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Briefing note

International Regulatory Update

2 – 6 June 2014

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Market abuse: EU Commission requests technical advice from ESMA on implementing acts

The EU Commission has issued a request to the European Securities and Markets Authority (ESMA) for technical advice on implementing acts concerning the regulation on insider dealing and market manipulation (MAR).

In particular, the implementing acts shall specify the procedures to enable reporting of actual or potential infringements of MAR to competent authorities, including the arrangements for reporting and for following up reports, and measures for the protection of persons working under a contract of employment and measures for the protection of personal data. The Commission has already asked ESMA for technical advice regarding other aspects of MAR and issued an according mandate on 8 October 2013.

The deadline set for ESMA to deliver its technical advice is eight months after the entry into force of MAR, which is expected in July 2014.

MiFID 2: EU Commission requests EBA technical advice on delegated acts regarding product intervention powers

The EU Commission has published a letter dated 16 May 2014, in which it requests the European Banking Authority's (EBA's) technical advice on possible delegated acts under the new Markets in Financial Instruments Directive (MiFID 2) and Regulation (MiFIR).

Under MiFIR, the Commission is empowered to adopt delegated acts specifying criteria and factors to be taken into account by the ESMA, EBA and competent authorities in determining when there is a significant investor protection concern and threat to the orderly functioning and integrity of financial markets or commodity markets and to the stability of the whole or part of the EU financial system.

The Commission's letter emphasises that, as MiFIR establishes an identical framework for EBA intervention powers in respect of structured deposits, factors and criteria to be taken into account for the exercise of product intervention powers for structured deposits should be similar to (if not identical to) those set for ESMA with respect to financial instruments, and urges the EBA to liaise closely with and consult ESMA when providing its technical advice and proposing factors and criteria for intervention powers concerning structured deposits.

The deadline for the EBA to submit its technical advice is set at 6 months after the entry into force of MiFID 2/MiFIR, which is expected to take place in June 2014.

CRD 4: Delegated Regulation on categories of staff with material impact on an institution's risk profile published in OJ

Commission Delegated Regulation (EU) No 604/2014 supplementing the Capital Requirements Directive (CRD 4) with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile has been published in the Official Journal.

The Delegated Regulation will enter into force on 26 June 2014.

CRR: Implementing Regulation on additional risk weights published in Official Journal

Commission Implementing Regulation (EU) No 602/2014 laying down implementing technical standards for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights under the Capital Requirements Regulation (CRR) has been published in the Official Journal.

The Regulation will enter into force on 24 June 2014.

Exposures to CCPs: Implementing Regulation extending transitional periods for own funds requirements published in Official Journal

Commission Implementing Regulation (EU) No 591/2014 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties (CCPs) in the CRR and the European Market Infrastructure

Regulation (EMIR) has been published in the Official Journal.

The Implementing Regulation extends the transitional periods during which all CCPs with which institutions established in the EU clear transactions will be considered 'qualifying' CCPs, and during which certain CCPs will be required to report the total amount of initial margin they have received from their clearing members, by six months, i.e. until 15 December 2014.

The Implementing Regulation enters into force on 5 June 2014.

European venture capital and social entrepreneurship funds: Implementing Regulations on format of notifications published in Official Journal

Two Commission Implementing Regulations (593/2014 and 594/2014) laying down implementing technical standards with regard to the format of notifications under the Regulation on European venture capital funds and the Regulation on European social entrepreneurship funds have been published in the Official Journal.

Both Implementing Regulations will come into force on the 7 June 2016.

Money Market Funds: ECB publishes opinion on EU Commission's proposal

The European Central Bank (ECB) has published an opinion on the EU Commission's proposal for a regulation on money market funds (MMFs). The opinion suggests a number of changes to the proposed regulation, including to:

- clarify the interaction between the directly applicable provisions of the proposed regulation and the national provisions transposing the Undertakings for Collective Investment in Transferable Securities (UCITS) and the Alternative Investment Fund Managers Directive (AIFMD);
- consider more flexible means for maintaining the net asset value buffer for constant net asset value MMFs; and
- allow the ECB broader access to data reported by MMFs.

The annex to the opinion contains drafting proposals made by the EBA to specific articles in the proposed regulation.

EBA publishes final draft technical standards and guidelines on global systemically important institutions

The EBA has published final draft Regulatory Technical Standards (RTS) on the methodology for the identification of global systemically important institutions (G-SIIs) under CRD 4. The RTS specify twelve indicators falling within the five categories set out under CRD 4 by which competent authorities will calculate the systemic significance of banks in Member States.

The EBA has also published its final draft Implementing Technical Standards (ITS) on uniform standards for the disclosure of indicators used for determining the score of G-SIIs under the CRR.

Alongside the RTS and ITS, which are intended to harmonise regulation and disclosure across the EU, the EBA has also issued guidelines on disclosure of indicators of global systemic importance, which stipulate that large institutions with an overall exposure of more than EUR 200 billion but not calculated to be G-SIIs will have the same disclosure requirements as G-SIIs.

EBA publishes final draft ITS on disclosure for leverage ratio

The EBA has published its final draft ITS on disclosure of the leverage ratio under the CRR. The ITS are intended to harmonise disclosure of the leverage ratio across the EU by providing institutions with uniform templates and instructions and will form part of the Single Rulebook.

Rating agencies: IOSCO consults on reducing reliance on rating agencies

The International Organisation of Securities Commissions (IOSCO) has published a consultation with a view to developing a set of good practices on reducing reliance on external credit rating in the asset management sector.

The report stresses the importance for asset managers to have the appropriate expertise and processes in place to assess and manage the credit risk associated with their investment decisions, and suggests possible good practices that asset managers may consider to avoid over-reliance on external ratings.

The actions that result from the consultation will be addressed to national regulators, investment managers, and investors where applicable.

The deadline for comments is 5 September 2014.

FCA publishes Quarterly consultation No. 5

The Financial Conduct Authority (FCA) has published its Quarterly consultation paper No. 5 (CP14/8), setting out amendments to the Handbook. CP14/8 proposes to:

- modify the list of appropriate qualifications in the Training and Competence sourcebook;
- make minor amendments to the Handbook as a result of the transfer of consumer credit regulation;
- amend persistency, annual report and accounts and product sales data reporting;
- implement changes to the Handbook regarding employers' liability registers and the collection of employer reference numbers, as well as the scope of provisions regarding directors' certificates and auditor reports;
- modify the information disclosed in periodic reports and accounts for authorised funds; and
- require banks and building societies which offer current accounts to confirm to the FCA each year that they have complied with the Immigration Act.

Comments on Chapter 2 are due by 6 July 2014 and on all remaining chapters by 6 August 2014.

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2014 published

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2014 (SI 2014/1448) and explanatory memorandum has been published. The Order removes certain credit broking activities from the scope of regulation under the Financial Services and Markets Act 2000.

The Order comes into force on 27 June 2014.

Financial Services and Markets Act 2000 (Consumer Credit) (Transitional Provisions) (No. 3) Order 2014 published

The Financial Services and Markets Act 2000 (Consumer Credit) (Transitional Provisions) (No. 3) Order 2014 (SI 2014/1446) and explanatory memorandum has been published. The Order makes provision in connection with the transfer of consumer credit regulation from the OFT to the FCA, and the regulation by the FCA of consumer credit lending by local authorities. In particular, it extends to 30 September 2014 the deadline for local authorities to notify the FCA and pay the relevant fee in order to obtain interim permission under the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (SI 2013/1881).

The Order comes into force on 27 June 2014.

The Financial Services Act 2012 (Commencement No. 4) Order 2014 published

The Financial Services Act 2012 (Commencement No. 4) Order 2014 entered into force on 5 June 2014. The Order relates to sections of the Financial Services Act 2012 with relevance to the special resolution regime and bank administration and brings into force sections 100, 101 and 102 concerning banking group companies, the application of the Act to investment firms and UK clearing houses.

Ministerial Order on crowdfunding published

A Ministerial Order relating to crowdfunding, dated 30 May 2014, has been published in the Journal Officiel. Intended to provide small and medium sized companies and innovative start-ups with new sources of financing, the Order sets out the legal framework for crowdfunding in France by introducing into French law the following two new regulated statuses:

- equity investments advisor (conseiller en investissements participatifs); and
- crowdfunding intermediary (intermédiaire en financement participatif).

Equity investment advisor is a status open to platforms offering securities to investors through a website. Such platforms are subject to the supervision by the French Autorité des marchés financiers and must comply with a number of requirements relating to, amongst other things, the managers' competence and good reputation, mandatory insurance, good conduct, canvassing, AML-CFT and information to be provided to investors with respect to the securities' offering (it being noted that those platforms are exempted from the prospectus publication requirements). This new method of financing is also open to simplified joint stock companies (societés par actions simplifiées).

Crowdfunding intermediary is a status open to platforms connecting lenders/donors (who are individuals) and the project initiator (the individual/entity raising funds). The French banking monopoly rules have been amended by the Order to allow such lending by individuals. When receiving payment flows, such platforms must be licensed by the French Autorité de contrôle prudentiel et de résolution (ACPR) under a new simplified status of payment institution (which is exempted, in particular, from own funds and

internal control requirements). Such platforms are supervised by the ACPR and the Banque de France. Whether or not receiving payments, crowdfunding intermediaries must also comply with requirements relating to, amongst other things, the managers' competence and good reputation, good conduct, mandatory insurance, information to be provided to the borrower, and due diligence with respect to the financed project and the loan.

Except for the provisions relating to mandatory insurance, the Order will enter into force on 1 October 2014.

The Order is aimed at credit institutions, investment firms and, more generally, commercial companies.

BaFin consults on anti-money laundering duties

The German Federal Financial Supervisory Authority (BaFin) has launched a consultation on certain duties under the German Anti-Money Laundering Act (Geldwäschegesetz) and the German Banking Act (Kreditwesengesetz). Following the consultation, BaFin intends to publish a circular covering, amongst other things:

- monitoring of business relationships;
- outsourcing of certain functions, in particular BaFin approvals; and
- non-recognition of electronic residence permits in lieu of identity cards.

Comments are due by 30 June 2014.

Dutch banks disclose amount of interest rate derivatives held by SMEs

The Netherlands Authority for the Financial Markets (AFM) has published figures on the amount and value of interest rate derivatives held by small and medium-sized enterprises (SMEs). The numbers are based on information recently provided to the AFM by the major banks offering interest rate derivatives to SMEs. The AFM notes that approximately 17,000 of such derivatives are currently outstanding with SMEs. The underlying financing to which these derivatives relate amounts to EUR 26 billion. In April 2014 the aggregated negative market value of these derivatives was EUR 2.7 billion.

The numbers follow previous AFM research on the size of potential problems with interest rate derivatives held by SMEs and the way in which banks asses such problems. This research led the AFM to publish several recommendations to banks with regard to them offering interest rate derivatives to SMEs in February 2014. The AFM notes that clients can suffer major financial damages if the underlying financing is terminated or if repayment of the loan is accelerated, in which case the negative market value of the derivative must be paid back.

The AFM believes that it should be swiftly clarified to what extent banks neglected their duty of care when selling interest rate derivatives to SMEs. Banks have previously indicated that they will reassess their service provision and the AFM intends to ensure that the banks will make a proper reassessment. The AFM has further indicated that banks should have insight into acute problems that SMEs may have with derivatives that no longer suit their needs. The AFM expects banks to prioritise cases where SMEs have urgent continuity problems, and to try to find adequate solutions.

FINMA publishes circular on accounting guidelines for financial institutions

In conjunction with the fully revised Banking Ordinance, the Swiss Financial Market Supervisory Authority (FINMA) has published Circular 2015/1 'Accounting – banks', which contains the accounting guidelines applicable to all financial groups, conglomerates, banks and securities dealers. The circular reflects the corresponding accounting rules from the revised Banking Ordinance (with additional detail where necessary), and follows consultations held by FINMA and the Federal Department of Finance.

Amongst other things, the circular provides for the following changes to existing accounting rules:

- minimum classification rules for annual financial statements will be contained in a separate appendix to the Banking Ordinance (which includes a partial revision of the classification rules applicable to the balance sheet and income statement);
- unrestricted individual valuation of participations, tangible fixed assets and intangible assets will be implemented;
- all institutions will be required to recognise all significant subsidiaries (including special purpose entities) in their consolidated financial statements;
- all institutions will be required to prepare and publish half-yearly interim financial statements, including a full income statement;
- cash flow statements will only be required for true and fair view financial statements;
- the statement of equity will be included as part of the annual financial statements;

- the mandatory deduction of valuation adjustments from relevant assets; and
- the separate disclosure of valuation adjustments and losses from interest operations.

The circular will also necessitate simultaneous minor changes to the Capital Adequacy Ordinance, the Liquidity Ordinance, the Banking Insolvency Ordinance and other FINMA circulars.

The circular, together with the fully revised Banking Ordinance, will come into force on 1 January 2015, and will supersede the existing FINMA-Circ. 08/2 'Accounting – banks'.

MAS launches consultation on obligations of financial institutions under Personal Data Protection Act 2012

The Monetary Authority of Singapore (MAS) has published a consultation paper on obligations of financial institutions under the Personal Data Protection Act 2012.

The consultation paper sets out proposed amendments to the MAS Notices on Prevention of Money Laundering and Countering the Financing of Terrorism (AML/CFT). The proposed amendments are intended to clarify financial institutions' obligations under the AML/CFT requirements in relation to the Personal Data Protection Act 2012. For the avoidance of doubt, the proposed amendments will be added as a new part and applied to the respective MAS AML/CFT Notices. The amendments are intended to be effective from 2 July 2014.

Comments on the consultation paper are due by 20 June 2014.

MAS consults on proposed amendments to Monetary Authority of Singapore and Trust Companies Act to strengthen framework for combating money laundering

The MAS has published a consultation paper on proposed amendments to the Monetary Authority of Singapore Act (MAS Act) and Trust Companies Act (TCA). The proposed amendments are intended to strengthen the regulatory framework for combating money laundering and terrorism financing (AML/CFT) and key amendments include:

- amending the definition of 'financial institutions' in the MAS Act to include designated financial holding companies so that they will be subject to AML/CFT regulation;
- amending the MAS Act to set out the need to perform customer due diligence and keep proper records in primary legislation;
- including provisions in the MAS Act to empower the MAS to provide assistance or share protected information with foreign and domestic supervisors for AML/CFT purposes; and
- amending the TCA to facilitate inspection of Singapore-incorporated licensed trust companies that are subsidiaries of foreign financial groups by their foreign parent supervisory authorities.

The draft Monetary Authority of Singapore (Amendment) Bill and the draft Trust Companies Act (Amendment) Bill are set out in Annex 1 and Annex 2 of the consultation paper respectively.

Comments on the consultation paper are due by 7 July 2014.

SGX launches consultation on proposed regulatory framework for secondary listings

The Singapore Exchange (SGX) has published a consultation paper on its proposed regulatory framework for secondary listed companies on the exchange. Under the current framework, the SGX reviews the legal and regulatory requirements of the primary listing venue or 'home exchange' for each company from a jurisdiction new to the exchange. With the proposed framework, the SGX aims to:

- make clear the regulatory oversight it has on secondary listings i.e. reliance is placed on the regulator of the jurisdiction of the exchange where the company has its primary listing, also known as the company's home exchange; and
- provide greater clarity on the methodology it applies for its regulatory review of secondary listing applicants.

The proposed framework comprises:

- classification of a secondary listing applicant into either a company from a developed market or from a developing market - whether a market is deemed developed or developing will be based on classification by both MSCI and FTSE which takes into account, among others, the overall robustness and maturity of the legal and regulatory regimes of the market;
- where a company is from any of the 23 developed markets, the SGX will not impose additional continuing listing obligations; and
- if a company is from a developing market, additional continuing listing obligations may be imposed to enhance shareholder protection and corporate governance standards.

The SGX also intends to help investors more easily differentiate between secondary and primary-listed companies in the Singapore stock market. For example, the SGX will clearly segregate between these companies when their stock information is displayed on its website.

Comments on the consultation paper are due by 25 June 2014.

FATCA: UAE and US Treasury Department reach agreement in substance on Model 1 IGA

The US Treasury Department has published an update to its FATCA Archive to include the United Arab Emirates (UAE) among the list of jurisdictions that have reached agreements in substance with the Treasury Department with respect to the creation of a Model 1 intergovernmental agreement (IGA). The UAE consented to its inclusion on the list of jurisdictions holding 'in substance' status on 23 May 2014.

Qatar and Kuwait also appear on the list of jurisdictions having achieved agreement in substance on a Model 1 IGA and having given their consent to appear on this list as of 2 April 2014 and 1 May 2014 respectively.

Under a Model 1 IGA, Foreign Financial Institutions (FFIs) in the UAE will be able to report information on US account holders directly to the UAE authorities, who in turn will report to the IRS. Jurisdictions that are considered to have agreements in substance are treated as having an IGA in effect until the end of 2014 and FFIs in those jurisdictions may start the process of submitting information on US account holders to the relevant authorities.

CFTC extends time period of no-action relief from US transaction-level requirements for swaps between non-US swap dealers using US agents and non-US counterparties

The Commodity Futures Trading Commission (CFTC) has issued an extension of its earlier temporary no-action relief on the applicability of US transaction-level requirements to swaps between a CFTC-registered non-US swap dealer and a non-US counterparty. The latest no-action relief applies until 31 December 2014 (extending relief under the earlier letter, which would have expired on 15 September 2014.)

RECENT CLIFFORD CHANCE BRIEFINGS

MiFID 2 and MiFIR – What you need to know

Almost four years since the Commission began its review of the original Markets in Financial Instruments Directive (MiFID), the final texts of MiFID 2 and MiFIR are about to be published in the Official Journal. The protracted legislative process is testament to the scope and complexity of these comprehensive reforms. If, as expected, publication occurs in the second week of June, the new rules will enter into force in mid July 2014 and will start to apply to firms 30 months later, early in 2017.

Focusing on the Level 1 text, this briefing provides an overview of the structure and major features of this multi-faceted legislation, highlighting key areas of concern and illustrating some of the implementation issues likely to face the market in coming months.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/06/mifid_2_and_mifir-whatyouneedtoknow.html

The New European Parliament – What to expect

From 22 to 25 May 2014, Europeans went to the polls. Many of them went to express their dissatisfaction. Although the majority of the incoming 751 MEPs remain broadly supportive of the EU, both they and those who need to engage with the European Parliament will have to adapt to the increased power of a disparate anti-EU and antiestablishment minority over the next five years.

This briefing provides an overview of the election results at the EU level and what happens next, further analysis on results in France, Germany, Greece and the UK, a look at the key outgoing and incoming MEPs, and an examination of the selection procedures for the new leaders of the European Commission, European Parliament and European Council.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/06/the_new_europeanparliamentwhattoexpect.html

China's new rules on cross-border security affect offshore bond issuance and cross-border financing

With a view to liberalising control over capital account transactions, the State Administration of Foreign Exchange (SAFE) issued the Provisions for Foreign Exchange Control over Cross-border Security and a set of corresponding operation guidelines (jointly the Provisions) on 12 May 2014. The Provisions became effective as from 1 June 2014, and aim to reform and deregulate China's regulatory regime for

cross-border guarantees and security (referred to as Cross-border Security). The Provisions now present new opportunities for greater accessibility to Cross-border Security.

This briefing navigates through the main changes introduced by the Provisions and specifically addresses their implications on offshore bond issuance and cross-border financing structures.

http://www.cliffordchance.com/briefings/2014/06/china_s_new_rulesoncross-bordersecurityaffec.html

Second Circuit Reverses Judge's Rejection of SEC-Citigroup Settlement

On Wednesday 4 June 2014, a three-judge panel of the US Court of Appeals for the Second Circuit vacated and remanded Southern District of New York Judge Jed Rakoff's 28 November 2011 order rejecting a settlement between Citigroup Global Markets, Inc. (Citigroup) and the Securities and Exchange Commission (SEC) in which Citigroup neither admitted nor denied any wrongdoing. On the heels of Judge Rakoff's decision, the SEC modified its no admit/no deny practices, leading to an increase in settlements in which defendants were required to admit liability for their conduct.

This briefing discusses this decision.

http://www.cliffordchance.com/briefings/2014/06/second_circuit_reversesjudgesrejectiono.html