the past deliberations in the Committee, and seeks feedback regarding the future structure of JPY interest rate benchmarks.

The Committee was established by the Bank of Japan in August 2018 to conduct necessary deliberations to facilitate market participants and interest rate benchmark users to appropriately choose and use JPY interest rate benchmarks in ways suited to the characteristics of financial instruments and financial transactions.

Amongst other things, the consultation seeks comments on various specific issues relating to:

- options for alternative benchmarks;
- fallbacks; and
- different use of interest rate benchmarks in the multiple-rate approach.

The Committee has indicated that, based on the responses to the consultation, it plans to publish the deliverables reflecting the outcome of the consultation around later in 2019.

Comments on the consultation are due by 30 September 2019.

MAS announces issuance of up to five digital bank licences

The Monetary Authority of Singapore (MAS) has [announced](#) that it intends to issue up to five new digital bank licences.

These would be in addition to any digital banks that the Singapore banking groups may also establish under the existing internet banking framework introduced in 2000. This move will extend digital bank licences to non-bank players, and add diversity and help strengthen Singapore's banking system in the digital economy of the future. The new digital players would be able to cater to under-served segments of the market, and provide impetus for existing banks to continue enhancing the quality of their digital offerings.

The five new digital bank licences will comprise of:

- up to two digital full bank licences, which allow licensees to provide a wide range of financial services and take deposits from retail customers – applications will be open to companies headquartered in Singapore and controlled by Singaporeans. Foreign companies will be eligible if they form a joint venture with a Singapore company, and the joint venture meets the headquarter and control requirements; and
- up to three digital wholesale bank licences, which allow licensees to serve small and medium-sized enterprises and other non-retail segments – applications will be open to both Singapore and foreign companies. The applicant will need to meet similar eligibility criteria as a digital full bank applicant.

The MAS has indicated that it expects to invite applications in August 2019, and will provide more details on the eligibility and admission criteria at that time.

RECENT CLIFFORD CHANCE BRIEFINGS

Another step towards sustainability – ESMA consultation on short-termism in financial markets – what are the issues for asset managers?

Another step has been taken towards fostering sustainable growth in the EU with the publication by ESMA of a survey on undue short-term pressure on corporations from the financial sector.

This development relates to Action Point 10 of the European Commission's Sustainable Finance Action Plan, which was published in March 2018. Action Point 10 focused on 'fostering sustainable corporate governance and attenuating short-termism in capital markets'.

This briefing paper outlines the key areas covered by the survey and some of the issues they may raise for asset managers.

https://www.cliffordchance.com/briefings/2019/07/another_step_towardssustainabilityesm.html

Directors' Liability for Unlawful Dividends

When businesses fail it is not unusual for the blame game to start. Those responsible for its management are most likely to be in the firing line. Transactions that may have taken place years before any formal insolvency, may suddenly become subject to the close scrutiny of insolvency officeholders. Often with the benefit of hindsight, decisions taken years before are assessed to ascertain whether they have contributed to the failure of the business. For creditors, unwinding transactions may be the best hope they have of recovering what they are owed from the company.

On 19 June 2019 in the case *Re Burnden Holdings (UK) Limited* (in liquidation) the English court considered whether directors had overstepped the mark and breached their duties by paying a dividend and creating security. In addition to the breach of duty claims, the transactions were also challenged as defrauding creditors. This briefing paper discusses the case.

https://www.cliffordchance.com/briefings/2019/06/directors_liabilityforunlawfuldividends.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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Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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London, E14 5JJ

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