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Briefing note

International Regulatory Update

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Benchmarks: EU Council confirms agreement with Parliament on final compromise text

The Permanent Representatives Committee (Coreper) has approved the final compromise text of the Benchmark Regulation on behalf of the EU Council. This follows the provisional agreement reached in trilogue with the EU Parliament on 24 November 2015. The Regulation still needs to be formally adopted by both the EU Parliament and the Council. The Council has indicated that, should the EU Parliament plenary session adopt the final compromise text at first reading, the EU Council would approve the Parliament's position and the Benchmark Regulation would be adopted in that wording.

Cybersecurity: EU Parliament and Council reach political agreement on proposed Directive

The EU Parliament, Luxembourg Presidency of the EU Council and EU Commission have reached a political agreement on the proposed Cybersecurity Directive following trilogue negotiations. The proposal is intended to strengthen network and information security (NIS) across the EU through common rules and enhanced cooperation.

Under the Directive, critical service companies within certain critical sectors, including banking and financial markets, will be required to ensure robust cybersecurity to withstand cyber attacks. Member States will be required to identify operators of essential services based on criteria laid down in the Directive and the rules will also apply to digital service providers, including e-commerce platforms, with exemptions for small digital companies. Member States will also be required to adopt a national NIS strategy, designate a national authority to deal with cyber matters and establish a Computer Security Incident Response Teams (CSIRTs) to be responsible for handling incidents and risks.

The Directive will have to be formally approved by the EU Parliament and Council. Member States will have 21 months to implement the Directive into national laws following its entry into force and a further six months to identify operators of essential services.

The Luxembourg Presidency of the EU Council intends to present the proposal to Coreper for approval on 18 December 2015.

Banking Union: ECOFIN adopts statement on bridge financing arrangement for Single Resolution Fund

The Economic and Financial Affairs (ECOFIN) Council has adopted a statement on bridge financing arrangements for the Single Resolution Fund (SRF), which will be fully operational from 1 January 2016.

The statement sets out details of the bridge financing, under which participating Member States will enter into a harmonised Loan Facility Agreement with the Single Resolution Board (SRB) to provide a national individual credit line to the SRB to back individual Member States' national compartments in the SRF in case of temporary financing shortfalls in the SRF. The maximum aggregate amount of the credit lines of euro area Member States will be EUR 55 billion, with a repartition key among Member States in line with Commission estimates for contributions to the SRF published in 2014. Individual credit lines would be drawn on as a last resort once all other financing sources have been exhausted.

ECOFIN Ministers have also stated their intention to take stock of the establishment of the bridge financing arrangements once the SRF enters into force, participating Member States have ratified the intergovernmental agreement (IGA) on the transfer and mutualisation of contributions to the SRF and fully transposed the Bank Recovery and Resolution Directive (BRRD). At that point, Ministers will consider work and timescales relating to a common backstop to the SRF, which will be developed to be fully operational by the end of the transitional period once the SRF has been fully mutualised.

In a statement, the SRB has welcomed the endorsement of the bridge financing arrangement and indicated its intention to sign the Loan Facility Agreements with Member States as soon as possible.

DGSD 2: EU Commission calls on ten Member States to implement rules

The EU Commission has made a request to ten Member States that have not yet implemented the recast Deposit

Guarantee Schemes Directive (DGSD 2) to comply within two months. DGSD 2 has a transposition deadline of 3 July 2015, but Belgium, Cyprus, Estonia, Greece, Italy, Luxembourg, Poland, Romania, Slovenia and Sweden have not implemented the Directive into their respective national laws.

The Commission request takes the form of a reasoned opinion and requires the ten Member States to comply within two months. Should any Member State not transpose DGSD 2 by the end of the two month timeframe, the Commission will consider whether to refer any non-compliant Member States to the Court of Justice of the EU.

EU Commission reports on capital requirement for covered bonds under CRR

The EU Commission has reported to the EU Council and the Parliament on the capital treatment of covered bonds under Article 503 of the Capital Requirements Regulation (CRR).

In July 2014, the European Banking Authority (EBA) published a report reviewing EU national covered bond frameworks, identifying key features and prudentially sound practices, partially in response to a call for advice from the Commission under Article 503 of the CRR.

The Commission's report discusses the regulatory capital treatment of covered bonds under the CRR, having regard to the recommendations made by the EBA in its report. Items covered include:

- preferential risk weights for covered bonds, aircraft loans, and guaranteed residential loans; and
- a review of the Article 496 derogation.

The Commission does not propose amending Article 129 in relation to the first three matters addressed in the report, believing there would be little merit before stakeholders have had the opportunity to comment on the relative merits of each of the relevant policy options presented in its September 2015 consultation on an EU integrated covered bond framework.

On the Article 496 derogation, the Commission will wait to review feedback to its September 2015 consultation before deciding whether it would be appropriate to allow the derogation to lapse, make it permanent, or replace it with a covered bond framework that may include provisions on covered bond structures backed by securitisation instruments.

MiFID2: ESMA publishes final ITS on reporting, cooperation and suspensions

The European Securities and Markets Authority (ESMA) has published a final report on implementing technical standards (ITS) regarding the implementation of the Markets in Financial Instruments Directive (MiFID2).

The ITS specify standard forms, templates and procedures which are to be used in the following areas:

- cooperation arrangements for trading venue of substantial importance in a host Member State;
- suspension and removal of financial instruments from trading on a Regulated Market (RM), a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF);
- authorisation of data reporting services providers;
- position reporting and weekly position reports;
- cooperation between competent authorities in supervisory activities, on-site verifications, and investigations and for the exchange of information;
- consultation of other competent authorities prior to granting an authorisation; and
- submission of information on sanctions and measures.

The ITS have been sent for endorsement to the EU Commission.

Interchange Fees Regulation: EBA consults on draft RTS on separation of payment card schemes and processing entities

The European Banking Authority (EBA) has launched a consultation on draft regulatory technical standards (RTS) on requirements for payment card schemes and processing entities in relation to independence of accounting, organisation and decision-making processes under the Interchange Fees Regulation (2015/751 – IFR).

Under the draft RTS, payment card schemes and processing entities will be required to have in place:

- accounting processes to produce annual audited information from separate balance sheets and profit and loss accounts;
- separate workspaces;
- independence of senior management, management bodies and staff; and
- separate operating plans.

The draft RTS also specify requirements related to shared services, shared information management systems, the treatment of sensitive information and a code of conduct.

The RTS are intended to require independence of decision-making processes in relation to the development of innovations while ensuring that external processors are not prevented from having an opportunity to partner with the scheme to develop pilots for new innovative products. The consultation paper also outlines the EBA's supervisory expectation in relation to the period between the application date of Article 7 IFR from 8 June 2016 and the possible later application date of the final RTS.

Comments on the consultation are due by 8 March 2016.

PSD 2: EBA publishes discussion paper on customer authentication and secure communication

The EBA has published a discussion paper to obtain early input into the development of regulatory technical standards (RTS) on strong customer authentication and secure communication under the recast Payment Services Directive (PSD 2).

The EBA has launched its discussion paper in view of supporting the key objectives of PSD 2 in relation to enhancing consumer protection, promoting innovation and improving security of payment services in the EU. Among other things, the EBA is seeking views on:

- exemptions to the application of strong customer authentication;
- the protection of the personalised security credentials of payment service users;
- requirements for common and secure open standards of communication; and
- possible synergies with e-IDAs Regulation on electronic identities.

In its press release, the EBA sets out its expectation that PSD 2 will be published in the Official Journal in December 2015, enter into force in January 2016 and apply from January 2018. The EBA intends to publish its consultation on draft RTS on strong customer authentication and secure communication in the second quarter of 2016 and will work closely with the European Central Bank (ECB) in developing its mandate. PSD 2 is expected to confer on the EBA a mandate to develop six technical standard and five sets of guidelines under the Directive.

Comments on the discussion paper are due by 8 February 2016.

EBA consults on financial reporting using IFRS 9

The EBA has launched a consultation on the reporting of financial information for institutions using international financial reporting standards (FINREP IFRS).

The consultation paper proposes the amendment of the implementing technical standards (ITS) on supervisory reporting with regard to FINREP for IFRS reporters following the issuance of the new IFRS 9 standard. The proposed amendments include:

- changes to the measurement of financial instruments depending on the characteristics of cash flows and the business model within which the instrument is held;
- the new impairment model based on expected losses determined in accordance with the credit quality stage of a financial instrument; and
- changes in the accounting for hedging operations closer to risk management.

The proposed amendments are based on IFRS 9 as issued by the International Accounting Standards Board (IASB) and will be finalised once IFRS 9 is endorsed by the EU, however, this consultation has no link to the endorsement process. Assuming the implementation date is not modified compared to the IASB version, the first application date would be 1 January 2018 and the first reporting reference date 31 March 2018.

Comments are due by 8 March 2016.

FSB publishes progress report on bank risk disclosures

The Financial Stability Board (FSB) has published the third progress report by the Enhanced Disclosure Task Force (EDTF) alongside a report on expected credit loss (ECL) and a statement the treatment of emergency liquidity provision.

The progress report discusses the implementation of the EDTF principles and recommendations by 40 global or domestic systemically important banks. The report includes self-assessments by banks and assessments by users on the extent to which they believe the recommendations have been implemented. Based on results from bank self-assessments, the report finds that 82% of firms report to have fully implemented the recommendations but user group feedback highlights scope for further improvement. The report indicates that most progress has been made on implementing the recommendations, summarising assets

and outlining plans to meet new regulatory capital ratios and on minimum Pillar 1 capital requirements.

Alongside the progress report, the EDTF also published:

- a report on the impact of expected credit loss (ECL) approaches on bank risk disclosures which highlights issues with the implementation of new accounting standards on ECL; and
- a statement on the treatment of emergency liquidity provision under the EDTF disclosure recommendations, which is intended to clarify the application of Recommendation 19.

Basel Committee launches second consultation on standardised approach for credit risk

The Basel Committee on Banking Supervision (BCBS) has launched a second consultation on revisions to the standardised approach for credit risk. The proposals form part of the Committee's broader review of the capital framework to balance simplicity and risk sensitivity, and to promote comparability by reducing variability in risk-weighted assets across banks and jurisdictions.

The revised proposals include:

- the reintroduction of the use of ratings for exposures to banks and corporates as well as alternative approaches for jurisdictions that do not allow the use of external ratings for regulatory purposes;
- modified risk weighting of real estate loans to set the loan-to-value ratio as the main driver, and requiring the assessment of a borrower's ability to pay as a key underwriting criterion; and
- categorising all exposures related to real estate under the same asset class, and applying higher risk weights to real estate exposures where repayment is materially dependent on the cash flows generated by the property securing the exposure.

All calibrations in the consultative document are preliminary and will be subject to a comprehensive quantitative impact study (QIS) the Committee plans to publish in 2016. The Committee will provide sufficient time for implementation prior to finalising the revised standardised approach by end 2016.

Comments to the consultation are due by 11 March 2016.

CSDR: HM Treasury consults on implementation

HM Treasury has published a consultation paper on the implementation of the Central Securities Depositories Regulation (CSDR). The consultation covers competent authorities, settlement internalisers, recognised CSDs and authorisation, enforcement powers, freedom to issue in an authorised CSD, transitional provisions including for issuers of securities already evidenced in a UK CSD and amendments to the Uncertificated Securities Regulations 2001 (USRs) Schedule 1.

The consultation paper does not address CSDR Article 3(1), requirements relating to the book-entry form recording (also known as dematerialisation) of transferrable securities admitted to trading. This will be addressed in a separate consultation from the Department of Business, Innovation and Skills.

The consultation closes on 4 February 2016.

MREL: BoE and PRA consult on approach and relationship with regulatory buffers

The Bank of England (BoE) has launched a consultation on setting minimum requirements for own funds and eligible liabilities (MREL) for all UK banks, building societies and certain investment firms. MREL will require firms to maintain sufficient equity and liabilities that are capable of credibly bearing losses in resolution, comprising a loss absorption amount to cover losses up to and in resolution and a recapitalisation amount to enable a firm, or certain parts of it, to continue to meet conditions for authorisation and maintain market confidence as necessary following resolution.

In its consultation paper, the BoE sets out how the Bank will set MREL on a firm-specific basis, in particular:

- for firms requiring a bail-in strategy to continue operating, the recapitalisation amount is likely to be at least equal to existing Pillar 1 plus Pillar 2A capital requirements;
- for firms for which part of the business could be transferred to a private sector purchaser or temporarily to a bridge bank in resolution, the BoE proposes to set a recapitalisation amount that may be lower than existing Pillar 1 plus Pillar 2A capital requirements; and
- for firms facing insolvency the recapitalisation amount would be zero.

Alongside the BoE's consultation, the Prudential Regulation Authority (PRA) has launched a consultation (CP44/15) on the relationship between MREL and the PRA's Threshold Conditions, which provide the minimum requirements that firms must meet in order to be permitted to carry out regulated activities. The paper discusses the PRA's

proposed relationship between MREL and risk-weighted capital buffers and leverage buffers. Among other things, the PRA proposes not to allow double counting of common equity tier (CET1) capital towards both MREL and the buffers. The PRA also proposes that firms in breach of MREL should expect the PRA to investigate whether the firm is failing or likely to fail, but will not automatically consider the firm is failing.

The PRA has developed its proposals while taking into account the Financial Stability Board's (FSB's) total loss absorbing capacity (TLAC) proposals. The consultation paper has also been developed to be read alongside the BoE's consultation and the PRA's consultation paper on ensuring operational continuity in resolution (CP38/15), which was published in October 2015. Alongside CP44/15, the PRA has published an addendum to CP38/15 which is intended to clarify the scope of application of the PRA's proposals.

Comments on the consultations are due by 11 March 2016.

PRA publishes final rules for UK leverage ratio

The PRA has published its final policy statement on the UK leverage ratio framework (PS27/15). The policy statement sets out feedback on the most significant issues raised by respondents to the PRA's July 2015 consultation and outlines changes to the rules proposed in the consultation paper.

The final rules relate to implementation of a domestic leverage ratio framework, including the scope of application, minimum leverage ratio requirement, leverage ratio buffers, definitions and reporting and disclosure requirements. In light of the responses received, the PRA has chosen to extend its proposed transition period for daily averaging disclosure requirements by 12 months.

Alongside the policy statement, the PRA has published two new supervisory statements on the leverage ratio framework, which set out:

- the PRA's expectations on leverage ratio buffers and reporting and disclosure of an average leverage ratio (SS45/15); and
- guidance for completing the data items required under Chapters 3 and 4 of the Reporting Leverage Ratio Part of the PRA Rulebook (SS46/15).

The PRA has also updated its supervisory statement on capital requirements for major UK banks and building societies (SS3/13) to remove existing expectations that have now been superseded.

FCA publishes thematic review of flows of confidential and inside information

The Financial Conduct Authority (FCA) has published a thematic review that presents findings from an FCA study into how a sample of small to medium sized investment banks manage flows of confidential and inside information. In particular, the study focused on the debt capital markets (DCM) and mergers and acquisitions (M&A) departments at the firms studied.

The review identifies variation in the standards of controls, some of which were not as robust as the FCA would have hoped. The FCA has highlighted certain practices where further attention is required generally, including:

- identifying circumstances that pose heightened levels of risk for misuse of confidential and inside information;
- ensuring all staff understand their responsibility to control confidential and inside information; and
- putting in place robust systems, procedures and infrastructure to underpin the effective management of information flows.

The paper is intended to provide firms with useful examples of good and poor practices for firms to benchmark themselves against. The FCA encourages all UK-based FCA-regulated financial services firms to read and review the paper and consider whether their systems and controls, processes and procedures are fit for purpose.

Recovery and resolution: ACPR publishes decision to adapt principles of calculation methodology for 2015

The Autorité de contrôle prudentiel et de résolution (ACPR) has issued Decision no 2015-CR-01 dated 24 November 2015 (published in the Official Journal on 9 December 2015) concerning the adaptation for the year 2015 of procedures and methods of calculation and determination of ex ante contributions pursuant to the Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing the Bank Recovery and Resolution Directive (BRRD) with regard to ex ante contributions to resolution financing arrangements.

The Decision applies to credit institutions, investment companies (except management companies and some investment companies, depending on the investment services provided or not) as well as financing companies requested to provide the ACPR with a preventive recovery

plan. It is applicable to contributions calculated and notified for the year 2015.

BRRD: Spanish Stock Exchange Commission adopts EBA guidelines on implementation of simplified obligations

The Spanish Stock Exchange Commission (CNMV), in its role as supervising authority for the preventative resolution of investment services companies, has adopted the European Banking Authority (EBA) guidelines on the implementation of simplified obligations in accordance with Article 4, Paragraph 5 of the BRRD. The guidelines were approved by the EBA on 16 October 2015 and will enter into force on 17 December 2015.

The guidelines establish and develop, for the purposes of the application of the simplified obligations, the evaluation criteria of the potential negative effects on the financial markets, on other entities and on the financing conditions that the failure of an entity and its ulterior liquidation may have.

Polish Financial Supervision Authority consults on draft recommendation on internal corporate governance rules in banks

The Polish Financial Supervision Authority (KNF) has published the draft Recommendation Z relating to the internal corporate governance rules in banks for public consultation. The recommendation is intended to set out good corporate practices in banks. The KNF expects that as a result of the implementation of Recommendation Z, banks will cease to apply incorrect practices which increase the risk of their activity and, as a consequence, will increase their resistance to difficult market conditions and thus increase the stability of the financial sector in Poland.

HCMC extends temporary prohibition on short selling

The Hellenic Capital Market Commission (HCMC) has announced an extension to the temporary short selling prohibition for the shares of credit institutions admitted to trading on the Athens Exchange (ATHEX) and comprising the FTSE/Athex Banks index, irrespective of the venue where the transaction is executed. The prohibition, under Article 20 of the Short Selling Regulation (SSR), will include sales that are covered by subsequent intraday purchases, depository receipts and warrants. An exemption will be in place for certain market making activities.

The HCMC announcement follows an opinion issued by the European Securities and Markets Authority (ESMA) on the prohibition, as required under Article 27 of the SSR.

ESMA's opinion considers the adverse developments in Greece, the proportionality and duration of the measure and endorses HCMC's announcement due to risks of volatility on financial stability, especially considering the ongoing re-capitalisation of the Greek banking system.

The temporary short selling restriction will apply until the end of 21 December 2015.

FINMA publishes its Financial Market Infrastructure Ordinance

The Swiss Financial Market Supervisory Authority (FINMA) has published its implementing ordinance on financial market infrastructure (FMIO-FINMA). The ordinance contains the implementing provisions on reporting requirements for securities trading, mandatory clearing for derivatives, as well as on disclosure and takeovers. It will enter into force on 1 January 2016, at the same time as the Financial Market Infrastructure Act (FMIA) and the Financial Market Infrastructure Ordinance of the Federal Council (FMIO).

SSE, SZSE and CFFEX to adopt circuit breaker mechanism

The Shanghai Stock Exchange (SSE), Shenzhen Stock Exchange (SZSE) and China Financial Futures Exchange (CFFEX) have amended their trading rules to introduce a circuit breaker mechanism on the PRC stock exchanges and financial futures exchange, as approved by the China Securities Regulatory Commission (CSRC). The amended trading rules will all take effect from 1 January 2016. Among other things, the following key aspects of the circuit breaker mechanism are worth noting:

- the circuit breaker mechanism references to the CSI 300 index;
- when the intraday CSI 300 index rises or falls to a certain threshold in comparison to the previous day's closing index, subject to an announcement by SSE, SZSE or CFFEX, securities traded on the relevant exchange (including stocks, funds, convertible bonds and stock index futures) will be suspended from trading for a certain period;
- when a movement threshold of 5% is reached, trading will be suspended for 15 minutes – if at any time throughout the day a 7% threshold is reached, the suspension will continue to the close of the market, except that for stock index futures trading the suspension will not apply to the afternoon trading session on any delivery date; and

- the circuit breaker mechanism will apply to northbound trading under the Shanghai–Hong Kong Stock Connect but it will not affect southbound trading.

FSDC reports on strengthening asset management in Hong Kong

The Financial Services Development Council (FSDC) has published three research reports to promote Hong Kong's asset management business, focusing on fund distribution, tax issues relating to private equity investments and an alternative legal structure for private equity funds. Drawing on the experience and expertise of market participants, each report contains an in-depth discussion of their respective topics and sets out recommendations for the government, regulators and industry to consider in further developing Hong Kong's asset management business.

The reports discuss:

- objectives to make Hong Kong a leading retail fund distribution centre in the Asia Pacific region, including the current fund distribution landscape in Hong Kong, developments in both local and overseas markets and recommendations, including the establishment of more diversified distribution channels and providing additional guidelines on suitability requirements;
- tax issues on open-ended fund companies and profits tax exemption for offshore private equity funds, which follows-up the FSDC's report on proposals for a legal and regulatory framework for open-ended investment companies in Hong Kong published in November 2013, and sets out recommendations relating to the tax regime for open-ended fund companies, which is currently under review by the government, as well as the profits tax exemption criteria for private equity funds; and
- limited partnerships for private equity funds, which examines the current Limited Partnerships Ordinance and proposes an alternative limited partnership structure to strengthen Hong Kong's competitive position as a centre for private equity. The report's recommendations are consistent with government initiatives to launch an open-ended fund company regime in Hong Kong which will help create new jobs in the Hong Kong financial services industry.

Inland Revenue (Amendment) (No. 4) Bill 2015 gazetted

The Hong Kong Government has published the Inland Revenue (Amendment) (No. 4) Bill 2015 in the Gazette. The Bill is intended to enhance the existing interest deduction rules for the intra-group financing business of corporations and introduce a concessionary profits tax rate for qualifying corporate treasury centres. The Bill also seeks to clarify profits tax and stamp duty treatments in respect of regulatory capital securities issued by banks in compliance with Basel III capital adequacy requirements.

The Bill contains relevant anti-avoidance provisions to ensure that the proposals are consistent with the latest international standards to combat base erosion and profit shifting.

The Bill will be introduced into the Legislative Council for first reading on 16 December 2015.

SFC publishes consultation conclusions on client agreement requirements

The Securities and Futures Commission (SFC) has published conclusions from its consultation on the client agreement requirements, which was launched in September 2014.

Having carefully considered the feedback, the SFC has decided to proceed with its proposal to require the incorporation of a new clause into client agreements. The new clause will enable an investor to claim for damages under the client agreement where the regulated intermediary solicits the sale of or recommends a financial product which is not reasonably suitable. According to the SFC, the changes will result in fairer terms of business for investors, and also prevent intermediaries from misdescribing the actual services provided to the client.

The SFC expects intermediaries to make revised client agreements available as soon as possible so that new clients can execute them and existing clients can amend or replace their existing agreements. All intermediaries' client agreements must comply with the new Code of Conduct for Persons Licensed by or Registered with the SFC, including incorporation of the new clause and observance of the new paragraph 6.5 of the Code of Conduct which disallows contractual terms in a client agreement that are inconsistent with Code of Conduct obligations or which misdescribe the actual services to a client, by 9 June 2017.

FAST Act: Impact on US federal securities laws and amendments to promote international sharing of swap transaction data by repealing indemnification requirement

President Obama has signed into law the Fixing America's Surface Transportation Act (FAST Act). While this act primarily addresses transportation issues, it includes several securities law provisions and directs the Securities

and Exchange Commission (SEC) to take a number of implementing actions.

The FAST Act provides additional accommodations for US IPOs involving emerging growth companies (ECGs) by:

- reducing the required number of days between when an EGC publicly files its IPO registration statement and when it launches its road show from 21 days to 15 days (effective immediately);
- permitting an EGC to omit from its IPO registration statement any financial information for historical periods that would not be required to be included in such registration statement at the time the issuer expects to conduct its offering (effective 3 January 2016); and
- revising Section 6(e)(1) of the Securities Act of 1933, as amended (the Securities Act), to provide a grace period during which an issuer that was an EGC at the time it either filed or confidentially submitted its IPO registration statement (but subsequently ceases to qualify as an EGC during its IPO process) continues to be treated as an EGC for purposes of Section 6(e)(1) of the Securities Act through the earlier of: (a) the date on which the issuer completes its IPO or (b) the end of the one-year period beginning on the date the company ceases to be an EGC (effective immediately).

The FAST Act adds Section 4(a)(7) to the Securities Act to provide a new resale exemption for private resales of restricted securities (similar to what has informally been referred to as the Section 4(a)(1½) exemption), subject to a set of scope-limiting conditions. For example, this new provision requires all purchasers to be accredited investors, does not permit a seller to engage in general solicitation, includes bad actor disqualification provisions, and would not provide an exemption if the transaction relates to an underwriter's unsold allotment. This new exemption is effective immediately.

In addition, the FAST Act directs the SEC to take actions to:

- permit smaller reporting companies to use forward incorporation by reference in registration statements on Form S-1; and
- modernize and simplify certain public reporting requirements.

The FAST Act also includes amendments to Section 5b and Section 21 of the Commodity Exchange Act that repeal indemnification requirements that had been imposed by the Dodd-Frank Act on non-US regulators as a condition to providing swap data to them. These indemnification obligations had been preventing international data sharing. The FAST Act instead requires that written confidentiality agreements be in place before swap data is shared by the CFTC or by a swap data repository with non-US authorities. The FAST Act similarly amends the US Securities Exchange Act to facilitate the international sharing of security-based swap data. These amendments have immediate effect.

CLIFFORD CHANCE BRIEFINGS

Swaps and insolvency – the Supreme Court throws a spanner in the works

The Spanish Supreme Court has ruled out the possibility of relying on the special regime established in Royal Decree-Law 5/2005 of 11 March (RDL 5/2005) to protect swap debt in an insolvency, going back to the doctrine of the Barcelona Court of Appeal, which declared that a netting arrangement requires several transactions under the cover of a master agreement.

This briefing paper discusses the Supreme Court's judgment.

http://www.cliffordchance.com/briefings/2015/12/swaps_and_insolvencythesupremecourtthrows.html

Implications of FinCEN's proposed rule implementing AML program and suspicious activity reporting requirements for non-US investment advisers

On 25 August 2015, the Financial Crimes Enforcement Network (FinCEN) issued a notice of proposed rulemaking which would require investment advisers that are registered (or required to be registered) with the US Securities and Exchange Commission (SEC) to establish an anti-money laundering (AML) program and file suspicious activity reports (SARs) in response to certain indications of illegal activity observed by the adviser.

This briefing paper discusses the proposed rule.

http://www.cliffordchance.com/briefings/2015/12/implications_of_fincensproposedrul.html

Delaware Supreme Court affirms damages award against target company's banker

Last week, in its decision in the Rural Metro case, the Delaware Supreme Court upheld a $75.8 million damages award against the financial adviser to the target company in an all-cash third party buyout. The Court found the financial adviser liable for aiding and abetting breaches of

fiduciary duties by the target company's directors, even though the directors themselves could not have been liable in damages for those breaches because of standard statutorily-authorized exculpatory clauses in the target company's charter.

This briefing paper discusses the findings from the Rural Metro case.

http://www.cliffordchance.com/briefings/2015/12/delaware_supremecourtaffirmsdamagesawar.html

The Transportation FAST Act Helps Smooth the JOBS Act's 'On Ramp'

A number of amendments to US securities laws were included in the Fixing America's Surface Transportation Act (FAST Act) to ensure bipartisan support and passage of the bill, which was signed into law on 4 December 2015. These amendments are designed to ease the burden on companies raising money in both the private and public capital markets.

This briefing paper discusses the amendments.

http://www.cliffordchance.com/briefings/2015/12/the_transportationfastacthelpssmooththejob.html

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