

International Regulatory Update

10 – 14 August 2015

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ESMA reports on EMIR Review

The European Securities and Markets Authority (ESMA) has published four reports on how the European Markets Infrastructure Regulation (EMIR) framework has been functioning and providing input and recommendations to the EU Commission's EMIR Review.

Three of the reports are required under Article 85 of EMIR and cover:

- [non-financial counterparties](#);
- [pro-cyclicality](#); and
- [the segregation and portability for CCPs](#).

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If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Steven Gatti](#) +1 202 912 5095

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP, 10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

The [fourth report](#) responds to the EMIR Review and includes recommendations on amending EMIR in relation to the clearing obligation, the recognition of third country CCPs and the supervision and enforcement procedures for trade repositories.

Mortgage Credit Directive: EBA publishes final guidelines on passport notifications

The European Banking Authority (EBA) has published [final guidelines](#) on passport notifications for mortgage credit intermediaries in accordance with the Mortgage Credit Directive (2014/17/EU – MCD). The MCD specifies that admitted credit intermediaries intending to carry out business in one or more Member States for the first time should inform their home state competent authority, which in turn is required to notify competent authorities in host Member States. The guidelines set out a formalised notification process alongside related templates and are intended to ensure information in relation to the provision of services, establishment of branches, transmission of notifications, registration and details of changes is shared consistently across the EU.

IOSCO reports on post-trade transparency in credit default swaps market

The International Organization of Securities Commissions (IOSCO) has published its [final report](#) on post-trade transparency in the credit default swaps market. The report analyses the potential impact of mandatory post-trade transparency in the credit default swaps (CDS) derivatives market.

The report concludes that greater post-trade transparency in the CDS market, including making the price and volume of individual transactions publicly available, would be valuable to market participants and other market observers. The report's analysis is based on a review of relevant work by international bodies and academic literature and an examination of publicly available transaction-level post-trade data about CDS transactions before and after the introduction of mandatory post-trade transparency in certain CDS markets in the US.

FCA and PRA publish new rules on individual accountability in financial services firms

The Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) have each set out how they will apply new accountability reforms to senior managers of UK branches of non-EEA banks and insurance companies, and approved persons working in Solvency II firms.

The PRA's supervisory statement on strengthening individual accountability in insurance ([SS35/15](#)) sets out its expectations regarding the Senior Insurance Managers Regime (SIMR), the application of conduct standards and associated notifications, and assessing fitness and propriety. Its corresponding policy statement ([PS21/15](#)) sets out its final rules to revise the current Approved Persons Regime for insurance firms outside the scope of Solvency II.

The PRA has also issued a policy statement ([PS20/15](#)) that sets out final and near-final rules on the application of the Senior Managers Regime (SMR), Certification Regime and Conduct Rules to UK branches of non-EEA banks and PRA-designated investment firms (non-EEA branches). The PRA can only make all the final rules necessary to extend regimes to non-EEA branches when Parliament approves HM Treasury's Order amending section 71A of the Financial Services and Markets Act 2000.

The FCA has published near-final rules ([FS15/3](#)) in anticipation of secondary legislation coming into force that will extend the statutory elements of the new individual accountability regime to UK branches of overseas banks (incoming branches), and plans to publish final rules later in 2015 once the legislation is finalised. In [PS15/21](#), the FCA sets out its final rules for the reformed accountability framework for individuals working in Solvency II firms, taking into account provisions in the Financial Services (Banking Reform) Act 2013 that apply to insurers, changes that the PRA is making to its approval regime for these firms, and requirements in Solvency II around the governance of firms and propriety of key function holders within them.

PRA launches fourth consultation on draft instruments for new Rulebook

The PRA has launched its fourth consultation ([CP28/15](#)) on redrafting the PRA Handbook inherited from the Financial Services Authority (FSA) to create the PRA Rulebook.

The consultation paper seeks views on proposals relating to:

- a new Rulebook Part entitled 'Financial Conglomerates';
- a new chapter on third country groups in the Groups part;
- a new Rulebook Part entitled 'Group risk systems'; and
- changes to rules in the Regulatory Reporting Part.

To assist stakeholders, the consultation paper includes a table mapping modules from the Handbook to the proposed corresponding Rulebook Parts.

The PRA is planning to launch the new PRA Rulebook online in 2015. Comments on the consultation are due by 13 November 2015.

PRA publishes occasional consultation paper on minor amendments to rules

The PRA has published an occasional consultation paper ([CP29/15](#)) on miscellaneous and minor amendments to the PRA Handbook or Rulebook and certain supervisory statements.

The PRA proposes to:

- remove the administrative fee rule for late regulatory reporting from the PRA Handbook;
- insert a definition for 'data item' to the Reporting Pillar 2 Part of the PRA Rulebook alongside an interpretative provision making clearer that terms defined in the Capital Requirements Regulation (CRR) but not defined in the Rulebook Part should be read as having the meaning given in the CRR;
- amend the supervisory statement on Market Risk (SS13/13) to clarify the PRA's expectations of firms applying to use their own estimates of delta in the standardised approach for options, sensitivity models under Article 331 CRR and the exclusion of positions from the calculation of net open currency positions under Article 352(2) CRR;
- amend the supervisory statement on Counterparty Credit Risk (SS12/13) to highlight changes to the transitional period for qualifying central counterparties (QCCP);
- amend the definition of 'significant risk taker' in the Certification Part of the PRA Rulebook to bring it into line with the definition of a 'material risk taker' in the Remuneration rules; and
- amend the Pre Issuance Notification (PIN) rules applicable to CRR firms and insurers, which are intended to provide the PRA with the opportunity to review and comment on proposed capital instruments prior to issuance, from 1 January 2016.

Comments on the chapter relating to the administrative fee are due by 14 September 2015. Responses to proposals in the other sections of the consultation paper are due by 14 November 2015.

UK Government publishes conclusions on nullifying ban on invoice assignment contract clauses

The Department for Business, Innovation & Skills (BIS) has published the [Government response](#) to feedback received to its consultation on proposals to nullify terms which ban invoice assignments in commercial contracts, which was launched in December 2014. Invoice finance allows a business to assign the right to future payment of an invoice (trade receivable) to a finance provider in exchange for a loan up to the full value of the invoice. The Government is concerned that clauses which ban invoice assignments may stop businesses accessing the finance they need.

The response sets out the Government's approach to nullifying contractual terms which will prohibit banning assignment of invoices through Regulations to be made under the Small Business, Employment and Enterprise Act 2015. The Regulations will apply to business to business contracts between businesses of all sizes but exclude financial services contracts and contracts with interests in land. The response sets out that the Government does not intend to create any special provisions for supply chain finance arrangements and will permit debtors to take action against suppliers if they breach commercial confidentiality. The Regulations will not apply retrospectively.

Payment Systems Regulator publishes policy statement on concurrent competition powers

The Payment Systems Regulator (PSR) has published its [response](#) to consultation feedback from stakeholders and final guidance [on its concurrent competition powers under the Competition Act 1998](#) and [on procedures for carrying out market reviews, market studies and market investigation references](#) to the Competition and Markets Authority (CMA). The PSR obtained powers to carry out investigations under the Competition Act on 1 April 2015 and has held powers to carry out market studies or make market investigation references since 1 April 2014. The final guidance sets out the PSR's approach to exercising its powers as at the date of publication.

CSSF sets out conclusions of 2014 EMIR questionnaire

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [press release](#) setting out the conclusions of the responses to a questionnaire on Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) subject to its supervision. The

purpose of the questionnaire was to assess the compliance of the sample entities with EMIR.

In terms of main conclusions, the CSSF notes that management companies and alternative investment fund managers (AIFMs) have to generally improve their EMIR compliance and draws attention to some specific points relating to reporting, hedging derivatives, adequate oversight in case of delegation of EMIR.

The CSSF has announced that it will contact those potentially problematic sample entities as well as certain entities with a significant number of rejection reports at trade repositories before the end of 2015.

Polish Ministry of Finance publishes bill on payment services

The Ministry of Finance has [prepared a bill](#) amending the Act on Payment Services and the Act on Supervision of the Financial Market, which is aimed at implementing into Polish law Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features. Under the planned amendments, among other things, customers will be provided with free access to a basic payment account and basic payment services associated with that account. Moreover, the bill provides for the introduction of procedures facilitating the switching of payment accounts if the consumer finds a better offer.

The bill has now been sent for inter-ministerial consultation.

SFC issues circular to corporations licensed for Type 2 regulated activity regarding exemption from registration with US CFTC

Further to its [press release](#) issued on 26 March 2015, the Securities and Futures Commission (SFC) has issued a [circular](#) to inform corporations licensed for Type 2 regulated activity (dealing in futures contracts) of the procedures for filing an application to the United States Commodity Futures Trading Commission (CFTC) for exemption from registration under the relevant CFTC Order. The application is to be made via the SFC to the United States National Futures Association (NFA), which is delegated by the CFTC with the relevant responsibilities.

The circular sets out the following:

- eligibility criteria for exemption;
- application procedures for obtaining exemption; and

- on-going notification requirements for licensed corporations that have been granted exemption.

The SFC has reminded licensed corporations to ensure full compliance with the undertakings and representations made to the CFTC/NFA and SFC. The circular advises them to read the CFTC Order carefully to understand the scope of the exemption and be satisfied that they are able to comply fully with the terms stipulated in the CFTC Order before sending in their applications. Licensed corporations are also reminded that in the event of any breach of the CFTC's Part 30 Regulations, the CFTC and NFA may take action against them, which might impugn their fitness and propriety to remain licensed under the Securities and Futures Ordinance (SFO).

RECENT CLIFFORD CHANCE BRIEFINGS

EMIR and MiFID2/MiFIR – Update on recognition procedures for non-EU markets and CCPs

Planned changes to the EU regulation on OTC derivatives, central counterparties (CCPs) and trade repositories (EMIR) should help end the anomaly under which all non-EU exchange-traded derivatives (ETD) are treated as 'OTC derivatives' for the purposes of EMIR.

The recently agreed Regulation on Securities Financing Transactions (SFTR) will amend the definition of 'OTC derivatives' in EMIR and will introduce a new procedure for recognising non-EU markets as equivalent for these purposes. However, there are separate, differing processes for recognising non-EU markets as equivalent to EU markets under MiFID2/MiFIR.

This briefing summarises the changes to EMIR and includes tables identifying the processes for determining when non-EU markets and CCPs are equivalent to EU markets and CCPs under EMIR and MiFID2/MiFIR and summarising the benefits and consequences of, and the process and criteria for, an equivalence determination.

http://www.cliffordchance.com/briefings/2015/08/emir_and_mifid2_mifirupdateonrecognitio.html

Proposed Changes to UK Limited Partnership Law Applicable to Private Funds

On 23 July 2016 HM Treasury issued a consultation on proposed changes to the Limited Partnerships Act 1907 (which governs both English and Scottish limited partnerships).

The proposed amendments would be made by way of a legislative reform order (LRO) and are designed to simplify the existing regime for registration, administration and operation of UK limited partnerships structured as private funds, remove some of the uncertainties that exist and 'ensure that the UK limited partnership remains the market standard structure for European private equity and venture capital funds as well as many other types of private fund'.

This briefing discusses the proposed changes.

<http://www.cliffordchance.com/briefings/2015/08/proposed-changestouklimitedpartnershipla.html>

The impact of China's regulatory investigations following the recent stock market crash

China's stock market crashed at the end of June 2015. By early July, around a thousand of the shares listed on PRC stock exchanges were suspended for trading and the A share index fell by a third in a few weeks, losing over RMB 20 trillion (roughly USD 3.5 trillion).

Fearful of the potential impact on the Chinese economy, PRC regulators have adopted a series of bail-out measures in a bid to stop the stock market from falling further. Some of these measures are unusual, such as asking PRC securities companies to purchase A shares with their

proprietary funds and banning major shareholders and all shareholders with over 5% shareholding of a listed company from selling the company's shares on the secondary market within a period of 6 months from 8 July 2015. In addition, the Chinese Securities Regulatory Commission (CSRC) has initiated an investigation into illegal trading activities including 'malicious shorting' and market manipulation which are regarded as among the main causes of the stock market turmoil. Subsequently other PRC regulators and relevant exchanges including the PRC Ministry of Public Security (MPS), the China Financial Futures Exchange (CFFEX), the Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE) are also carrying out investigations.

Foreign investors have expressed concern about the intervention of PRC regulators which appears inconsistent with the government's stated aim to 'let the market play a decisive role'.

This briefing discusses the impact of China's regulatory investigations.

http://www.cliffordchance.com/briefings/2015/08/clifford_chance_clientbriefingtheimpactof.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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