UPCOMING REGULATORY INITIATIVES IMPACTING PRIVATE FUND MANAGERS

January 2021

Table of Contents

1. ESG ... 1

2. LIBOR ... 2

3. BREXIT ... 4

4. EUROPEAN REGULATORY INITIATIVES ... 5

4.1 AIFMD Marketing/Pre-marketing – Cross-border distribution of investment funds ... 5

4.2 Further AIFMD developments ... 5

4.3 Capital Markets Union Action Plan ... 6

4.4 CSDR ... 6

4.5 ELTIF Reform ... 6

4.6 EMIR ... 7

4.7 MiFID II “quick fix” amendments ... 7

4.8 CRR amendments ... 8

4.9 EU Short selling position reporting ... 8

4.10 European Commission review of AML regime ... 8

4.11 SFTR ... 8

5. UK REGULATORY INITIATIVES ... 9

5.1 Financial Services Bill ... 9

5.2 Proposals for an ‘overseas funds regime’ ... 9

5.3 UK government to undertake a review of the UK funds regime ... 10

5.4 FCA to consult on UK prudential regime for investment firms (IFPR) ... 10

5.5 UK Short Selling Regulation ... 11

5.6 UK EMIR ... 11

5.7 UK SFTR ... 12

5.8 PRIIPS ... 12

5.9 HM Treasury proposals to amend the financial promotions approval regime ... 13

5.10 HM Treasury proposes expansion of financial promotion regime to include cryptoassets ... 13

5.11 UK Fintech Strategic Review ... 14

5.12 FCA regulation of cryptoassets ... 14

6. U.S. REGULATORY INITIATIVES ... 15

6.1 Amendments to Definitions of Accredited Investor and Qualified Institutional Buyer Take Effect ... 15

6.2 Substantial Overhaul of the SEC Advertising and Solicitation Rules ... 16

6.3 Regulatory Freeze by President Biden ... 17

6.4 New York Updates Local Filing Rules Ending Lack of Clarity for Rule 506 Offerings ... 17

6.5 Application of Statutory Disqualification Prohibitions to CPOs Exempt under CFTC Regulation 4.13 ... 18

6.6 Proposed amendment to Rule 13f-1 and Form 13F ... 18

6.7 SEC Registration of UK Managers ... 18

6.8 Adoption of Amendments to Volcker Rule ... 19

Upcoming Regulatory Initiatives Impacting Private Fund Managers

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1. ESG

In recent years, environmental, social and governance (**ESG**) factors have become a key discussion point in the asset management industry, with many managers now incorporating ESG considerations into their investment processes. It is a topic that continues to gain global importance. In the EU, the impetus stems primarily from the EU Sustainable Finance Action plan and remains on the top of the regulatory agenda. There have been some key developments taking the form of new legislation and amendments – proposed and actual – to existing legislation.

Of most significance are the Sustainable Finance Disclosure Regulation (**SFDR**) and the Taxonomy Regulation which impact "Financial Market Participants" (**FMPs**) (which includes amongst others AIFMs, UCITS ManCos, Portfolio Managers/Advisors) in relation to "Financial Products" (which includes amongst others AIFs, UCITS and segregated investment management mandates). The SFDR, which starts to apply from 10 March 2021 impacts both firms and products and requires three types of disclosure – website disclosure, pre-contractual disclosure and periodic reporting. It will require FMPs to make significant changes to their current processes.

There are challenges related to the meeting the requirements of the SFDR. The SFDR included provisions requiring the European Supervisory Authorities (**ESAs**) to prepare level 2 regulatory technical standards (**RTS**) to provide further detail and to assist in the application of the SFDR provisions before 30 December 2020. At the time of writing the RTS are still not finalised. In addition, in October 2020, the EU Commission announced that the RTS would not apply on 10 March 2021 but would apply at a "later stage." There is no confirmation as to when they might apply, although there is some expectation that this is likely to be closer to 1 January 2022, the date on which the Taxonomy Regulation goes into effect. In addition, on 7 January 2021 the ESAs wrote to the EU Commission highlighting that the ESAs have encountered several important areas of uncertainty in the interpretation of SFDR and asking for clarification on a number of points. With less than eight weeks to go until the SFDR comes into force, FMPs will be hoping for a swift response from the EU Commission including much needed guidance as to how to prepare for 10 March 2021. (See Dechert's OnPoint "Preparing for SFDR" for more details on the Letter from the ESAs to the EU Commission," available here).

Additional regulatory developments in the ESG space include draft legislation and technical guidance proposing amendments to MiFID II (product governance/organisational requirements), amendments to the UCITS Directive and AIFMD and consultations on changes to the Non-financial Reporting Directive. Additional rules and regulations relating to sustainable development take the form of the EU Ecolabel framework for certain financial products and Green Bond Standards, together with local developments such as the AMF's ESG related Doctrine. The EU also enacted the Low Carbon Benchmark Regulation which entered into force in December 2019. The Low Carbon Benchmark Regulation amended the EU Benchmarks Regulation by introducing two new types of "climate benchmark," which seek to ensure the integrity of low-carbon benchmarks.

BREXIT – Although the legislation has passed into law, it will only take effect from 10 March 2021 – which is after the end of the "transition period" (which was 11.00 p.m. on 31 December 2020), and consequently will not be 'on-shored' in the UK as a piece of existing EU legislation. It remains to be see if and how far the UK's position will diverge from the EU's, but the UK government has stated that "*at the very least, we will match the ambition of the EU Sustainable Finance Action Plan*." The UK was one of the first countries worldwide to endorse the

recommendations of the Task Force for Climate-related Financial Disclosures (**TCFD**) – aimed at ensuring climate-related risks and opportunities are priced into financial decision-making, and its 2019 Green Finance Strategy outlined an expectation that all UK listed issuers and large asset owners would be making disclosures in accordance with the TCFD's recommendations by 2022.

The UK has started to develop its own post-Brexit regulatory and legislative agenda with the Financial Conduct Authority (**FCA**) and HM Treasury launching a number of initiatives. On 9 November 2020, HM Treasury published an Interim Report of the UK's Joint Government-Regulator TCFD Taskforce (the **Report**) and a Roadmap (the **Roadmap**) which provide an outline of the UK's ambitions on climate change mitigation. The UK Taskforce describes itself as *"charting a path towards mandatory TCFD-aligned climate-related disclosures to help accelerate progress*." The Roadmap sets out an indicative path for the introduction of regulatory rules and legislative requirements over the next five years. The Report also sets out the implementation approach for Asset Managers. (See Dechert's OnPoint "Is Brexit Green? A UK Roadmap Towards Mandatory Post-Brexit Climate-Related Disclosures," available [HERE]). Further specific details have yet to be announced.

2. LIBOR

Focus remains on the transition away from the London Interbank Offered Rate (**LIBOR**), a key interest rate benchmark that is referenced across many of the agreements that you, funds you manage or advise or entities that you have invested in, have entered into. The end of 2021 remains a key date for LIBOR cessation. Whilst the UK is the home of LIBOR, this is a multi-currency, international issue as LIBOR is published in five currencies: USD, GBP, Euro, CHF and JPY. Alternative largely risk-free interest rates (the **RFRs**) have been identified as replacements for each of the LIBOR family of currencies: SONIA (GBP), SOFR (USD), SARON (CHF), €STR (EURO) and TONA (JPY).

Many regulators see the transition from LIBOR as a financial stability risk given the prevalence of LIBORs use across a multitude of agreements. Exposures to LIBOR can arise at every level of a business – investments, loans, hedges, fees, systems and infrastructure. The disruption caused by the COVID-19 pandemic did little to slow the pace of transition efforts and achieving a smooth transition away from LIBOR benchmarks by 31 December 2021 remains a key priority for the FCA and other regulators.

The FCA continues to prioritise the transition away from LIBOR and market participants are actively being encouraged, and indeed incentivised, to move to alternative risk free rates. In the UK these efforts are being led by the Working Group on Sterling Risk-Free Reference Rates (**WGRFR**), the FCA and the Bank of England, and in the U.S. by the Alternative Reference Rates Committee (**ARRC**). There has also been significant input from industry associations, in particular ISDA (as the vast majority of LIBOR exposure lies in derivatives products) and also the Loan Market Association.

In relation to the regulation of benchmarks, on 23 June 2020 the UK government declared its intention to change the UK Benchmarks Regulation to permit changes to the methodology for determining LIBOR rates with a view to enabling LIBOR to continue to be used as a benchmark in certain limited circumstances. The FCA webpage explaining the extent of the proposals is available *here*. There was also a Summer 2020 proposal from the European Commission to amend the EU rules on benchmarks to empower the European Commission to designate a replacement benchmark that covers all references to widely used reference rates such as LIBOR when this is necessary to avoid a disruption of the financial markets. This is now in the latter stages of the EU legislative process and is expected to be published in the EU Official Journal (**OJ**) in early February.

On 21 October 2020 the Financial Services Bill (the **FS Bill** – see Section 5.1) was introduced to the House of Commons. The FS Bill included several significant provisions relating to benchmarks. On the same date, HM Treasury published a LIBOR policy statement to accompany the FS Bill.

At a high level, the FS Bill proposes significant amendments to the current benchmark regulation and greatly expand the FCA's powers. The FS Bill amends the UK Benchmarks Regulation, providing an overarching legal framework which gives the FCA new and enhanced powers to manage the wind-down of a critical benchmark. The FS Bill expands the circumstances in which the FCA can conduct a formal assessment of a benchmark's representativeness and also grants the FCA powers to prohibit some or all use of a specific benchmark by supervised entities. The FCA will consult on its policy and approach to the use of these new powers. One of the related FCA consultations has already been held and has recently closed. We await an update from the FCA on next steps.

October 2020 saw some other significant developments in the transition away from LIBOR. On 23 October 2020, ISDA launched its long awaited LIBOR Fallbacks Supplement and Protocol[1] and in the U.S. on 16 October 2020, CME and LCH (the leading derivative central clearing houses) began substituting SOFR for Fed Funds OIS in their discounting methodology for valuing cleared USD interest rate swaps and interest due on the collateral held against these positions.

The most significant LIBOR developments of 2020 came late in the year with a series of announcements by the administrator of LIBOR, ICE Benchmark Administration (**IBA**). The most notable was the IBA announcement that it would consult in early December 2020 on ceasing publication of the one-week and two-month USD LIBOR settings immediately after the LIBOR publication on 31 December 2021, and the remaining USD LIBOR settings immediately after the LIBOR publication on 30 June 2023. The IBA consultation was launched on Friday 4 December 2020 and closed for feedback on 25 January 2021. These developments were welcomed by U.S. and UK regulators. The FCA confirmed that it would co-ordinate with the relevant authorities, to consider whether and, if so, how most appropriately to limit new use of USD LIBOR, consistent with its objectives of protecting consumers and market integrity.

Although these developments received a lot of attention and there was much speculation about what they may mean for LIBOR transition, the FCA is emphatic that firms cannot rely on LIBOR being published after the end of 2021. On 11 January 2021, the FCA and the Bank of England both published a press release on the need for firms to complete the transition from sterling LIBOR by the end of 2021. The message remains the same – the time to act is now. We have a range of LIBOR resources available. Our most recent round-up on LIBOR is available *here*.

Our dedicated Dechert LIBOR site is available *here* and includes information on future update webinars and broadcasts. Our next LIBOR update webinar will be held on 4 February 2021. Details are available here. Of particular interest is our LIBORcast podcast series which includes discussions with key players such as ISDA, the FCA, and Fitch Ratings. The full LIBORcast series is available here.

[1] For more details on the ISDA Supplement and Protocol, please see our OnPoint "LIBOR Transition – The Moment the Market has Been Waiting For," available here

3. BREXIT

The UK formally left the EU at 11.00pm on 31 January 2020, and the UK and the EU entered the withdrawal agreement's "transition period" which was designed to maintain the regulatory status quo between the UK and the EU until 11.00 p.m. on 31 December 2020. During the transition period, EU law continued to apply to and in the UK, and the UK was treated as part of the EU's single market in financial services – meaning that, until 31 December 2020, UK financial services firms were able to access EU markets on the same terms and with the same rights and protections as before the withdrawal.

On 24 December 2020, the EU and the UK agreed the terms of a Trade and Cooperation Agreement (the **TCA**), which, broadly speaking, establishes a customs and duty-free border between the UK and the EU together with a framework for encouraging trade between the UK and the EU, based on the concept of a level playing field for matters such as monopolies, subsidies, and protectionism.

The TCA does not cover any decisions on equivalence for financial services, nor the adequacy of the UK data protection regime. Agreement in this area was always recognised as highly ambitious, and its omission from the TCA is not seen as surprising. The UK and EU also issued, at the same time as the TCA, a "Joint Declaration on Financial Services Regulatory Cooperation between the European Union and the United Kingdom" which provides that the parties will aim to agree, by March 2021, a Memorandum of Understanding (**MoU**) establishing a framework for regulatory cooperation on financial services. While this is positive, the MoU does not have the same legal force as an international treaty and, although it may provide some limited assurances to financial market participants, it does not provide certainty for firms trying to make long-term strategic plans. (See Dechert's OnPoint "A New European Financial Services Landscape for a New Year?" available *here*).

The absence of details of an agreement on financial services means that, from 11.00pm GMT on 31 December 2020, the challenges facing financial services firms are effectively the same as those which would have been faced in a "no deal" Brexit. UK firms accessing EU markets, and EU firms accessing UK markets, can no longer continue to rely on the passporting rights which existed prior to 31 December 2020.

The UK government and the FCA have implemented a Temporary Permissions Regime (**TPR**) for "inbound" European Economic Area (**EEA**) firms and funds which took effect on 1 January 2021. The aim of the TPR is to allow inbound firms to continue operating in the UK within the scope of their current permissions for a limited period after the end of the transition period, while seeking full UK authorisation if necessary. It will also allow investment funds with a passport to continue temporarily marketing in the UK.

The FCA required firms and fund managers wanting to use the TPR to notify the FCA before 30 December 2020. Firms that have not submitted their notifications are not able to avail themselves of the TPR.

Looking to the future of UK financial services regulation after the end of the transition period, the UK government is working on a new post-Brexit regulatory framework for financial services. HM Treasury published a consultation paper in October 2020, covering matters such as how regulators should deal with technical standards, how policy innovation from HM Treasury and Parliament will be scrutinised, and how that will interact with regulators' responsibilities. The deadline for responses is 19 February 2021. This will be followed by a second consultation, to be published in the first half of 2021 that will set out more detail on the proposed approach.

4. EUROPEAN REGULATORY INITIATIVES

4.1 AIFMD Marketing/Pre-marketing – Cross-border distribution of investment funds

Changes to EU law on the cross-border distribution of AIFs and UCITS will come into effect on 2 August 2021. UK AIFMs will be out of scope of the majority of these new rules, as they only apply to EU AIFMs marketing EU AIFs. The changes are made by way of a Regulation ((EU) 2019/1156) and a Directive ((EU) 2019/1160)) and are commonly referred to as the CBDF framework – which forms part of the EU's capital markets union initiative. (See Section 4.3 below).

The changes introduce a definition of and conditions for pre-marketing of EU AIFs by EU AIFMs. National private placement regimes will continue to apply to marketing by non-EU AIFMs and the new pre-marketing rules will not apply to non-EU AIFMs. Conditions and de-notification requirements will also apply when marketing of an AIF / UCITS by an EU AIFM or Manco ceases in a particular EU member state.

All AIFMs will have to establish certain local facilities when marketing to retail investors. The facilities will not however need to be a physical presence in a country and may be run by a third party.

ESMA published a consultation paper on 9 November 2020 on draft guidelines for funds' marketing communications under Article 4 of the Regulation. The purpose of the draft guidelines is to specify the requirements for marketing communications sent to investors to promote UCITS and AIFs (including EuSEFs, EuVECAs and ELTIFs). The consultation closes on 8 February 2021.

From 2 August 2021, marketing materials for AIFs and UCITS must be identifiable as such and must describe the potential risks and rewards of purchasing units or shares in UCITS/AIFs in an equally prominent manner and all information included in marketing communications must be fair, clear and not misleading.

4.2 Further AIFMD developments

European Commission review of AIFMD: The European Commission's wide ranging consultation on the review of the application and scope of AIFMD launched in October 2020 and closes to comments on 29 January 2021. The Commission's webpage for the consultation says that its aim is to examine how to strengthen the rules and complete the internal market for AIFs. This may result in legislative changes being proposed to AIFMD later in 2021, which could also lead to further harmonising amendments to the UCITS rules.

In December 2020 a speech by ESMA's executive director in the context of the AIFMD review, focused in particular on delegation under AIFMD. ESMA's view is that all AIFs should be subject to consistent regulatory standards regardless of status or location of the delegates, especially with delegation to non-EU entities that may be subject to different regulatory standards. This is likely to be a hot topic now that the Brexit transition period has ended and UK investment managers are non-EU entities under AIFMD.

Leverage risk: on 17 December 2020 ESMA published its final report containing guidelines to address leverage risk. This followed on from an ESMA consultation paper issued in March 2020 on how the leverage-related systemic risk assessment should be conducted and when leverage limits might be imposed. The guidelines follow IOSCO's two step approach, and includes a set of indicators for National Competent Authorities to consider when performing their risk assessment plus a set of principles for them to take into account when setting leverage limits. The guidelines will apply two months after publication of their translation into the official EU languages.

4.3 Capital Markets Union Action Plan

The European Commission publish its second *action plan* on the Capital Markets Union in September 2020. The action plan includes 16 initiatives grouped under 3 objectives which the Commission is working on:

- Supporting a green, inclusive and resilient economic recovery by making financing more accessible to European companies
- Making the EU a safer place for individuals to save and invest long-term
- Integrating national capital markets into a genuine single market

As part of this ongoing initiative to strengthen EU capital markets, in December 2020 the Council of the EU approved prioritising those actions that are important for improving the funding of the economy and SMEs in particular and that have the potential to support a swift economic recovery in the context of the COVID-19 pandemic. These should be delivered by the European Commission no later than the end of 2021**.**

4.4 CSDR

The new settlement discipline regime requirements under the Central Securities Depositories Regulation (**CSDR**) have been delayed until 1 February 2022 due to the disruption caused by the COVID-19 pandemic. The UK government announced in June 2020 that it would not be implementing the CSDR settlement discipline regime in the same form in the UK, following Brexit.

In December 2020, the European Commission also published a *consultation paper* on its review of CSDR and its implementation. The Commission intends to propose legislation during 2021 to simplify CSDR and develop a more integrated post-trading landscape in the EU.

4.5 ELTIF Reform

The European Commission launched a consultation on the review of the European Long-term Invest Fund (**ELTIF**) Regulation in October 2020, which closes for comments on 1 February 2021. The consultation is seeking views on:

- the scope of the ELTIF authorisation and process
- investment universe, eligible assets and qualifying portfolio undertakings
- borrowing of cash and leverage
- conflict of interest and co-investment
- rules on portfolio composition and diversification

The consultation follows active lobbying for reform of the ELTIF Regulation including by the Alternative Credit Council (**ACC,** which is part of the Industry association AIMA). The ACC submitted a position paper in March 2020, the aim of which was to highlight to policymakers areas where the ELTIF Regulation might be reformed, and to use this to support engagement with the CMU review and other discussions relating to the policy framework for private credit in Europe.

The European Commission is expected to adopt a report on its review of the ELTIF Regulation in Q3 of 2021.

4.6 EMIR

Regulatory reporting. ESMA issued its final report on new draft implementing technical standards for reporting under the European Markets and Infrastructure Regulation (**EMIR**) in December 2020. The report followed a consultation earlier in 2020 on Technical Standards on reporting, data quality, data access and registration of trade repositories pursuant to EMIR, as amended by the EMIR Refit Regulation and the reporting responsibility changes introduced by the EMIR Refit Regulation which took effect on 18 June 2020. The draft technical standards set out in ESMA's report are currently being considered by the European Commission and, if adopted, ESMA has proposed that an 18 month implementation period should apply.

On 10 November 2020 ESMA issued a Public Statement with respect to issues affecting EMIR and SFTR reporting following the end of the transition period. That Public Statement can be found here.

Please see our OnPoint for further details of the reporting changes under the EMIR Refit and their impact, available *here*.

Initial margin. Phase 5 of the EMIR regulatory initial margin requirements will take effect on 1 September 2021. Entities in scope will have an aggregate average aggregate notional amount, so called "AANA" threshold of EUR 50bn by reference to March, April and May 2021. Phase 6 will follow on 1 September 2022 and the relevant AANA threshold for the final phase is EUR 8bn. On 21 December 2020 the European Commission adopted the Delegated Regulation that will incorporate these extended initial margin deadlines into EMIR. That same Delegated Regulation also sets our certain other amendments to EMIR that have been under discussion for some time including the treatment of physically settled FX forward contracts and equity option contracts.

Ahead of the end of the transition period, ESMA also published a revised version of its EMIR Q&A paper. The updates primarily serve to clarify the status of derivatives executed on UK markets once the UK becomes a "third country."

The UK 'on-shored' EMIR by way of a series of statutory instruments and binding technical standards, meaning that the UK now has its own version of EMIR (the UK EMIR). (See Section 5.6 below).

4.7 MiFID II "quick fix" amendments

In December 2020 the Council of EU Ministers approved the proposed the "quick fix" updates to MiFID II and changes to the research unbundling requirements. These are part of the EU's ongoing review of the regime and a capital markets recovery package in light of the COVID-19 pandemic. The proposals require approval by the European Parliament, anticipated to be in February 2021. EU member states will then have 12 months to transpose them into national law. The updates include:

- simplifying certain information requirements, including phasing out paper based default methods of communication, introducing an exemption from the costs and charges information for eligible counterparties and professional clients for services other than investment advice or portfolio management, and suspending best execution reports

- amending the scope of position limits in commodities markets so that they only apply to agricultural commodity derivatives and significant or critical commodity derivatives

- a new narrow hedging exemption for financial entities from the position limits regime

- 10% portfolio loss reports will no longer be mandatory for professional clients
- an optional exemption from the current research unbundling requirement if execution services and the provision of research relate to small and mid-cap issuers or fixed income instruments.

4.8 CRR amendments

In December 2020 the Council of EU Ministers approved the European Commission's proposal to amend the Capital Requirements Regulation to adjust the securitisation framework. This may impact investment managers and their funds indirectly. The amendments aim to make securitisation more viable for institutions by:

- extending the existing EU framework for simple, transparent and standardised (**STS**) securitisations to cover on-balance-sheet synthetic securitisations and, to encourage the use of STS securitisations, preferential risk weights will be introduced for senior tranches retained by the originator
- removing the current regulatory constraints to the securitisation of non-performing exposures.

These proposals now require approval by the European Parliament, anticipated to be in February 2021.

4.9 EU Short selling position reporting

ESMA's intervention, which temporarily lowers the threshold for regulatory reporting of a net short position in shares traded on an EU regulated market to 0.1% from 0.2% during the COVID-19 pandemic has been extended and will now expire on 19 March 2021. Given the ongoing disruption caused by the pandemic, similar restrictions could be introduced in other jurisdictions in the future and at short notice.

Following the end of the Brexit transition period, the UK is also introducing its own regime for short selling position reporting, (See 5.5 below for details).

4.10 European Commission review of AML regime

The European Commission is due to issue its plans, including legislative proposals, in Q1 of 2021 for the further harmonisation of European AML and CTF laws. The proposals are expected to include a new EU AML and CTF single rulebook, a new EU-level AML and CTF supervisor and a new coordination and support mechanism for financial intelligence units.

4.11 SFTR

The new reporting requirements under the Securities Financing and Transaction Regulation (**SFTR**) went live in July 2020 and commenced in October 2020 for financial counterparties including UCITS, AIFs and in-scope third country entities not caught by the first phase in July.

On 11 January 2021 the SFTR reporting obligation commenced for non-financial counterparties.

On 21 December 2020 ESMA published an updated version of its guidelines on SFTR reporting. This was first published in January 2020 and followed ESMA's first Q&A relating to SFTR reporting which was published on 5 November 2020.

Further ongoing work on SFTR during 2021 includes ESMA's publication in Q1 2021 of guidelines on the calculation of positions by trade repositories and the development by ESMA of guidelines, Q&As and opinions on SFTR data requirements. Please see our updates on SFTR available *here* and *here*.

Once the uncertainty and disruption caused by the COVID-19 pandemic eases, we expect to see further focus on regulatory reporting requirements at EU level, including under SFTR. As we originally reported in our May 2019 EMIR note, available *here*, European authorities are seeking to improve reporting standards generally, with "harmonisation" and "effectiveness and efficiency" being strong themes.

On 10 November 2020 ESMA issued a Public Statement on issues affecting EMIR and SFTR reporting following the end of the transition period. That Public Statement can be found here.

SFTR was also on-shored by the UK under the European Union (Withdrawal) Act 2018, so similarly to EMIR, the UK now has its own version of SFTR, so called UK SFTR. (See Section 5.7 below).

5. UK REGULATORY INITIATIVES

5.1 Financial Services Bill

The UK's departure from the EU at the end of the transition period will have significant implications for the regulation of financial institutions. In June 2020, the government issued a policy statement providing information on proposals for a Financial Services Bill (**FS Bill**) that would make amendments to the legislative and regulatory framework for financial services arising from the UK's departure from the EU. The FS Bill was introduced in Parliament on 21st October 2020.

The FS Bill will:

- establish the legislative framework for the Investment Firms Prudential Regime (**IFPR**) and for the UK implementation of the final Basel III standards. (See Section 5.4 for more details)
- establish the legislative framework for the Overseas Funds Regime (**OFR**) and make amendments to the retained EU law version of the Markets in Financial Instruments Regulation (600/2014) (UK MiFIR) relating to the equivalence regime for third country investment firms.(See Section 5.2 below for more details)
- amend the retained EU law version of the Benchmarks Regulation ((EU) 2016/1011) (**UK BMR**) to provide the FCA with additional powers to manage an orderly wind-down of a critical benchmark, such as LIBOR. (See Section 2 LIBOR for more details), and
- amend the retained EU law version of the Market Abuse Regulation (596/2014) (**UK MAR**) and increase the maximum sentence for criminal market abuse.

The FS Bill is making its way through the UK's legislative process and it is not yet known when it will become law

5.2 Proposals for an 'overseas funds regime'

Connected to the end of the transition period, HM Treasury consulted on proposals to simplify the process for allowing investment funds set up overseas to be marketed in the UK (**OFR**). The consultation set out the government's proposal for a new process for allowing investment funds domiciled overseas to be sold to UK investors, to replace the existing regime. The consultation closed in May 2020 and the government then brought forward legislation as part of the FS Bill (see Section 5.1 above). In November 2020 HM Treasury published a summary of responses to its consultation, together with its policy decisions taken in response.

The OFR will encompass two new outcomes-based equivalence regimes: one for retail investment funds and one for money market funds (**MMF**s). The general principle of outcomes-based equivalence acknowledges that different approaches to regulation can achieve the same regulatory objectives.

The government has also made changes to the temporary marketing permissions regime (**TMPR**). The FS Bill will extend the TMPR from three to five years, to allow enough time for government to complete any equivalence assessments and for funds in the TMPR to apply for recognition, either through the OFR or section 272 of the Financial Services and Markets Act 2000 (**FSMA**). The FCA will be given power to create "landing slots" for funds that are leaving the TMPR and applying for permanent recognition under the OFR. The two-month time limit for the FCA to consider applications under the OFR will also be disapplied for funds leaving the TMPR.

The FS Bill provides for HM Treasury to impose additional requirements on overseas funds, but when doing so it must have regard to what is required of comparable UK authorised funds.

In the consultation paper for the OFR, the government proposed a streamlined and simplified process for marketing overseas funds to retail investors in the UK, compared to the current system under section 272 of FSMA. The government noted that responses to the consultation welcomed a streamlined and simplified process for marketing overseas funds to retail investors in the UK, compared to the current system under section 272 of FSMA.

The regime in section 272 will remain for individual funds that do not fall within the scope of an equivalence determination under the OFR, but still wish to market to retail investors in the UK. The government has set out some amendments in the FS Bill and made changes relating to FSMA.

5.3 UK government to undertake a review of the UK funds regime

In the spring 2020 Budget, the government announced that it will undertake a review of the UK funds regime to ensure its continued competitiveness and sustainability. The first stages are a review of the VAT treatment of fund management fees and a consultation on the tax treatment of asset holding companies in fund structures to make the UK a more attractive location for such companies.

The consultation focussed on whether there are tax changes that could help make the UK a more attractive location for companies used by alternative funds to hold assets. It closed in August 2020 and the government issued a response paper and announced a second stage consultation in December 2020. The government believes that there is a strong case for change and the introduction of a new tax favourable regime for UK asset holding companies and has launched the second stage consultation and a series of targeted ‘town hall’ meetings to discuss the details of what that regime should look like. The second stage consultation will run until 23 February 2021 with a view to legislation being introduced in Finance Bill 2021.

The government is also continuing its general review of the UK funds regime and has just issued a further consultation paper calling for specific input into the way in which the regime should be reformed.

5.4 FCA to consult on UK prudential regime for investment firms (IFPR)

The IFPR is a revised prudential regime for FCA-authorised investment firms that the government intends to establish by summer 2021. It will be based on – but not identical to – the Investment Firms Regulation (**IFR**) and the Investment Firms Directive (**IFD**) which establish a new prudential framework for EU investment firms. HM Treasury and the FCA will adapt IFR and IFD to reflect the UK investment firms sector. The IFPR will largely

replace the existing prudential requirements for FCA MiFID investment firms. Its introduction will necessitate the amendment or deletion of existing legislation and regulation relating to these requirements.

In its June 2020 policy statement on prudential standards in the FS Bill, HM Treasury stated that it intends to consult publicly on the IFPR "in due course" with a view to introducing the new regime by summer 2021.

The FCA published a discussion paper (**DP 20/2**) in June 2020 and in December 2020, published its first consultation paper on the implementation of the IFPR. In CP20/24, the FCA set out its proposals for aspects of the IFPR, including details of where it intends to diverge from the rules set out in IFR and IFD. CP20/4 looks at, among other things:

- The categorisation of investment firms.
- Prudential consolidation.
- Own funds and own funds requirements.
- Reporting requirements.

The FCA intends to publish a second consultation paper at the start of Q2 2021 and a third consultation paper at the start of Q3 2021. The FCA intends to publish a policy statement and near-final rules in respect of each of these consultation papers and that, by the time it publishes its second policy statement in summer 2021, stakeholders will have seen near-final rules setting out the key points of the IFPR. The FCA will publish final rules once the FS Bill has passed through Parliament and all the consultations are complete.

5.5 UK Short Selling Regulation

Similar to many other pieces of EU legislation, the UK 'on-shored' the EU Short Selling Regulation by way of a Statutory Instrument (**SI**), meaning that the UK now has its own version of the Short Selling Regulation (the **UK SSR**). In January 2021, HM Treasury laid an SI to amend the notification threshold under Article 5(2) of the UK SSR from 0.2% to 0.1% of the issued share capital of an issuer. This change will come into force on 1 February 2021.

This means that from 1 February 2021 the notification threshold for issued share capital of a company that has shares admitted to trading on a UK trading venue (UK Regulated Market and UK MTF) will be 0.1%.

The SI will apply a new 0.1% notification threshold to shares admitted to trading on a UK MTF as well as a UK regulated market.

Until the SI comes into effect on 1 February 2021, the notification threshold for issued share capital of a company that has shares admitted to trading on a UK trading venue will be 0.2%. However, during this period, position holders will continue to be able to make notifications at the lower 0.1% threshold if they wish to do so.

5.6 UK EMIR

The UK also 'on-shored' EMIR by way of a series of statutory instruments and binding technical standards, meaning that the UK now has its own version of EMIR (UK EMIR). The related FCA page, which can be found here, summarises key aspects of UK EMIR.

Focus to-date has been on the UK EMIR reporting obligation. On 24 November 2020, the FCA published an updated note on the FCA's expectations for firms subject to the UK EMIR reporting obligation. That note can be found here.

5.7 UK SFTR

SFTR was also on-shored under the European Union (Withdrawal) Act 2018, so similarly to EMIR, the UK now has its own version of SFTR, the so called UK SFTR. There is also a dedicated FCA webpage for UK SFTR which can be found here.

On the same day as the FCA UK EMIR reporting note was published, the FCA also published a note on its expectations in relation to the UK SFTR reporting regime. That note can be found here. In contrast to the EU SFTR, UK SFTR did not implement the reporting obligation for non-financial counterparties.

5.8 PRIIPS

The EU PRIIPs Regulation has applied across the EU since 1 January 2018.

The PRIIPS Regulation sets the requirements for a standardised disclosure document, known as the Key Information Document (**KID**) that must be provided to retail investors when they purchase particular packaged investment products, known as PRIIPs.

The PRIIPs Regulation, like other EU legislation that is directly applicable, has been 'on-shored to the UK statute book and forms part of UK law. The EU PRIIPS has been amended to ensure that it operates effectively following the end of the transition period.

In June 2020, the government announced plans to introduce legislation to improve the functioning of the PRIIPs regime in the UK. It followed this up in July 2020 with a policy statement (available *here*) that contained information on three proposed amendments to the UK framework. These amendments were included in the FS Bill and are as follows:

- Clarification of the scope of the UK PRIIPs Regulation – there is currently significant uncertainty in industry as to the precise scope of PRIIPs. The proposed amendment would delegate to the FCA to clarify the scope of the UK PRIIPs Regulation through its rules, enabling the FCA to address existing, and potentially future, ambiguities relating to certain types of investment product. The definition of a PRIIP would remain unchanged.

- Replacement of "performance scenario" with "appropriate information on performance" in UK PRIIPs Regulation. The current methodology for calculating these scenarios has been criticised for producing misleading performance scenarios across a wide range of products. The proposed amendment would enable the FCA to amend the UK PRIIPs KID Delegated Regulation to clarify what information on performance should be provided in the KID.

- Further extension of the current UCITS exemption. UCITS funds are exempted from the requirements of the PRIIPs Regulation until 31 December 2021. Until that date, instead of a KID, UCITS funds must produce a Key Investor Information Document (**KIID**) per the requirements of the UCITS Directive. The proposed amendment would delegate a power to HM Treasury to further extend the exemption for UCITS for up to five years.

The FS Bill is currently making its way through the legislative process. The government also announced that, in the longer term, it intends to conduct a more wholesale review of the disclosure regime for UK retail investors. The wider review will explore, for example, how to harmonise the PRIIPs regime with requirements in MiFID II.

5.9 HM Treasury proposals to amend the financial promotions approval regime

In July, HM Treasury announced a consultation on limiting the scope of firms that can approve the financial promotions of unauthorised persons. The term "financial promotion" describes the communication of an invitation or inducement to engage in investment activity. Section 21 of the Financial Services and Markets Act 2000 (or **FSMA**) provides that a firm must not, in the course of business, communicate a financial promotion unless the firm is FCA-authorised or the content of the communication is approved by an authorised firm (subject to certain exemptions).

The problem that HM Treasury is seeking to address relates to the role of an authorised firm approving a financial promotion that an unauthorised firm wishes to communicate.

The consultation proposes the creation of new gateway by which a firm would first need to obtain specific consent from the FCA before it was able to approve the financial promotions of unauthorised persons.

HM Treasury has proposed two options for the 'gateway':

1. Option 1 – all authorised firms are subject to a requirement that they may not approve promotions of unauthorised persons, and firms must apply to the FCA to remove or vary the requirement; or

2. Option 2 – approving financial promotions of unauthorised persons is a regulated activity for which a specific permission is needed.

The government's preference is Option 1 as it would represent a less significant change to the current regulatory framework and treatment of financial promotions.

The 'gateway' proposal would not affect the way authorised firms communicate their own financial promotions, approve their own promotions for communication by unauthorised persons, or approve the promotions of unauthorised persons within the same corporate group.

The consultation closed on 25 October 2020. The government stated that it will analyses the responses and, in due course, set out the next steps including which policy options it intends to take forward.

The consultation was covered in the "AIMA Regulatory Deep Dive Programme – UK," presented by Dechert. For more information, please click *here*.

5.10 HM Treasury proposes expansion of financial promotion regime to include cryptoassets

HM Treasury launched a second consultation in July setting out proposals to expand the perimeter of the financial promotion regime to bring the promotion of certain types of unregulated cryptoassets within its scope. This consultation and the consultation on the approval of financial promotions of unauthorised firms (see 5.9 above) should be read together.

The government is of the view that many types of unregulated cryptoassets (that is, exchange tokens and utility tokens) expose consumers to "unacceptable levels of risk" as well as raising issues of market integrity and giving rise to financial crime risks.

To address these concerns, the government proposes to make changes to bring certain activities in relation to cryptoassets within the financial promotion regime. Not all cryptoassets would be caught in the proposed expansion of the financial promotion regime as the government considers that applying the financial promotion regime to too wide a range of cryptoasset activity could stifle innovation without a proportionate benefit to consumer protection.

The government is seeking information from respondents about the impacts its policy proposals would have, in particular on cryptoasset firms and users of cryptoassets.

The deadline for responses was 25 October 2020. The government has stated that it does not propose to introduce a transitional period before the proposed Financial Promotion Order amendments come into force.

5.11 UK Fintech Strategic Review

In July 2020 the government announced a strategic review (click *here*) into the UK's financial technology industry which aims to establish priority areas for industry, policy makers, and regulators to explore in order to support the ongoing success of the UK fintech sector and to identify opportunities to support further growth in the sector. The review is expected to report back to HM Treasury in Q1 2021.

5.12 FCA regulation of cryptoassets

Regulation of cryptoassets remains on the regulatory agenda. In 2018 a Cryptoasset Taskforce was established as a joint initiative between HM Treasury, the Bank of England and the FCA, charged with the task of looking at the risks of cryptoassets and the potential benefits of the underlying digital ledger technology. In October 2018 the Taskforce published a report outlining the UK's approach to cryptoassets and DLT technologies in the financial services sector and detailing (i) a framework for different types of cryptoassets and (ii) the different activities that should be assessed for regulation.

The term cryptoasset is not defined in UK legislation nor the FCA handbook and in attempt to address this, the UK Justice Taskforce (**UKJT**) prepared and published an authoritative legal statement on the status of cryptoassets and smart contracts under English private law. The report concluded that cryptoassets have all the legal characteristics of property, and under English law and as a matter of English legal principle, to be treated as property. (See Dechert's OnPoint).

The UK financial services regulatory framework was not developed with cryptoassets in mind and HM Treasury and the FCA have launched a number of initiatives and consultations on whether and how cryptoassets should be brought into the regulatory perimeter. In September 2020 the FCA published its regulatory initiatives grid which included initiatives relating to cryptoassets – such as the HM Treasury consultation on the expansion of financial promotion regime to include cryptoassets (see 5.10 above).

On 7 January 2021 HM Treasury launched a consultation on the broader regulatory approach to cryptoassets, including new challenges from stablecoins, with a deadline for comments on the paper of 21 March 2021. The annex to the consultation includes a timeline of recent and ongoing workstreams, including potential HM Treasury legislation later in 2021.

6. U.S. REGULATORY INITIATIVES

6.1 Amendments to Definitions of Accredited Investor and Qualified Institutional Buyer Take Effect

In late August 2020, the SEC adopted its final rules in relation to an expanded definition of Accredited Investor and conforming changes to the definition of Qualified Institutional Buyers. The rules became effective on 8 December 2020 and managers should consider amending any subscription agreements which specify the categories of Accredited Investor or Qualified Institutional Buyers

New Categories of Accredited Investor

Those persons that hold certain professional certifications that demonstrate a background and understanding of securities and investing are now capable of being Accredited Investors. An SEC order issued in conjunction with the final rules confirmed that those holding Series 7, 65 or 82 licenses will qualify, provided they are currently in good standing. These categories can be amended by the SEC in separate orders, making the addition of new categories simpler than rule amendments.

"Knowledgeable Employees" of private funds are now able to qualify as accredited investors for investment in the relevant fund. The definition of "Knowledgeable Employee" is the same as Rule 3c-5(a)(4) of the Investment Company Act of 1940 (**1940 Act**). This addition eliminates the requirement that knowledgeable employees that received the relevant exemption under the 1940 Act independently meet the accredited investor definition in order to invest in a 3(c)(1) or 3(c)(7) fund.

Expansion to Permit Certain Persons/Entities

The definition of Accredited Investor also has been expanded to include:

a) The pooling of income from "Spousal Equivalents" (cohabiting persons occupying a relationship generally equivalent to that of a spouse) for the purposes of the net worth tests;

b) Investment advisers that are registered under Section 203 of the Investment Advisers Act of 1940 (**Advisers Act**), investment advisers registered under state laws in the U.S. and investment advisers that utilize the exemptions under Sections 203(m) and 203(l) of the Advisers Act (**private fund adviser** and **venture capital fund adviser**, respectively);

c) Rural Business Investment Companies (**RBICs**);

d) Limited liability companies (**LLCs**) with total assets that exceed US$5 million;

e) Certain family offices and family clients (those meeting the definition in the Advisers Act (i) with more than US$5 million in assets under management; (ii) that are not formed for the purpose of investing in the offered securities; and (iii) whose prospective investments are directed by individuals who have knowledge and experience in financial and business matters); and

f) Certain entities, such as Native American tribes and governmental bodies, that meet an "investments" test rather than "assets" test. Such entities must have US$5 million in investments owned.

Qualified Institutional Buyers

The amendments include certain conforming changes to Rule 144A (which provides a safe harbor for certain resales of restricted securities to qualified institutional buyers (**QIBs**) from the registration requirements of the Securities Act), to ensure that there are not inconsistencies between the entity types available for Accredited Investors and QIB status. In addition, a new category has been added to permit certain institutional accredited investors (see (f) above) to automatically qualify as QIBs provided they meet the US$100 million in owned and invested securities test in Rule 144A.

6.2 Substantial Overhaul of the SEC Advertising and Solicitation Rules

The SEC has finalized its amendments to Rule 206(4)-1 – Advertisements by Investment Advisers (**Old Advertising Rule**) and Rule 206(4)-3 – Cash Payments for Client Solicitations (**Old Solicitation Rule**) under the Advisers Act, as well as technical amendments to Rule 204-2 (the **Recordkeeping Rule**) and Form ADV, Part 1A (separately, **Updated Advertising Rule** and **Updated Solicitation Rule**, and collectively, **New Rules**). The New Rules were adopted on 22 December 2020 and all advertisements by advisers that are registered or required to be registered with the SEC are required to be in compliance within 18 months following the publication of the New Rules in the Federal Register. This effective date should have been 60 days from 22 December 2020; however, when President Biden took office, he issued a Regulatory Freeze Pending Review (discussed further in 6.3 hereof), which has placed the New Rules on hold.

These changes, while mainly of concern to SEC-registered investment advisers, will also be relevant to managers that are not registered with the SEC, as the Advertising Rules are generally considered largely applicable to all advisers via the “Anti-Fraud” provisions of the Advisers Act.

The Updated Advertising Rule dramatically revises and modernizes the regulatory framework for investment adviser and private fund marketing materials. It replaces the current set of rigid prohibitions (particularly those relating to testimonials and past specific recommendations) with a more flexible, principles-based approach, and codifies and rationalizes the patchwork of guidance provided through SEC enforcement actions and Staff no-action letters (particularly as these apply to performance advertising) over prior years. Among other things, the Updated Advertising Rule:

a) Brings the regulatory scheme into the 21st century and adapts it from primarily paper-based premises to a more technology-neutral basis that recognizes the realities of the Internet, social media and mobile applications;

b) Eliminates unnecessary or outdated requirements; and

c) Relies more expressly on compliance policies and procedures, as well as additional reviews by advisers, than under the Old Advertising Rule.

While the changes in the Updated Solicitation Rule are less fundamental, they also reflect a significant modernization of the Old Solicitation Rule (which is now subsumed in the New Advertising Rule) with a more streamlined structure.

Certain deviations from the proposal issued in 2019 include:

a) the proposals regarding distinguishing between retail and non-retail investors was not adopted;

b) the definition of advertisement was not expanded to one-on-one communications;

c) internal review and written approval of advertisements by certain adviser personnel is not required prior to dissemination; and

d) the requirements surrounding advertisements that display predecessor performance are less onerous than was proposed.

Further detailed publications on the New Rules will be forthcoming from Dechert LLP.

6.3 Regulatory Freeze by President Biden

On taking office on 20 January 2021, President Biden issued a memorandum requesting that all heads of department halt the implementation of any new rules until a department or agency head appointed or designated by the President reviews and approves the rule. This applies to all rule proposals and, importantly, to any new rules that have been adopted but not yet published in the Federal Register.

The effect of this could impact many rules, including rules issued by the SEC (including the Advertising Rule and the proposed amendments to Rule 13f-1 and Form 13F discussed below) and the CFTC.

6.4 New York Updates Local Filing Rules Ending Lack of Clarity for Rule 506 Offerings

Background

The offering of securities in New York is subject to state regulation under local law known as the Martin Act. The Martin Act generally regulates securities dealers rather than offerings and sales of securities themselves; however, the definition of “dealer” includes the issuer of a security, meaning that funds could be considered to be dealers. Because of this definition, the Martin Act technically required the registration of a fund as a dealer using a Form 99 and additional filings.

This approach has been viewed by many as inconsistent with requirements of federal securities laws, including Rule 506 of Regulation D under the Securities Act of 1933 (Rule 506). As a result, many lawyers and advisers have taken the position that the New York Martin Act requirements have been pre-empted by U.S. federal law (the National Securities Markets Improvement Act of 1996). As such, many funds and other similar issuers conducting Rule 506 offerings did not file with the New York state authorities under the Martin Act citing the pre-emption principal, which was supported in a published position by the New York Bar Association’s Committee on Securities Regulation (August 2002).

Amendment

On 2 December 2020, new rules came into effect in New York which require, consistent with most other U.S. states, that issuers making private placements offerings in compliance with Rule 506 must file a copy of the issuer’s federal Form D with the relevant authorities in New York within 15 days of the first sale within or from the state of New York.

Impact

While the changes are a welcome clarification for practitioners and issuers alike, issuers that have made sales in New York and have an ongoing offer should consider making a Form D filing in the state of New York at this time. Form D requires submission of “the initial date of offering” in the United States and “the total amount sold” in the United States as well as disclosure on brokers used (if any) as well as any sales commissions paid. While

closed-end private funds will likely be able to determine this relatively easily, older funds which have a continuing offer may have difficulty providing this information.

In such circumstances, advisers should speak with Dechert or their fund counsel in relation to determinations on how to proceed.

6.5 Application of Statutory Disqualification Prohibitions to CPOs Exempt under CFTC Regulation 4.13

The Commodity Futures Trading Commission (**CFTC**) on 4 June 2020 unanimously approved an important final amendment to Regulation 4.13 under the Commodity Exchange Act (**CEA**). This amendment adds a new requirement that any person filing with the National Futures Association (**NFA**) a notice of exemption from registration as a CPO under Regulation 4.13(a)(1), (2), (3) or (5), or annually affirming such an exemption, must make a specified representation. The representation will provide that neither the person, nor any of the person's principals, has in its background a statutory disqualification that would require disclosure under Section 8a(2) of the CEA if such person sought registration (unless such disqualification arises from a matter disclosed in connection with a previous application for registration, where such registration was granted). The CFTC definition of a "principal" is as set forth in CFTC Regulation 3.1(a).

The compliance date for this rule amendment for new claims of exemption was September 8, 2020. The compliance date for exempt CPOs who were already relying on CFTC Rule 4.13(a)(1), (2), (3) or (5) prior to the compliance date for the rule amendment is March 1, 2021, the same deadline as the annual affirmation of the exemption.

More information in relation to this and other updates from the CFTC is available in our *OnPoint.*

6.6 Proposed amendment to Rule 13f-1 and Form 13F

In July 2020, the SEC proposed amendments to Rule 13f-1 of the Securities Exchange Act of 1934 and the corresponding Form 13F which would dramatically raise the reporting threshold for institutional investment managers, from US$100 million to US$3.5 billion, to reflect the change in size and structure of the U.S. equities market since 1975, when Rule13f-1 was adopted. Rule 13f-1 and the corresponding Form 13F relate to required reporting by institutional investment managers of positions meeting the reporting thresholds of specified publicly traded equity securities. The proposed amendments would also amend Form 13F to increase the information provided by institutional investment managers by eliminating the omission threshold for individual securities, and requiring managers to provide additional identifying information. There are also additional proposed amendments to modernize the structure of data reporting and to take account of confidential treatment requests per recent U.S. Supreme Court jurisprudence.

The comment period for the proposal recently passed and it is notable that the New York Stock Exchange issued a commentary submission against the proposal on the basis that it would decrease transparency in the markets.

6.7 SEC Registration of UK Managers

Following the implementation of the European Union's (**EU**) General Data Protection Regulation (**GDPR**), non-U.S. firms have been unable to register with the SEC as investment advisers pursuant to the Advisers Act because of concerns held by the SEC's Staff regarding the impact of GDPR on the cross-border transfer of data.

Specifically, the Staff's fears were based on the fact that provisions of GDPR seemed to prevent the Staff from obtaining prompt, direct access to the books and records of EU firms.

A number of industry groups have been involved in lobbying the SEC on behalf of their members to resolve this issue and find ways to address the SEC's concerns. The industry groups have actively encouraged a direct dialogue between the SEC and UK Information Commissioner's Office (**ICO**), which has met with success.

The ICO has provided comfort (believed to be in the form of a letter) to the SEC that UK firms can, according to the ICO's interpretation of GDPR, share any necessary data with the SEC without breaching the provisions of GDPR.

Although there has been no formal announcement, nor have copies of what the ICO may have sent to the SEC been made public, Peter Driscoll, Director of OCIE, stated at an industry event that took place on 15 September 2020 that the SEC is likely to begin registering UK firms as investment advisers very shortly.

The SEC's position only covers UK firms at this time, but we understand that other jurisdictions hope to obtain relief in the future.

6.8 Adoption of Amendments to Volcker Rule

The Office of the Comptroller of the Currency (**OCC**) , the Board of Governors of the Federal Reserve System (**Board**), the Federal Deposit Insurance Corporation (**FDIC**), the SEC and the CFTC (together, **Agencies**) on 25 June 2020 adopted a final rule (**Final Rule**) amending certain provisions of the regulations implementing the so-called "Volcker Rule." The Final Rule's amendments, which relate to the provisions of the regulations implementing the Volcker Rule (**Volcker Rule Regulations**) dealing with "covered funds," are substantially the same as those the Agencies proposed for comment earlier in 2020, although the Agencies made certain changes to the proposal in response to comments. The Final Rule took effect on 1 October 2020.

With the Final Rule, the Agencies seek to: limit certain unintended consequences of the Volcker Rule Regulations; reduce their extraterritorial impact; and generally streamline the provisions relating to covered funds – while maintaining, and in some cases improving, consistency with the requirements and purpose of the Volcker Rule. The Final Rule includes a number of amendments which are covered in more detail in our *OnPoint*, including:

a) New exclusions from the covered fund definition for credit funds, venture capital funds, family wealth management vehicles, and customer facilitation vehicles;

b) Revisions to existing exclusions from the covered fund definition for foreign public (retail) funds, loan securitizations, and public welfare and small business funds;

c) Modification of the definition of "ownership interest" under the Volcker Rule Regulations to clarify that: (i) an ownership interest in a covered fund does not include bona fide senior loans or senior debt instruments, and (ii) certain types of creditor rights do not give rise to an ownership interest;

d) Codification of an existing policy statement by the OCC, the Board, and the FDIC to address situations where a foreign fund that is not a covered fund could be deemed to be a banking entity;

e) Clarification that in certain circumstances, a banking entity is not required to treat investments by the banking entity or its directors or employees alongside a covered fund as investments by the banking entity in the covered fund itself; and

f) Modifications to the so called “Super 23A” provisions of the Volcker Rule to allow a banking entity to make certain short-term extensions of credit to covered funds advised or sponsored by their banking entity or its affiliates and engage in riskless principal transactions with such funds.

For further information, please do not hesitate to get in touch with a member of Dechert’s financial services team or your usual Dechert contact.

Dechert’s financial services advisory capability spans 16 jurisdictions including Ireland, Luxembourg, Germany, France and Belgium as well as throughout the United States, Middle East and Asia. Please visit dechert.com for further detail.

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01-21