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Briefing note

International Regulatory Update

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Banking Union: ECOFIN reaches political agreement on Single Resolution Fund bridge financing

The Economic and Financial Affairs (ECOFIN) Council, comprising finance ministers from all EU Member States, has published the outcome of its 10 November meeting under the Luxembourg Presidency. Among other things, the Council reached political agreement on financial support for the Single Resolution Fund (SRF) under the Banking Union, which will become operational from 1 January 2016. The political agreement relates to bridge financing for the SRF to reach EUR 55 billion by 2023 and will grant Member States the option to apply national procedures in the event of a demand for mobilisation of national credit lines and give the authorisation to proceed with a scaling-up of payments, on the condition that the first payment is 'substantial'. The agreement will be finalised in the Council's preparatory working groups before final agreement at the ECOFIN Council in December 2015.

The Council also exchanged views on:

- the Capital Markets Union, which was welcomed by the Council. The Presidency announced that a political agreement on the securitisation of financial assets may be possible before the end of 2015;
- the package of measures announced by the Commission as the first phase of deepening economic and monetary union (EMU) as set out in the Five Presidents' Report. The Presidency announced that the Council had convergent views on proposals related to the European semester and will continue discussions on other proposals; and
- the financing arrangements for action against climate change ahead of the Paris Conference on Climate Change (COP21).

Securitisation Regulation: EU Council publishes first Presidency compromise text

The EU Council Presidency has published the first compromise text of the proposed Regulation on creating a European framework for simple, transparent and standardised securitisation.

MiFID2: ESMA Chair reports to ECON Committee on timings and implementation

The Chair of the European Securities and Markets Authority (ESMA), Stephen Maijoor, has delivered a speech at the EU Parliament's Economic and Monetary Affairs (ECON) Committee on three key areas of MiFID2 and setting out ESMA's approach to them in the final draft regulatory technical standards (RTS) published in September 2015.

In particular, the speech addresses:

- the non-equity transparency regime, including the forthcoming implementation project;
- position limits, in particular addressing the broad range of contracts that the regime will need to accommodate at the go-live date; and

- the ancillary activity test, which ESMA intends to create a level playing field between investment firms and large non-financial institutions conducting activities identical to financial institutions.

The speech also discusses challenges in relation to the timing of MiFID2 implementation. In particular, Mr. Maijoor highlighted the difficulty faced by stakeholders and regulators in developing the IT infrastructure required for implementation while the text of the RTS has not yet been finalised. ESMA has raised with the EU Commission whether the resulting uncertainty requires a legislative response delaying certain parts of MiFID2, mainly related to transparency, transaction and position reporting.

EMIR: ESMA proposes central clearing for Norwegian, Polish and Swedish interest rate swaps

ESMA has published additional draft RTS regarding the central clearing of interest rate swaps (IRS) which ESMA is required to develop under the European Market Infrastructure Regulation (EMIR). ESMA's RTS propose the mandatory central clearing of fixed-to-float IRS and forward rate agreements denominated in Norwegian Krone (NOK), Polish Zloty (PLN) and Swedish Krona (SEK).

ESMA has sent the draft RTS for endorsement to the EU Commission, which has three months to do so, followed by a non-objection period by the EU Parliament and the Council.

EMIR: ESMA publishes review of reporting RTS and ITS

ESMA has submitted its review of the technical standards on reporting obligations under Article 9 of EMIR to the EU Commission. The report notes that ESMA only had limited experience of derivatives reporting when drafting the technical standards and that this led to a number of shortcomings and limitations. ESMA has therefore proposed certain revisions to the technical standards to ensure that EMIR reports better fulfil their objectives and are aligned with reporting requirements under MiFIR as far as possible.

The report sets out ESMA's view that full alignment with MiFIR should be pursued only for newly introduced reporting fields as well as for those fields where currently applicable requirements should be amended while fixing the most urgent issues that currently impede correct reporting. The report includes a draft RTS on the minimum details of the data to be reported to trade repositories and a draft implementing technical standard (ITS) on the format and frequency of trade reports to trade repositories, which are intended to address the shortcomings and limitations identified.

CRD 4: EBA consults on draft ITS on exchanges between authorities regarding qualifying holdings

The European Banking Authority (EBA) has launched a consultation on its draft ITS on common procedures, forms and templates for the consultation process between the relevant competent authorities under Article 24 of the Capital Requirements Directive (CRD 4).

The draft ITS set out requirements for the designation of contact points by competent authorities, as well as a timeframe and process for submitting the consultation notice and for providing the response, which is meant to ensure a timely assessment of the proposed acquisition. Aiming to make the process as effective as possible, the draft ITS provide templates for the consultation notice and for the response from the requested authority. Requirements are also included in respect of the language and means of communication, as well as provision of mutual feedback.

Comments to the consultation close on 10 February 2016. The EBA will then finalise the ITS and submit them to the EU Commission for endorsement.

CRD 4: EBA reports on remuneration practices

The EBA has published two reports on remuneration practices under CRD 4.

Under CRD 4 there is a limit of 100% on the ratio between the variable component and the fixed component of total remuneration unless shareholders approve a higher ratio of up to a maximum 200%. The EBA has published a benchmarking report on the use of the higher ratio, which sets out findings from fifteen Member States that have made use of the national discretion to allow the higher ratio and where institutions have made use of the possibility.

The EBA has also published a report on remuneration practices and the use of allowances following an EBA opinion in October 2014 on the application of CRD 4 regarding the principles on remuneration policies and the use of allowances. The report provides an update on institutions' adjustments to their remuneration policies where using role based allowances (RBAs), which were treated as part of fixed remuneration and widened the scope for awarding variable remuneration, in line with the EBA's opinion. The report identifies that no competent authorities in Member States have adopted specific legal or regulatory instruments following the publication of the

EBA's opinion, in the most part due to forthcoming final EBA guidelines on sound remuneration policies. However, in most jurisdictions measures have been taken that will affect the remuneration awarded for the performance year 2015, while some competent authorities have also aimed to ensure that the criteria specified in the EBA's opinion were applied for 2014.

EBA publishes draft guidelines on treatment of CVA risk under SREP

The EBA has launched a consultation on its draft guidelines on the treatment of credit value adjustment (CVA) risk under the supervisory review and evaluation process (SREP), as well as a data collection exercise for the quantitative impact study (QIS) to calibrate the threshold values.

The draft guidelines implement a policy recommendation of the EBA's February 2015 CVA report and provide a common European approach that would allow competent authorities to:

- determine the relevance and materiality of CVA risk for an institution;
- assess any material CVA risk under SREP;
- assess the adequacy of own funds to cover material CVA risk; and
- determine additional own funds requirements, where the risk is not adequately covered by the minimum own funds requirements, in particular due to the exemptions in the EU legislative framework.

In order to ensure appropriate calibration of the threshold values, the EBA is launching a data collection exercise for the related quantitative impact study (QIS) in parallel with the consultation. Relevant institutions will be contacted by their competent authorities and asked to provide the data required in the accompanying template.

Comments to the consultation close on 12 February 2016, and the responses to the data collection exercise must be received by 28 January 2016.

The draft guidelines will be finalised and will apply together with the threshold values provided in the guidelines. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publications of the translations on the EBA website.

EBA consults on stress tests for deposit guarantee schemes

The EBA has launched a consultation on its draft guidelines on stress tests of Deposit Guarantee Schemes (DGSs). The proposed guidelines provide the methodological principles to assess whether the operational and funding capabilities of DGSs are sufficient to ensure deposit protection in the event of a bank failure and will require DGSs across the EU to establish a programme of tests over a period of two to five years, covering specific scenarios and indicators.

In line with the Deposit Guarantee Schemes Directive (DGSD), the guidelines are intended to promote the quality and the consistency of these stress tests. The resulting data will also facilitate future peer reviews by the EBA.

While the guidelines apply without any time limit, DGSs will be requested to run a number of priority tests and to report the results to their own authorities and the EBA by 3 July 2019. This will in turn enable the EBA to deliver its first peer review in 2020.

Comments are due by 8 February 2016.

PRIIPs: Joint Committee of ESAs consults on draft RTS on content and presentation of KIDs

The Joint Committees of the European Supervisory Authorities (ESAs), comprising EBA, ESMA and the European Insurance and Occupational Pensions Association (EIOPA), has published a consultation paper on its proposed regulatory technical standards (RTS) on the content and presentation of key information documents (KIDs) under the Packaged Retail and Insurance-Based Investment Products (PRIIPs) Regulation.

Specifically, the draft RTS relate to:

- the presentation and content of the KID, including methodologies for the calculation and presentation of risks, rewards and costs within the document;
- the review, revision, and republication of KIDs; and
- the conditions for fulfilling the requirement to provide the KID in good time.

Comments to the consultation close on 29 January 2016.

Joint Committee publishes final draft ITS on credit assessments by ECAIs

The Joint Committee of the ESAs has published two final draft implementing technical standards (ITS) on mapping external credit assessment institutions (ECAIs) under the

Capital Requirements Regulation (CRR) and the Solvency II Directive.

In order to determine the allocation of appropriate risk weights to the credit ratings issued by ECAIs, the ESAs have specified an approach that establishes the correspondence, or 'mapping', between credit ratings and the credit quality steps defined in the CRR and Solvency II. The draft ITS specify the factors and benchmarks that need to be taken into consideration.

The final draft ITS have been submitted to the EU Commission for endorsement.

SSM: ECB consults on options and national discretions under CRD 4

The European Central Bank (ECB) has launched a consultation on harmonising the exercise of options and discretions (O&Ds) in the EU legislative framework concerning the prudential supervision of credit institutions under CRD 4. The ECB has identified that O&Ds under the CRD 4 package and Liquidity Coverage Ratio (LCR) Delegated Act have led to a differentiated application of O&Ds which may impose a layer of complexity and costs for firms operating across borders, may leave room for regulatory arbitrage and negatively affect the Single Supervisory Mechanism's (SSM's) ability to supervise banks efficiently.

The ECB has published a draft ECB Regulation on the exercise of O&Ds available under EU law, a draft ECB guide and explanatory memorandum. The draft guide sets out proposals for harmonised policies regarding the exercise of case-by-case O&Ds, which relate to supervisory bank-specific decisions and may include various waivers and derogations from general rules.

The ECB intends to foster financial integration and set high supervisory standards through a harmonised approach to O&Ds and to provide coherence, effectiveness and transparency regarding the supervisory policies that will be applied in supervisory processes within the SSM.

TLAC: FSB publishes final standard and Basel Committee consults on TLAC holdings

The Financial Stability Board (FSB) has published its final Total Loss-Absorbing Capacity (TLAC) standard to be applied to global systemically important banks (G-SIBs). The standard is intended to ensure that failing G-SIBs have sufficient loss-absorbing and recapitalisation capacity available in resolution for authorities to implement an orderly resolution that minimises impacts on financial stability, maintains the continuity of critical functions and avoids exposing public funds to loss.

The TLAC principles and term sheet sets out the minimum requirement for the instruments and liabilities that should be readily available for bail-in without resolution at G-SIBs, which will be defined as at least 16% of the resolution group's risk-weighted assets from 1 January 2019 and at least 18% from 1 January 2022 as well as a minimum TLAC of at least 6% of the Basel III leverage ratio denominator from 1 January 2019 and at least 6.75% from 1 January 2022. The standard also sets out separate minimum TLAC requirements for G-SIBs headquartered in emerging markets. The FSB has announced that it will monitor the technical implementation of the TLAC standard and will report on this by the end of 2019.

Alongside the final standard, the FSB has also published the results of its impact assessment studies undertaken as part of the consultation process on the draft standard, which was launched in November 2014, and comprises:

- an overview of the post-consultation revisions to the TLAC principles and term sheet;
- an overview report summarising findings from the four components of the TLAC impact assessment studies;
- a findings report on historical losses and recapitalisation needs, which relates to systemically important financial institutions that failed or received official support during either the recent global financial crisis or the Japanese banking crisis in the 1990s;
- an assessment of the economic costs and benefits of TLAC implementation, which relates to micro- and macroeconomic impact assessments conducted by the Bank for International Settlements (BIS); and
- the Basel Committee on Banking Supervision's (BCBS') TLAC quantitative impact study (QIS) report, which relates to the BCBS QIS undertaken as part of the BCBS end-2014 Basel III monitoring exercise, including shortfall analyses for each resolution entity of each G-SIB, internal TLAC requirements for material subsidiaries of each G-SIB, and holdings of TLAC instruments by G-SIBs and non-G-SIBs.

BCBS has also published a consultation on TLAC holdings, which sets out proposals on the prudential treatment of banks' investments in TLAC for all banks subject to BCBS standards, including both G-SIBs and non-G-SIBs. The consultation paper includes the proposed deduction treatment and proposals on the extent to which instruments ranking pari passu with TLAC should be subject to the

same deduction treatment. The consultation paper also discusses necessary changes to Basel III to specify how G-SIBs must take account of the TLAC requirement when calculating their regulatory capital buffers.

Comments on the consultation are due by 12 February 2016.

FSB reports to G20 Leaders on financial regulatory reforms

The FSB has published a letter from the FSB Chair, Mark Carney, to the G20 Leaders reporting on progress on the FSB's work ahead of the Antalya G20 Leaders Summit on 15-16 November 2015.

Among other things, the letter discusses the FSB's first annual report on implementation and effects of the G20 financial regulatory reforms which has also been published ahead of the Antalya Summit. The report describes progress of the 24 FSB member jurisdictions in implementing the financial reforms agreed following the global financial crisis, presents initial analysis of the impact of the reforms and highlights three areas that may merit closer monitoring:

- the impact on emerging market and developing economies (EMDEs) from the implementation of reforms in home jurisdictions of global financial institutions;
- the causes of financial stability consequences of recent shifts in liquidity in fixed income markets; and
- maintaining an open and integrated global financial system.

The FSB has also published a dashboard, which summarises for the G20 the status of implementation of the financial regulatory reforms in a colour-coded table.

Dr. Carney's letter also discusses the final standard on total loss-absorbing capacity (TLAC) for global systemically important banks (G-SIBs) and work to finalise the remaining post-crisis reforms. The FSB has published a report to the G20 on the progress of the FSB's ongoing resolution work and on removing remaining obstacles to resolvability ahead of the Leaders Summit, which includes a summary of the findings of the first round of the Resolvability Assessment Process (RAP) for G-SIBs and preliminary findings from the ongoing FSB peer review of member jurisdictions' implementation of the Key Attributes of Effective Resolution Regimes for Financial Institutions.

The letter also discusses addressing new risks and vulnerabilities and several reports to the G20 on specific topics have been published alongside the letter, including on:

- misconduct risks, setting out actions that the FSB and international standard-setters are taking to tackle misconduct risks in the financial industry;
- correspondent banking and the potential risk of financial exclusion, which discusses the causes of banks' withdrawal from correspondent banking and the implications for affected jurisdictions; and
- climate change and risks to financial stability, on which the FSB is submitting a proposal to create an industry-led disclosure task force on climate-related risks.

Alternative finance: FSB provides updates on monitoring and regulation of shadow banking

The FSB has published three reports on its shadow banking monitoring and regulation programmes:

- a progress report on transforming shadow banking into resilient market-based finance;
- the global shadow banking monitoring report 2015; and
- a regulatory framework for haircuts on non-centrally cleared securities financing transactions (SFTs).

The reports show the FSB's progress with the actions and deadlines set in the November 2014 roadmap endorsed by leaders at the Brisbane G20 summit.

The progress report gives an update on the FSB's two-part strategy to address financial stability risks in shadow banking and transform it into resilient market-based finance, and sets out its progress on actions taken to implement its strategy and the next steps in this work. This year the FSB introduced a new activity-based economic function approach in its annual monitoring, intended to help authorities detect and assess the sources of financial stability risks from shadow banking in the non-bank financial sector, and apply appropriate policy measures where necessary to mitigate these risks. The report also sets out the FSB's progress in the regulation of securities financing.

The FSB's monitoring report for 2015 reflects data as at end-2014 and covers 26 jurisdictions, including Ireland for the first time and the euro area as a whole, which together account for about 90% of global financial system assets. The FSB's new economic function approach is intended to help authorities focus on parts of the non-bank financial sector where shadow banking risks may arise. The newer, narrow measure of shadow banking that may pose financial

stability risks was USD 36 trillion in 2014, an increase of USD 1 trillion from 2013.

The FSB's regulatory framework for haircuts on non-centrally cleared securities financing transactions sets out the FSB's finalised policy recommendations. This work updates the original October 2014 work with a revised framework and an extension of the deadline for the implementation of the FSB's recommendations on SFTs to the end of 2018.

Basel Committee consults on capital treatment for simple, transparent and comparable securitisations

The Basel Committee on Banking Supervision (BCBS) has launched a consultation on capital treatment for simple, transparent and comparable (STC) securitisations.

In December 2014, the BCBS published the revised securitisation framework and the criteria for STC securitisation, developed jointly by the BCBS and the International Organization of Securities Commissions (IOSCO). The final STC criteria were published in July 2015.

This consultation explains the rationale for incorporating the STC criteria into the revised securitisation framework and proposed options for doing so. The BCBS is proposing to reduce minimum capital requirements for STC securitisations by reducing the risk weight floor for senior exposures, and by rescaling risk weights for other exposures. The BCBS has also suggested a range for the potential reduction in capital charges. The BCBS expects to make a final decision on calibration in 2016 based on further analysis and assessment of the quantitative impact of the proposals.

Comments to the consultation close on 5 February 2016.

Basel Committee reports to G20 Leaders on post-crisis reforms and Basel III implementation

BCBS has published two reports for G20 Leaders ahead of the Leaders Summit in Antalya on 15-16 November. In relation to BCBS' work on finalising post-crisis reforms, the Committee reports that substantial progress has been made, including revisions to the standardised approaches for determining regulatory capital and measures to reduce excessive variability in risk-weighted assets (RWAs). BCBS views progress as well on track to finalising the remaining core elements of the global bank regulatory reform agenda.

BCBS has also published its sixth update to G20 Leaders on Basel III implementation, which summarises the outcomes of the Regulatory Consistency Assessment Programme (RCAP) and sets out that:

- all but two member jurisdictions have published final regulations to implement the Liquidity Coverage Ratio (LCR);
- efforts continue on the adoption of Basel III regulations for the leverage ratio (LR), the systemically important bank (SIB) frameworks and Net Stable Funding Ratio (NSFR);
- non-Basel Committee member jurisdictions report substantial progress in the adoption of Basel III standards; and
- from results of the Basel III Monitoring Report in September 2015, banks are on track to meet Basel III standards.

IOSCO publishes final report on standards for custody of collective investment scheme assets

The International Organization of Securities Commissions (IOSCO) has published its final report on standards for the custody of collective investment schemes (CIS) assets. The focus of IOSCO's report is to review the role of entities responsible for the overall operation of the CIS in relation to the custody of CIS assets consistent with IOSCO's June 2010 Principles.

The report sets out eight standards, divided into two sections, aimed at identifying the core issues that should be kept under review by the regulatory framework. The first section focuses on key aspects relating to the custody function and highlights the importance for the regulatory framework to provide for suitable custodial arrangements to be in place, clear segregation requirements and appropriate independence. The second part of the report explores standards relating more specifically to the appointment and ongoing monitoring of custodians.

ISDA publishes 2015 Universal Resolution Stay Protocol

The International Swaps and Derivatives Association (ISDA) has published the ISDA 2015 Universal Resolution Stay Protocol, which has been developed in coordination with the FSB in order to enable parties to amend the terms of their Protocol covered agreements to contractually recognise the cross-border application of special resolution regimes (SRRs) applicable to certain financial companies

and support the resolution of certain financial companies under the US Bankruptcy Code.

The operative provisions of the 2015 Protocol are almost identical to the ISDA 2014 Resolution Stay Protocol but it includes the addition of an annex covering certain securities finance master agreements developed by the International Capital Market Association (ICMA), International Securities Lending Association (ISLA) and Securities Industry and Financial Markets Association (SIFMA) in consultation with ISDA.

ISDA has also announced that the ISDA Resolution Stay Jurisdictional Modular Protocol will be published in the near future, which ISDA expects will generally be used by the buyside. The Jurisdictional Modular Protocol is intended to achieve the same policy goals as the 2015 Protocol with respect to the orderly resolution of systemically important financial institutions but is being developed to assist compliance with specific legislative or regulatory requirements in different jurisdictions.

Adherence to the 2015 Protocol will require a one-off payment of USD 1000 to ISDA for the Initial Adherence Letter and an annual update fee for subsequent adherence to Country Annexes of USD 500. ISDA has not imposed a cut-off deadline, but may impose a cut-off in the future with 30 days notice.

European Long-term Investment Funds Regulations 2015 published

HM Treasury (HMT) has laid the European Long-term Investment Funds Regulations 2015 (SI 2015/1882) before Parliament. The Regulations make changes to primary and secondary legislation required in order to give effect to the European Long-term Investment Funds (ELTIF) Regulation.

The Regulations will come into force on 3 December 2015.

Bank of England sets out revised arrangements for new sterling money market data collection

The Bank of England has published the revised arrangements for its new sterling money market data collection.

This follows the Bank's July 2015 consultation paper entitled 'A new sterling money market data collection and the reform of SONIA'. According to the Bank, respondents to the consultation expressed broad support for its plans for the reform of the Sterling Overnight Index Average (SONIA) benchmark interest rate.

The Bank has responded to feedback by allowing approximately three further months' preparation time for reporting institutions to prepare for the start of the new data collection.

The Bank has also confirmed that the daily publication of the SONIA benchmark will be moved to 09.00 on the business day following that to which the rate refers, as was proposed in the July consultation paper. This change will come into effect at the point the Bank commences the publication of reformed SONIA, anticipated to be in Q2 2017.

The Bank intends to consult on its detailed plans for the reform of SONIA in late summer 2016.

Transparency Directive: FCA publishes policy statement on implementation

The Financial Conduct Authority (FCA) and HM Treasury (HMT) have published a policy statement (PS15/26) on the implementation of the Transparency Directive Amending Directive (2013/50/EU) and other Disclosure Rule and Transparency Rule changes. PS15/26 includes feedback on the March 2015 consultation (CP15/11) and final rules which enter into force on 26 November 2015.

The FCA has also published a new handbook instrument: Disclosure and Transparency rules Sourcebook (Transparency Directive Amending Directive) Instrument 2015 (FCA 2015/54).

FCA announces plans for 'regulatory sandbox'

The FCA has published a report on its plans to implement a 'regulatory sandbox', which is intended as a safe space where businesses can test innovative products, services, business models and delivery models without incurring the normal regulatory consequences of engaging in the activity in question.

The FCA intends that FCA authorised and unauthorised firms will be able to make use of the sandbox. The FCA has also suggested additional solutions, such as establishing a virtual testing environment and setting up an authorised umbrella company that allows innovative businesses to act as its appointed representatives for the duration of the trial.

The FCA intends to open the sandbox unit to proposals from firms for testing in spring 2016.

The FCA aims to consult on the design of how the unit will operate and on establishing a virtual sandbox and a sandbox umbrella company in the next few months.

PRA publishes final rules on contractual stays in financial contracts governed by third-country law

The Prudential Regulation Authority (PRA) has published its final policy statement (PS25/15) on contractual stays in financial contracts governed by third-country law.

The final rules prohibit relevant firms from creating new obligations or materially amending existing obligations under certain financial arrangements unless the counterparty has agreed in an enforceable manner to be subject to similar stays on early termination and close-out to those that would apply as a result of a UK firm's entry into resolution, or the write-down or conversion of a UK firm's regulatory capital at the point of non-viability, if the financial arrangement were governed by the laws of any part of the UK.

The PRA launched a consultation on its proposals in May 2015 and has made several changes in the final rules, which include a restriction in their scope in order that the rules only apply to third-country law financial arrangements containing termination rights or rights to enforce security interest that could be subject to the special resolution regime (SRR) if the contract were governed by the laws of a part of the UK. The PRA has also expanded the definition of 'excluded persons' to cover all third-country financial market infrastructures (FMIs) and clarified that any agency or branch of central government will be excluded. Other changes are intended to clarify that:

- qualified parent undertakings are only in-scope to the extent they have a UK registered office or head office; and
- the rules will apply in relation to third-country law financial arrangements which contain security interests or default event provisions, the enforcement of which could be suspended, prevented or would be disregarded under the SRR.

The rules relating to financial arrangements with counterparties that are credit institutions or investment firms will become effective from 1 June 2016 and rules in respect of financial arrangements with all other counterparties will become effective from 1 January 2017.

Alongside the policy statement, the PRA has also published a supervisory statement (SS42/15), which sets out the PRA's expectations of PRA-authorised firms implementing the rules and should be read alongside the Stay in Resolution Part of the CRR Firms and Non-Authorised Persons Sectors of the PRA Rulebook.

German Federal Council comments on draft law to amend law on German building societies

The German Federal Council has commented on the draft law to amend the law on German building societies proposed by the German Federal Government. Amongst other things, the draft law grants German building societies (Bausparkassen) the right to expand their business model and provide for more flexible rates. Furthermore, the draft law provides for new funding opportunities for such building societies.

German Federal Financial Supervisory Authority proposes draft regulation on building societies

The German Financial Supervisory Authority has proposed a draft regulation for building societies which replaces the current regulation. Amongst other things, the draft regulation is intended to increase legal certainty for building societies and to improve the efficiency of the supervision of building societies.

The German Financial Supervisory Authority has invited comments on the draft regulation by 18 November 2015.

Regulation on German Federal Financial Market Stabilisation Authority enters into force

The Regulation on the German Federal Agency for Financial Market Stabilisation has been published in the Federal Gazette and entered into force on 12 November 2015. The regulation implements changes in the Regulation on the Contributions and Fees for the German Federal Agency for Financial Market Stabilisation as well as the Regulation on the Statutes of the German Federal Agency for Financial Markets Stabilisation.

French Financial Markets Authority updates its position on market timing and late trading practices

The French Financial Markets Authority, the Autorité des Marchés Financiers (AMF), has updated its position on market timing and late trading practices to take into account provisions introduced into French law for the purposes of implementing the Delegated Regulation 2015/35 of 10 October 2014 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) and the Alternative Investment Fund Managers Directive (AIFMD).

In particular, for the purposes of this position, the French authority has taken into account relevant provisions of Solvency II provisions in respect of the solvency capital requirement calculation methodology as well as the new regulations on reporting and disclosure and rules governing the assets eligible for the portfolio of collective investment

undertakings managed by asset management companies. Such rules on disclosure of information related to transactions will be subject to stricter conditions and a formal regulatory framework.

New Bill implementing Single Resolution Fund in Luxembourg submitted to Parliament

A new bill approving the intergovernmental agreement (IGA) on the transfer and mutualisation of contributions to the Single Resolution Fund (SRF) of 21 May 2014 has been submitted to the Luxembourg Parliament. The mechanism for the transfer and mutualisation of contributions to the SRF, which is due to be effective from 1 January 2016, is a key component of the Single Resolution Mechanism (SRM). It is a pre-requisite for the application of certain provisions in the SRM Regulation 806/2014.

The main element of the IGA is the transfer of the contributions raised at national level to the SRF, in particular, the allocation during a transitional period of the contributions raised at national level to different compartments corresponding to each participating Member State, as well as the progressive mutualisation of the use of the compartments in such a manner that the compartments will cease to exist at the end of that transitional period.

Pursuant to the new bill, Luxembourg institutions will be required, upon instruction by the Luxembourg financial sector supervisory authority, the CSSF, to transfer their respective contributions to the Luxembourg Resolution Fund (to be put in place in accordance with Luxembourg's BRRD implementation), which in turn transfers the contributions to the SRF. In line with the provisions of Article 47 of the SRM Regulation, the Luxembourg government will further be authorised to provide a state guarantee or credit line for a maximum period of 8 years after the entry into force of the bill and for a maximum amount of EUR 1085 million to the Single Resolution Council with a view to making up for any insufficiencies in the Luxembourg SRF compartment.

Act on Payment Dates in Commercial Transactions published

The Act Amending the Act on Payment Dates in Commercial Transactions, the Act – Civil Code and Certain Other Acts has been published in the Journal of Laws. It aims to adjust Polish law to Directive No. 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions.

The most important amendments involve:

- the introduction of a mechanism calculating interest for late payment in professional transactions, pursuant to which the interest rate for late payment will be the reference rate at the NBP plus 8 percentage points;
- a new mechanism for charging statutory interest under the Civil Code and the differentiation in the amounts of interest: principal interest, i.e. the reference rate at the NBP plus 3.5 percentage points; default interest – the sum of the reference rate at the NBP and 5.5 percentage points;
- a new mechanism for charging maximum interest that will be twice the rate of statutory (principal) interest or statutory default interest, as the case may be.

The Act comes into force on 1 January 2016.

Royal Decree on development of Law on recovery and resolution of credit entities and investment firms and modification of Royal Decree on deposit guarantee funds of credit entities published

Royal Decree 1012/2015 of 6 November on the development of Law 11/2015 of 18 June on the recovery and resolution of credit entities and investment firms and on the modification of Royal Decree 2606/1996 of 20 December on deposit guarantee funds of credit entities has been published in the Spanish Official Gazette. The Royal Decree partially transposes the EU Bank Recovery and Resolution Directive (BRRD) and develops Law 11/2015 of 18 June on the recovery and resolution of credit entities and investment firms.

Royal Decree 1012/2015 includes a package of measures aimed at:

- establishing the criteria for the application of the regulation for the resolution of credit entities;
- establishing the content of the recovery and resolution plans of the credit entities;
- regulating the use of the instruments for resolution set out in Law 11/2015 and, in particular, the actions to be carried out by the Fund for the Orderly Restructuring of the Banking Sector (FROB) for the application of these instruments;
- establishing the regime applicable to the FROB in connection with the managing of the funds addressed to finance the resolution procedures and to the contributions that credit entities must make to the National Resolution Fund; and

- establishing the regime applicable to the resolution of cross border entities.

The Royal Decree entered into force on the date after its publication in the Spanish Official Gazette, except for specific legal provisions related to internal recapitalisation (set out in Chapter VI) which will enter into force on 1 January 2016.

Swiss Federal Council adopts Anti-Money Laundering Ordinance

The Swiss Federal Council has adopted the Anti-Money Laundering Ordinance (AMLO), which will enter into force on 1 January 2016.

The AMLO is part of Swiss efforts to align legislation with the revised international standards concerning the combating of money laundering and terrorist financing published by the Financial Action Task Force in February 2012. The Parliament already adapted various laws to these standards with the Federal Act for Implementing the Revised Financial Action Task Force (FATF) Recommendations of 12 December 2014. The amendments to the Anti-Money Laundering Act (AMLA) and the Swiss Civil Code (CC) require additional implementing provisions, which are set out in the AMLO.

Among other things, the AMLO:

- fleshes out new due diligence obligations and reporting duties for traders set out in the AMLA – these will be applied when traders accept cash payments of more than CHF 100,000 in the course of trading activities; and
- incorporates the provisions of the existing Federal Council Ordinance on the Professional Practice of Financial Intermediation (PFIO).

Moreover, the new provisions on the reporting system for financial intermediaries will be implemented by amending the Ordinance on the Money Laundering Reporting Office Switzerland (MROSO). Finally, the Parliament also decided to improve transparency in the law on foundations whereby ecclesiastical foundations will now also have to be registered in the commercial register. For ecclesiastical foundations which already exist, the details of this obligation will be specified in greater detail in the Commercial Register Ordinance.

SNB announces direct trading link between Renminbi and Swiss Franc

The Swiss National Bank (SNB) has announced that the People's Bank of China has authorised direct trading between Renminbi and Swiss francs on the China Foreign Exchange Trade System with effect from 9 November 2015.

The availability of a direct Renminbi/Swiss franc exchange rate is expected to help reduce currency conversion costs for market participants and facilitate and promote the use of Renminbi in cross-border transactions between companies and financial institutions.

According to the SNB, direct trading between Renminbi and Swiss francs is an important step in strengthening bilateral economic and trade connections between China and Switzerland, and in establishing a Renminbi hub in Switzerland.

PBOC and SAFE issue operating guidelines for foreign exchange administration on cross-border offering and distribution of Mainland and Hong Kong securities investment funds

The People's Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) have jointly issued operating guidelines for foreign exchange administration on cross-border offering and distribution of Mainland and Hong Kong securities investment funds to clarify, among other things, the quota and account administration. The following key aspects are worth noting:

- the upper limits for net outward remittance size for the capital raised by all Hong Kong funds through Mainland offering and the net inward remittance size for the capital raised by all Mainland funds through Hong Kong offering shall both be RMB 300 billion or equivalent at the initial stage;
- Hong Kong and Mainland fund managers may remit the subscription and redemption capital outward or inward in RMB or foreign currency, while it is encouraged for cross-border offering and distribution of Mainland and Hong Kong funds to be denominated in RMB with cross-border payment and receipt in RMB as well; and
- an information reporting regime on the cross-border offering and distribution of funds is adopted and qualified Hong Kong and Mainland fund managers shall report to the SAFE Capital Account Information System prior to offering of the funds.

The operating guidelines took effect as of their issuance on 6 November 2015.

CFTC staff issues time-limited extension of swap data reporting relief for certain swap dealers and major swap participants

The Commodity Futures Trading Commission (CFTC) Division of Market Oversight has issued a time-limited no-action letter extending the relief previously provided to certain CFTC-registered swap dealers (SD) and major swap participants (MSP) in CFTC Letter No. 14-141.

The no-action letter (CFTC Staff Letter 15-61) states that the Division will not recommend that the CFTC take an enforcement action against a non-US SD or a non-US MSP established in Australia, Canada, the European Union, Japan or Switzerland that is not part of an affiliated group in which the ultimate parent entity is a US SD, US MSP, US bank, US financial holding company, or US bank holding company, for failure to comply with the swap data reporting requirements of Part 45 and Part 46 of the CFTC's regulations (SDR Reporting Rules), with respect to its swaps with non-US counterparties that are not guaranteed affiliates, or conduit affiliates, of a US person.

The relief is provided subject to certain terms and conditions outlined in the letter and is time-limited, expiring on the earlier of:

- 30 days following the issuance of a comparability determination by the CFTC with respect to the SDR Reporting Rules for the jurisdiction in which the non-US SD or non-US MSP is established; or
- 1 December 2016.

RECENT CLIFFORD CHANCE BRIEFINGS

Trans-Pacific Partnership Agreement (TPP) – Final text released

The final text of the Trans-Pacific Partnership Agreement (TPP) was released on Thursday 5 November 2015. In 30 chapters, the TPP covers a wide range of subjects, from traditional trade liberalisation through to services, investment, environmental protection and labour standards. The TPP still needs to complete the ratification stage before it enters into force, and it will take some time for the parties and their communities to digest the whole agreement. However, based on a preliminary review, the TPP appears to be a very sophisticated and ambitious instrument.

This briefing paper supplements our initial thoughts on the TPP set out in our October 2015 briefing 'The TPP of the Iceberg – TPP Signals New Approach to Trade Liberalisation' and discusses the final text.

http://www.cliffordchance.com/briefings/2015/11/trans-pacific_partnershipagreementtppfina.html

Time to Up Your Game – The TPP's Enhanced Anti-Corruption Provisions

The TPP includes the strongest anti-corruption standards of any multi-lateral (and bilateral) trade agreement in history. These provisions, if implemented and enforced, could level the playing field for compliant companies operating in Asia Pacific – and make it harder for those unwilling to up their game.

This briefing paper discusses the TPP's enhanced anti-corruption provisions.

http://www.cliffordchance.com/briefings/2015/11/time_to_up_your_gamethetppsenhance.html

Legal advice privilege upheld in regulatory investigations

In an important judgment on legal advice privilege under English law in relation to regulatory investigations, the High Court has held that communications between lawyer and client are privileged not only when the lawyer is advising on the client's rights and obligations but also when the lawyer is assisting the client in dealing with and co-ordinating responses and other communications to regulators. The judgment highlights the important role played by specialist lawyers in complex, multi-jurisdictional regulatory investigations, and the public policy rationale for protecting the privilege of their communications with clients.

This briefing paper discusses the recent judgment in Property Alliance Group Ltd v The Royal Bank of Scotland plc [2015] EWHC 3187 (Ch).

http://www.cliffordchance.com/briefings/2015/11/legal_advice_privilegeupheldinregulator.html

FCA to ban opt-out add-on insurance

On 1 April 2016, the FCA ban on opt-out selling across the financial services sector will come into effect and consumers will no longer be defaulted into purchasing add-on products.

To help consumers make informed choices, firms and their representatives selling add-on insurance products must comply with the FCA's new guidance on general insurance add-on sales by 30 September 2016.

This briefing paper examines the new rules and guidance to determine how firms should meet the FCA's requirements.

http://www.cliffordchance.com/briefings/2015/11/fca_to_ban_opt-outadd-oninsurance.html

Cyber Crime – using criminal investigators to pursue perpetrators

The latest victims of cyber crime have chosen the route of reporting incidents to the criminal authorities and supporting the resulting criminal investigations, rather than using civil proceedings. This has advantages and can leave open the option of civil proceedings at a later date but work still needs to be done and care does need to be taken to protect work product.

This briefing paper discusses the UK's enforcement landscape and the reasons why an organisation might elect to report a cyber crime and thereafter support a criminal investigation rather than pursuing civil proceedings.

http://www.cliffordchance.com/briefings/2015/11/cyber_crime_usingcriminalinvestigatorst0.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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