

International Regulatory Update

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EU Council adopts rules on bank recovery and resolution

The EU Council has [formally adopted](#) the Recovery and Resolution Directive (RRD). The Directive provides national authorities with tools to pre-empt bank crises by introducing instruments at preparatory and preventative, early intervention and resolution stages of bank failure. The Directive includes provision for:

- bail-in, to enter force in January 2016, which will enable resolution authorities to write down or convert into equity the claims of the shareholders or creditors of banks that are failing or likely to fail;
- setting up resolution funds or national financing arrangements that can make temporary support available to banks under resolution equal to at least 1% of covered deposits within all credit institutions authorised in a country;
- exceptional measures enabling the temporary injection of funds to address capital shortfalls emergent from stress tests, asset quality reviews or equivalent exercises conducted by the European Central Bank, European Banking Authority or national authorities;
- a stabilisation tool that provides for public capital injections where extensive bail-in would endanger financial stability; and
- minimum requirements for own funds and eligible liabilities (MREL) of each institution, based on size, risk and business model, to ensure institutions have adequate loss-absorbing capacity.

Member States have until 31 December 2014 to transpose the Directive into national law.

Rating agencies: EU Commission adopts report on smaller CRAs

The EU Commission has adopted a [report](#) on the feasibility of a network of smaller credit rating agencies (CRAs) in the EU. The report assesses how the establishment of such a network could contribute to the strengthening of smaller CRAs, facilitating their growth to become more competitive market players.

The report proposes the establishment of a regulatory dialogue with smaller CRAs. It also recommends that a full assessment of the feasibility of establishing a more integrated network of smaller CRAs be carried out within the medium to long term when the overall impact of recently enacted legislation on CRAs can be effectively analysed.

Banking union: ECB publishes second quarterly report on implementation of SSM regulation

The European Central Bank (ECB) has published its second [Quarterly Report](#) to the EU Parliament, the EU Council and the EU Commission on progress in implementing the regulation on the Single Supervisory Mechanism (SSM). The report covers the three months up to 3 May 2014, and discusses:

- the establishment of governance structures for the SSM;
- the adoption of the SSM Framework Regulation;
- work on the SSM supervisory manual;
- progress towards the establishment of Joint Supervisory Teams (JSTs) for the conduct of supervision by the SSM;
- progress in the conduct of the comprehensive assessment;
- the approval of the Supervisory Reporting Manual; and
- other preparatory work, including staffing the SSM.

EBA publishes risk dashboard of EU banking sector

The European Banking Authority (EBA) has published its [risk dashboard](#) for the first quarter of 2014, based on data from the fourth quarter of 2013. The dashboard summarises the main risks and vulnerabilities in the EU banking sector by examining the evolution of key risk indicators (KRIs) from fifty-five banks across the EU that the EBA has been collecting on a quarterly basis since 2009. This edition considers:

- solvency and capital ratios, which have been affected by cleaning up balance sheets and taking on legal charges;
- credit risk and asset quality, pointing to declining Risk Weighted Assets and deterioration in the quality of banks' loan portfolios;
- profitability, highlighting the effect for some major banks of preparation for the Asset Quality Review and Stress Test; and
- balance sheet structure, discussing significant declines in debt-to-equity and loan-to-deposit ratios.

EBA consults on RTS concerning the treatment of equity exposures under the IRB approach

The EBA has launched a [consultation](#) on [draft Regulatory Technical Standards \(RTS\)](#) to specify the treatment of equity exposures under the internal ratings-based (IRB) approach under the Capital Requirements Regulation (CRR). The CRR allows competent authorities to

temporarily exempt from IRB treatment certain equity exposures held by institutions as at 31 December 2007 provided certain conditions are met. This exemption, which was introduced in CRD 1 to partly relieve institutions' capital requirement for equity exposures under the IRB approach, will end on 31 December 2017.

The Consultation Paper sets out the single proposed condition in the draft RTS that would allow competent authorities to grant the exemption if it was being applied on the last day of application of the Capital Requirements Directive (CRD 1).

The consultation closes on 7 July 2014.

EMIR: ESMA writes to EU Commission with regard to frontloading requirement

Steven Maijoor, Chair of the European Securities and Markets Authority (ESMA) has [written](#) to Michael Barnier, EU Commissioner for Internal Markets and Services, in relation to the clearing obligation and frontloading requirements included in the European Market Infrastructure Regulation (EMIR). ESMA has identified that the frontloading requirement may introduce uncertainties in the market, including potential negative impacts on financial stability, and raises this with the Commission as a matter of urgency.

The frontloading requirement is the obligation to clear OTC derivative contracts entered into during the period after a central counterparty (CCP) has been authorised under EMIR and before the date of application of the clearing obligation. ESMA has divided this frontloading period into two different timeframes and is considering the removal of the frontloading requirement during the period between the notification of classes to ESMA and the entry into force of the regulatory technical standards (RTS) on the clearing obligation. Mr. Maijoor's letter serves to inform the Commission of this approach and seeks the Commission's views.

FCA policy statement on changes to the use of dealing commission rules

The Financial Conduct Authority (FCA) has released a policy statement ([PS14/7](#)) setting out changes to the use of dealing commission rules found in the Conduct of Business Sourcebook (COBS) 11.6, following consultation with the industry (CP13/17). The changes seek to reinforce the current rules and provide greater clarity on what investment managers can pay for using client dealing commission. The changes include:

- an amendment to the exemption permitting the use of dealing commission providing specific criteria for substantive research;
- prohibition on investment managers using dealing commission to pay for corporate access; and
- clarification on the costs investment managers can pass on to their clients through dealing commission, including specific guidance on mixed use assessments.

The policy statement includes the FCA's response to the consultation and the finalised changes in COBS. The changes come into force on 2 June 2014.

BaFin publishes FAQs on algorithmic trading

The German Federal Financial Supervisory Authority (BaFin) has published [FAQs](#) on [its circular on systems and controls for algorithmic trading by institutions](#). The circular is based on ESMA's [guidelines](#) on systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities.

Swiss Federal Council approves total revision of Banking Ordinance

The Federal Council has [approved](#) the total revision of the Banking Ordinance.

Amongst other things, the revised Banking Ordinance will include the following amendments:

- revised accounting legislation, including minimum requirements for banks' annual financial statements; and
- other formal, structural and editorial changes.

The proposed revisions found broad support in the consultation procedure. In isolated cases, certain provisions on the definition of public funds, the new accounting standards and the definition of unclaimed assets were criticised. The vast majority of the concerns of the respondents were taken into account.

The revised Banking Ordinance, together with the revised regulations under the Banking Act regarding unclaimed assets (previously adopted by the Parliament on 22 March 2013), will come into force on 1 January 2015. The minimum requirements for the annual financial statements of banks will now be set out in an appendix to the Banking Ordinance.

FINMA issues decrees on capital requirements of largest Swiss banks

The Swiss Financial Market Supervisory Authority (FINMA) has [issued](#) decrees on capital requirements to the two

largest Swiss banking institutions, in accordance with the 'too big to fail' regime under Swiss law. The decrees set out strict capital requirements (which vary depending on each bank's size and national market share) for the two systematically important banks and prescribe, among other things:

- a minimum capital requirement of 19.2% and 16.7% of risk-weighted assets (RWAs) in 2019 for each bank respectively; and
- an unweighted leverage capital ratio of 4.6% and 4.0% in 2019 for each bank respectively.

According to FINMA, it is not unreasonable to assume that the 2019 capital requirements may decrease, given the two banks' continuing efforts to reduce their respective balance sheets and the potential for changes in market share. FINMA also notes that the two banks' current RWA values are still below the FINMA-defined standard capital requirement for large banks of 14.4% of RWAs.

FINMA has also granted certain concessions under the Capital Adequacy Ordinance to ensure that capital requirements at single entity level do not exceed capital requirements at consolidated group level, as provided by law. FINMA will review annually whether such concessions need to be maintained.

SFC outlines risks of crowd-funding and potential regulatory issues

The Securities and Futures Commission (SFC) has issued a [notice](#) to remind parties engaging in crowd-funding activities of the potential application of relevant securities laws and regulations, and to remind the public of potential risks relating crowd-funding activities participation, in view of the increased activities internationally and in Hong Kong.

The notice reminds parties engaging in crowd-funding activities that this may be subject to provisions of the Securities and Futures Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance and/or relevant SFC requirements, including regulations on offers of investments, intermediary licensing and conduct of business requirements, and requirements applicable to automated trading services and/or recognized exchange companies. Other Hong Kong laws and regulations may also apply depending on the features of the activities. Parties looking to engage in crowd-funding activities are advised to seek professional advice if in doubt to ensure compliance with all applicable laws and regulations.

According to the SFC, potential risks involved in crowd-funding activities as an investor include risk of default, risk of illiquidity of the investment, risk of platform failure and insolvency, risk of fraud, risks associated with platforms operating outside Hong Kong, information asymmetry and lack of transparency, cyber security issues and possible illegal activities. Investors considering participating in crowd-funding activities and in doubt about the nature, risk profile and regulatory status of such activities are advised to seek professional advice.

The Investor Education Centre has also published information on its website outlining the key risks of crowd-funding activities.

Indonesian government issues new Negative List

The Indonesian government has issued (through [Presidential Regulation No.39 of 2014](#)) the highly anticipated and much deliberated new Negative List which specifies the business sectors that are closed to foreign investment and the business sectors that are open to foreign investment subject to conditions.

Essentially the new Negative List increases foreign ownership limits in several sectors, while limiting them in others.

The new Negative List introduces the following key changes:

- opening up opportunities in advertising and film business to ASEAN investors;
- increasing the permitted maximum foreign ownership limits in the pharmaceutical, ecotourism and certain public-private partnership project sectors (among others); and
- restricting the permitted maximum foreign ownership limits in certain sectors, including the onshore oil and gas drilling services, horticulture, and distribution, warehouse, and cold storage sectors in certain locations.

While certain changes introduced in the new Negative List are more foreign investor friendly, others are arguably more protectionist.

FSS to operate centers for reporting mis-selling and suspended mutual savings bank clients

The Financial Supervisory Service (FSS) has [announced](#) that it intends to establish and operate a center for suspended mutual savings bank clients and a center for reporting mis-selling of subordinated debt. The centers are

to ensure that depositors of the suspended Haesol Mutual Savings Bank receive advice on deposit insurance and subordinated debt more easily. The center for mutual savings bank depositors will be located at the FSS building in Yeoido and will be in operation for two weeks from 7 May 2014.

The center for reporting mis-selling of subordinated debt by suspended mutual savings banks will be in operation for three months from 7 May 2014 at nine regional offices (Busan, Daegu, Gwangju, Daejeon, Jeonju, Chuncheon, Jeju, Chungju, Gangneung), as well as at the FSS building in Yeoido. The FSS has indicated that claims will be addressed according to the procedures for settlement of complaints and disputes.

FRB requests comment on proposed rulemaking implementing section 622 of Dodd-Frank Act

The Federal Reserve Board (FRB) is requesting comment on a newly published [proposed rulemaking](#) that would implement section 622 of the Dodd-Frank Act. The proposed rule, which reflects recommendations made by the Financial Stability Oversight Council, would prohibit a financial company from combining with another company if the ratio of the resulting financial company's liabilities exceeds 10% of the aggregate consolidated liabilities of all financial companies.

In accordance with section 622 of the Dodd-Frank Act, the proposal generally defines liabilities of a financial institution as the difference between its risk-weighted assets, as adjusted to reflect exposures deducted from regulatory capital, and its total regulatory capital. Firms not subject to consolidated risk-based capital rules would measure liabilities using generally accepted accounting standards. Under the proposal, the FRB would measure and disclose the aggregate liabilities of financial companies annually, and would calculate aggregate liabilities as a two-year average.

Comments on the proposal should be submitted by 8 July 2014.

RECENT CLIFFORD CHANCE BRIEFINGS

Asia Region Funds Passport – MAS seeks feedback on proposed arrangements

A joint consultation paper has been published by Australia, Korea, New Zealand, the Philippines, Singapore and Thailand on the proposed rules and arrangements that will

govern the operation of the Asia Region Funds Passport (ARFP). The ARFP will allow fund managers operating in a passport member economy to offer collective investment schemes (CIS) in other passport member economies under a streamlined authorisation process.

This briefing discusses the proposed passport arrangements.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/05/asia_region_fundspassport-masseeksfeedback.html

Business and human rights – emerging issues for financial institutions

This article explores some of the emerging legal issues accompanying the increasing trend for financial institutions to commit to policy statements on human rights. Recently 'national action plans' on implementation of the UN's Guiding Principles on Business and Human Rights have been published in the UK, the Netherlands, Denmark and Italy, with other governments expected to follow in 2014. These government policies emphasise the expectation that all companies respect human rights in their activities.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/05/business_and_humanrightsemergingissuesfo.html

Clifford Chance Global Intellectual Property Newsletter – Issue 5/14

In the latest issue of our Global Intellectual Property Newsletter, we discuss the key elements of the EU proposal for a directive on the protection of trade secrets against their unlawful acquisition, use and disclosure, which aims at harmonising the laws of the EU Member States concerning trade secrets and thereby encourages the exchange of knowledge across borders and higher levels of investment in R&D.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/05/global_intellectualpropertynewsletterissue514.html

Listing Rule changes relating to controlling shareholders to take effect on 16 May 2014

This briefing discusses changes to the Listing Rules relating to controlling shareholders. The Financial Conduct Authority (FCA) has confirmed its intention to bring the Listing Rule changes, details of which are set out in its November 2013 consultation paper, CP 13/15, into force on 16 May 2014. The changes are intended to reinforce

minority shareholder protection in a number of specific situations, in particular, where a premium listed company has a controlling shareholder. Companies affected by these changes will need to take action to ensure compliance with the new requirements.

These changes were not expected to be brought into force until later this year but a FCA press release, published on 17 April 2014, highlighted the FCA's intention to fast track

implementation. The FCA has now published the Listing Rules (Listing Regime Enhancements) Instrument 2014, which sets out the text of the Listing Rule changes and the FCA intends to publish a policy statement on 16 May 2014, containing feedback on CP 13/15.

http://www.cliffordchance.com/briefings/2014/05/listing_rule_changesrelatingtocontrolin.html

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

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