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Briefing note

International Regulatory Update

4 - 8 January 2016

IN THIS WEEK'S NEWS

- Joint work programme for EU Council presidencies to June 2017 published
- SSM: ECB sets out priorities for 2016
- SSM: ECB publishes recommendation on dividend policies for financial year 2015
- Capital Markets Union: EU Parliament publishes report on stocktaking and challenges of EU financial services regulation
- CRR: EU Commission reports on effect of revised IAS 19 on volatility of own funds of credit institutions and investment firms
- EMIR: ESMA agrees MoUs on CCPs with Canada and Switzerland
- Short Selling Regulation: ESMA reviews NCA compliance with market maker exemption
- BRRD: FCA publishes modification by consent for Article 55 rules
- DNB's systemic importance framework for banks brought in line with new EU standards
- AFM introduces new rules for crowdfunding platforms
- The Netherlands implements Deposit Guarantee Schemes Directive
- Grand Ducal Regulation implementing Article 1(5) of EU Interchange Fees Regulation in Luxembourg published
- BRRD and DGSD 2 implemented in Luxembourg
- CSSF issues circular on prospectus law
- CSSF issues circular on dormant or inactive accounts
- CSSF issues regulation on systemically important CRR institutions authorised in Luxembourg
- EMIR: BaFin publishes guidance note on notifications and applications regarding intra group exemptions under Article 4
- German Federal Government proposes draft law implementing Market Abuse Directive and other EU laws
- Haut Conseil de stabilité financière decision regarding countercyclical capital buffers published
- Belgium implements bail-in tool
- Bank of Spain sets capital buffers for systemic institutions and countercyclical capital buffer for 2016

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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

- Bank of Spain issues circular on information required for determination of calculation basis for contributions made to Deposit Guarantee Fund of Credit Entities
- SFC issues circular on reporting of OTC derivatives transactions to HKMA trade repository
- HKMA publishes list of designated domestic systemically important authorised institutions for 2016
- Amendments to commence crowdfunding rules approved by Korean Cabinet
- MAS publishes guidelines and notice to all holders of a capital markets services licence for real estate investment trust management
- Australian government consults on measures relating to resilience and collateral protection and client money reforms
- Australian Government releases draft legislation relating to regulation of crowd-sourced equity funding
- SEC issues annual staff reports on credit rating agencies
- CFTC proposes an alternative to its fingerprinting requirement for non-US persons
- FINRA sets out 2016 focus on supervision, liquidity and securities firms' culture
- Recent Clifford Chance briefings: New EU rules for securities financing transactions and collateral; and more. Follow this link to the briefings section.

Joint work programme for EU Council presidencies to June 2017 published

The Netherlands has begun its Presidency of the EU Council from 1 January to 1 July 2016. The Netherlands Presidency is the first Council Presidency in the Trio of upcoming presidencies held by the Netherlands, Slovakia and Malta, which have jointly published their eighteen-month Trio work programme from January 2016 until June 2017. The work programme sets out long-term goals and a common agenda across the three presidencies and is intended to provide a framework for organising the work of the Council over the next eighteen months, as well as serving as a guide for cooperation with other institutions.

The Trio work programme is built on five pillars, which follow the strategic agenda agreed by the European Council in June 2014, and comprise: jobs, growth and competitiveness; empowering and protecting citizens; energy union and climate policy; freedom, security and justice; and the EU as a stronger global actor.

The work programme highlights the first pillar on jobs, growth and competitiveness as a particular area of emphasis. Work relating to migration has also been highlighted as a particular priority. Among other things, the work programme sets out the Trio's plans for:

- taking forward work set out in the Five Presidents' Report on strengthening and deepening economic and monetary union (EMU), in particular reinforcing the social dimension of the EMU;
- making progress towards the Capital Markets Union (CMU);
- taking forward work on money market funds, bank structural reform and the review of the Prospectus Directive;
- deepening the Single Market, particularly in relation to services and the digital agenda;
- making swift progress on trade agreements, including the Transatlantic Trade and Investment Partnership (TTIP);
- taking forward measures to improve labour mobility;
- pursuing work on an Energy Union in relation to the interconnection of energy infrastructures and design of a governance system; and
- following up the UN Climate Change Convention (COP-21), the implementation of the 2030 energy and climate package, including the proposal on the emission trading scheme (ETS) and expected proposal on emission reduction in other sectors (non-ETS).

The Netherlands has also set out the specific priorities for its Presidency, which relate to: migration and international security; sound finances and a robust euro area; innovation and job creation; and a forward looking energy and climate policy.

Amongst other things, the Netherlands Presidency has indicated that it:

- will include the proposal on a European deposit insurance scheme (EDIS) on the Council's agenda and will endeavour to ensure that the extra measures required to complete the Banking Union presented by the EU Commission in autumn 2015 are developed further;
- might be able to complete the Council's work on the proposed regulation on creating a European framework for simple, transparent and standardised securitisation and the proposed regulation amending the Capital

Requirements Regulation (CRR) as regards the capital treatment of securitisations;

- will begin trilogue negotiations on bank structural reform as soon as the EU Parliament has determined its position;
- expects trilogue negotiations on the revision of the European Directive on institutions for occupational retirement provision (IORPs) to start during its Presidency;
- expects the Commission to put forward a legislative proposal for a framework for the recovery and resolution of central counterparties (CCPs) at the start of 2016; and
- will prioritise action against tax evasion and tax avoidance, including increasing transparency in efforts to tackle corporate tax avoidance, based on the package of measures agreed as part of the OECD's Base Erosion and Profit Shifting (BEPS) project in October 2015 – in particular, during the Netherlands Presidency the Commission will come forward with a proposal for the conversion of OECD BEPS measures into European legislation.

SSM: ECB sets out priorities for 2016

The European Central Bank (ECB) has published its supervisory priorities for the Single Supervisory Mechanism (SSM) in 2016. The ECB has identified key risks facing SSM banks, which have informed its priorities with supervisory initiatives planned for each risk area.

Among the key risks identified, business model and profitability risk ranked the highest and the ECB intends to address this priority with a thematic review of banks' profitability drivers. The other priority areas identified by the ECB are:

- credit risk, for which the ECB intends to form a task force on non-performing loans (NPLs) and carry out a thematic review of International Financial Reporting Standards (IFRS) 9 – Financial Instruments;
- capital adequacy, for which the ECB will carry out a review of the quality and consistency of banks' internal capital adequacy assessment processes (ICAAP) and review banks' internal models, including preparedness of total-loss absorbing capacity (TLAC) and the minimum requirement for own funds and eligible liabilities (MREL);
- risk governance and data quality, including clarification of supervisory expectations to banks' boards and a thematic review of compliance with the Basel Committee on Banking Supervision (BCBS) principles for effective risk data aggregation and reporting; and
- liquidity, including a dialogue on internal liquidity adequacy assessment processes (ILAAP).

SSM: ECB publishes recommendation on dividend policies for financial year 2015

An ECB recommendation (ECB/2015/49) on banks' dividend distribution policies within the SSM has been published in the Official Journal. The recommendation applies the same method as set out in the ECB's recommendation of 28 January 2015 (ECB/2015/2) and is addressed to significant entities and significant groups supervised directly by the ECB and national competent authorities (NCAs) and designated authorities that supervise less significant supervised entities and less significant supervised groups.

The ECB recommends an approach to dividend distributions in 2016 for the financial year 2015 that distinguishes between three categories of bank:

- category one banks, which fulfil capital requirements as at 31 December 2015 and have already reached their 'fully loaded' capital ratios for January 2019 requirements, which should conservatively distribute dividends;
- category two banks, which fulfil capital requirements as at 31 December 2015 but are yet to reach their 'fully loaded' capital ratios for January 2019 requirements, which should conservatively distribute their net profit in dividends even in cases of deteriorated economic and financial conditions, but only to the extent that the path towards the required fully loaded ratio is secured; and
- category three banks, which neither satisfy Pillar 1 requirements under the Capital Requirements Regulation (CRR), capital requirements beyond Pillar 1 imposed as a result of the supervisory review and evaluation process (SREP) nor satisfying countercyclical capital and systemic buffers under the Capital Requirements Directive (CRD 4), and should in principle not distribute dividends.

Significant credit institutions that are not able to comply due to a legal requirement to pay dividends should immediately contact their joint supervisory team, while less significant supervised entities should contact their national supervisory authority.

Capital Markets Union: EU Parliament publishes report on stocktaking and challenges of EU financial services regulation

The EU Parliament has published an own-initiative report on stocktaking and challenges of the EU financial services regulation. The report welcomes the Commission's Capital Markets Union (CMU) project and recognises the achievements of financial regulation in responding to the ramifications of the financial crisis. The Parliament believes that overly complex regulation can affect investment negatively and contends that the complexity of regulation must also be addressed regarding its application to non-financial end-users of financial products.

Amongst other things, the report calls for:

- the Commission, when reviewing the European Market Infrastructure Regulation (EMIR), to examine the effect that lowering the quality of collateral accepted by CCPs could have on the resilience of CCPs;
- the Commission and supervisors to address the interaction between International Financial Reporting Standards (IFRS) and prudential requirements;
- a stronger focus in policy making on the global competitiveness of the EU financial sectors without detriment to financial stability and consumer protections, and underlines that the CMU project must be seen in the context of improving the competitiveness of European business and the EU economy;
- the Commission to propose a consistent, practical and transparent framework for procedures on third country equivalence, and for all equivalence decisions to be adopted by means of delegated acts; and
- the Commission services to conduct a comprehensive quantitative and qualitative assessment every five years of the cumulative impact of EU financial services regulation on financial markets and its participants at EU and Member State level in order to identify shortcomings and loopholes, to assess the performance, effectiveness and efficiency of the regulation, and to report back to Parliament, with the first of these assessments to be completed by the end of 2016.

The Parliament is expected to vote on the report at its plenary session on 19 January 2016.

CRR: EU Commission reports on effect of revised IAS 19 on volatility of own funds of credit institutions and investment firms

The EU Commission has published a report to the Parliament and the Council on the effect of the revised International Accounting Standard (IAS) 19 on the volatility of own funds of credit institutions and investment firms.

Under Article 36(1)(e) of the CRR, credit institutions and investment firms shall deduct defined benefit pension fund (DBPF) assets on their balance sheet from common equity tier 1 (CET1) items.

The revision of IAS 19 has led to changes in the valuation of DBPFs. Article 519 of the CRR requires the Commission to prepare a report for the Parliament and the Council on whether the revised IAS 19 in conjunction with the deduction of net pension assets as set out in Article 36(1)(e) would lead to undue volatility of institutions' own funds. The Commission was asked to take into account a report written by the EBA on the same issue.

The Commission's report concludes that any additional volatility of own funds introduced by IAS 19 is limited and that any impact has been mitigated by appropriate transitional provisions. Consequently, the Commission views the CRR treatment as it stands as appropriate and will not table a legislative proposal in conjunction with the report.

EMIR: ESMA agrees MoUs on CCPs with Canada and Switzerland

The European Securities and Markets Authority (ESMA) has established three Memoranda of Understanding (MoUs) under EMIR. The MoUs establish cooperation arrangements, including the exchange of information, regarding CCPs which are established and authorised or recognised in Canada (Alberta, Manitoba, Ontario and/or Quebec) or Switzerland, and which have applied for EU recognition under EMIR.

EMIR provides for cooperation arrangements between ESMA and the relevant non-EU authorities where the legal and supervisory framework for CCPs has been deemed equivalent to EMIR by the EU Commission.

Except for the MoU agreed with Ontario, which will enter into force upon endorsement by the respective Ministry in accordance with local legislation, the MoUs are effective from 30 November 2015.

Short Selling Regulation: ESMA reviews NCA compliance with market maker exemption

ESMA has published a report following its peer review of how five national competent authorities (NCAs) apply market maker exemptions under Article 17 of the Short Selling Regulation (SSR). Under the exemption, market makers are not subject to the restrictions on uncovered short sales nor are they subject to the reporting and public disclosure obligations of significant net short positions in shares or sovereign debt. The review focussed on markets with the highest number of market makers benefiting from the exemption and the markets in which market makers have notified the highest number of instruments and comprised NCAs from Germany (BaFin), Italy (Consob), Hungary (MNB), Sweden (FI) and the UK (FCA).

Among other things, the peer review identified that all NCAs have dedicated resources, processes and staff to handle notifications but there is significant diversity regarding the scrutiny of notifications and firms. Overall, in relation to its assessment of compliance by NCAs with their responsibilities under the SSR and relevant ESMA guidelines, ESMA identified that only the Italian Commissione Nazionale per le Società e la Borsa (Consob) was compliant with the ESMA guidelines based on assessments of both supervisory practices and policy positions. ESMA found the other four NCAs to be partially non-compliant.

The peer review sets out specific recommendations for the five NCAs and more general recommendations, which include:

- enhancing processes and procedures to ensure that at the time of each notification some form of reasonable assurance can be given or obtained that the notifier meets the pre-qualifying requirements set out in the guidelines, specifically those dealing with organisational set-up;
- all notifications should be assessed on a per instrument basis;
- NCAs should ensure some form of periodic or ongoing monitoring of market makers; and
- processes for shared information in relation to market makers should be enhanced.

The assessment group has not recommended that any further action be taken by ESMA due to the upcoming review of the SSR by the EU Commission. ESMA has submitted its report to the Commission for its consideration and has identified, in particular, that differing interpretations of the Article 2(1)(k) of the SSR should be clarified as well as the scope of market making.

BRRD: FCA publishes modification by consent for Article 55 rules

The Financial Conduct Authority (FCA) has published a modification by consent to disapply the FCA rules on contractual recognition of bail-in that otherwise apply to relevant liabilities from 1 January 2016 in circumstances where compliance would be impracticable. The FCA intends to consult on amending IFPRU 11.6 in the way set out in the modification by consent and the modification is valid until 30 June 2016 or when the relevant rules are amended or revoked, whichever is earlier.

DNB's systemic importance framework for banks brought in line with new EU standards

The Dutch Central Bank (DNB), as supervisor of the Dutch banking sector, has modified its framework for identifying systemically important banks to bring it in line with the EBA guidelines for identifying systemically important banks. The systemically important banks (currently five) must maintain an additional capital buffer to be able to better absorb unexpected losses. The buffers will be phased in between 2016 and 2019. In an explanatory memorandum, the DNB elaborates on what the modified framework looks like, which banks are systemically important in the Netherlands, the level of capital buffers that will be imposed, and how such buffers will be imposed.

AFM introduces new rules for crowdfunding platforms

The Netherlands Authority for the Financial Markets (AFM) has issued its December 2015 newsletter for crowdfunding platforms and an accompanying Q&A document. In the documents, the AFM outlines the new conditions which it has set for crowdfunding platforms, whether loan or equity based platforms, especially in relation to investors that are consumers (i.e. persons not acting in the course of a business). The AFM also elaborates on new statutory requirements for crowdfunding platforms effective on 1 January 2016, and explains what it expects from relevant platforms.

The new conditions include doubled investment caps, i.e. the maximum amount that individual consumers may invest per platform (for equity based platforms: EUR 40,000; for loan based platforms: EUR 80,000). Furthermore, platforms will be required to perform (non-binding) investor suitability tests, and ask consumers about their knowledge, experience and wealth position. Where necessary, consumers must be warned about relevant risks. Also,

consumers must be given the possibility explicitly to confirm or cancel their investment within 24 hours.

Furthermore, a new statutory provision effective on 1 January 2016 shall require directors of loan based platforms to have the requisite knowledge and experience, which will be tested by the AFM before they may be appointed. The AFM requires relevant platforms to carry out a self-assessment and demonstrate that their current directors have adequate knowledge and experience. This will be verified by the AFM.

The Netherlands implements Deposit Guarantee Schemes Directive

The Netherlands has implemented the revised Deposit Guarantee Schemes Directive (DGSD2) by way of the Implementation Decree Deposit Guarantee Scheme (Implementatiebesluit depositogarantiestelsel).

The Decree, which became effective on 26 November 2015, makes the Dutch deposit guarantee scheme more risk-based. Under the new legal framework, banks will have to pay quarterly contributions into the new Deposit Guarantee Scheme Fund. The amount of a bank's individual contributions will depend on the amount of relevant deposits maintained by the relevant bank as well as its risk profile, and banks will be required to report relevant data to the Dutch Central Bank (DCB) on a quarterly basis. The Fund will thus be financed before it is activated by the DCB in case of an individual bank's insolvency (ex-ante financing). The target size of the Fund is at least 0.8% of the guaranteed deposits of participating banks, and this size is expected to be reached by 2024.

Compared to the previous deposit guarantee scheme system, an additional guarantee has been introduced for deposits that are directly related to the purchase of a house. Such deposits will be guaranteed for an amount up to EUR 500,000 for a period of three months following the deposit (the regular guaranteed amount is EUR 100,000. The Decree also amends the scope of the scheme by including deposits held by corporations (but excluding financial institutions) as well as directors and shareholders of the insolvent bank.

The Decree gradually reduces the term within which the DCB will make payments out of the Fund in case of a bank's insolvency, from 20 working days to 7 working days by 2024.

Grand Ducal Regulation implementing Article 1(5) of EU Interchange Fees Regulation in Luxembourg published

A new Grand-Ducal Regulation dated 18 December 2015 implementing Article 1(5) of the EU Interchange Fees Regulation (2015/751 – IFR) has been published in the Luxembourg official journal (Mémorial A).

In accordance with the Member State option foreseen in Article 1(5) of the IFR, the new Regulation exempts three party payment card schemes in relation to payment transactions made in Luxembourg from the obligations set out in Chapter II of the IFR until 9 December 2018, provided that card-based payment transactions made in Luxembourg under such schemes do not exceed a certain threshold.

The Regulation has entered into force and is applicable from 28 December 2015.

BRRD and DGSD 2 implemented in Luxembourg

The law of 18 December 2015 implementing the Bank Recovery and Resolution Directive (BRRD) and DGSD 2 and the law of 18 December 2015 approving the agreement on the transfer and mutualisation of contributions to the Single Resolution Fund (SRF) signed in Brussels on 21 May 2014 have been published in the Luxembourg official journal (Mémorial A).

Both laws entered into force on 28 December 2015, subject to limited exceptions and the transitional regime foreseen in the BRRD/DGSD 2 implementing Law.

CSSF issues circular on prospectus law

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued circular 15/632 dated 28 December 2015 providing an update on CSSF circular 12/539 on the technical specifications regarding the submission to the CSSF of documents under the law on prospectuses for securities and a general overview of the aforementioned law (Prospectus Law).

The update reflects the changes introduced by Directive 2014/51/EU to Article 5(4) of the Prospectus Directive 2003/71/EC (as amended) and amends the process of filing of final terms of base prospectuses approved by the CSSF in accordance with Articles 8(4) and 32(4) of the Prospectus Law.

The new circular sets out the requirements for the subject and the body of the filing e-mail as well as the new CSSF filing e-mail address.

The new circular is applicable as of 1 January 2016.

CSSF issues circular on dormant or inactive accounts

The CSSF has issued circular 15/631 dated 28 December 2015 on dormant or inactive accounts.

The circular is primarily addressed to banks, but also to all other financial sector professionals subject to CSSF supervision who hold or manage third party assets and deposit them with banks or other financial institutions and who open to this effect in their books accounts for the beneficiaries of these assets.

The circular summarises relevant legal provisions and restates regulatory obligations that apply to the professionals in relation to such dormant accounts.

CSSF issues regulation on systemically important CRR institutions authorised in Luxembourg

The CSSF has published a new regulation (No. 15-06) dated 30 November 2015 on systemically important institutions authorised in Luxembourg.

In the new regulation the CSSF sets out that none of the institutions within the meaning of the CRR authorised in Luxembourg is identified as a global systemically important institution (G- SII) within the meaning of the Luxembourg law of 5 April 1993 on the financial sector, as amended.

The new regulation further identifies six CRR institutions authorised in Luxembourg as other systemically important institutions (O-SIIs), as well as the capital buffer rate applicable to them with a gradual implementation over three years, as of 1 January 2016.

The new regulation entered into force on 1 January 2016.

EMIR: BaFin publishes guidance note on notifications and applications regarding intra group exemptions under Article 4

The German Federal Financial Supervisory Authority (BaFin) has published a guidance note on notifications and applications regarding intra group exemptions under Article 4 of EMIR.

The guidance note outlines the requirements and procedure regarding the notification of the intra group exemption and the application for exemption in the following scenarios:

- the counterparties are both established in the EU – a notification of BaFin and the respective supervisory authority in the other EU Member State is required; and
- one counterparty is established in a third country – if the third country has been declared equivalent pursuant to Article 13 paragraph 2 of EMIR with respect to the clearing obligations of the respective OTC derivatives, the party seated in Germany has to file an application for an intra group exemption with BaFin.

The intention to make use of the intra group exemption pursuant to Article 4 paragraph 2 of EMIR has to be notified to BaFin at least 30 calendar days before making use of the exemption and is deemed to be granted if BaFin does not react. BaFin has provided templates for such notifications.

German Federal Government proposes draft law implementing Market Abuse Directive and other EU laws

The German Federal Government (Bundesregierung) has proposed a draft law (Regierungsentwurf) on the implementation of the following Directives and Regulations under the title Financial Markets Renewal Act (Finanzmarktnovellierungsgesetz):

- the Directive on criminal sanctions for market abuse (CSMAD – Directive 2014/57/EU);
- the Market Abuse Regulation (MAR – Regulation (EU) No 596/2014);
- the Central Securities Depositories Regulation (CSDR – Regulation (EU) No 909/2014); and
- the Regulation on packaged retail and insurance-based investment products (PRIIPs - Regulation (EU) No 1286/2014).

Unlike the first draft of the proposal, it no longer contains an implementation of the Markets in Financial Instruments Directive (MiFID2 – Directive 2014/65/EU) and the Markets in Financial Instruments Regulation (MiFIR – Regulation (EU) No 600/2014) as the implementation date has been postponed to 3 January 2018.

Haut Conseil de stabilité financière decision regarding countercyclical capital buffers published

Having regard to Regulation (EU) No 1024/2013 of 15 October 2013, Directive 2013/36/EU of 26 June 2013 and the Recommendation of the European Systemic Risk Board of 18 June 2014 (ESRB/2014/1) relating to the prudential supervision of credit institutions and guidance for setting countercyclical buffer rates, a Decision n°2015-1 dated 30 December 2015 of the High Financial Stability Board, the Haut Conseil de stabilité financière (HCSF), regarding the rate of the countercyclical capital buffers has been published in the Journal Officiel and on the HCSF's website.

The Decision sets the countercyclical buffer rate as that rate is provided for under articles 511-41-1, II, 1° and L. 533-2-1 of the French monetary and financial code and is applicable to credit institutions and financing companies as referred to under article L. 612-2, I, A, 1° and 9°, and to the investment firms mentioned under article L. 533-2-1 of the same code, at 0%.

The HCSF has also acknowledged the countercyclical buffer rates of 1.5% as set by Sweden and Norway and applicable to exposures in those countries.

The Autorité de contrôle prudentiel et de résolution (ACPR) is entrusted with the implementation of the Decision, which entered into force on 1 January 2016, while the abovementioned persons must, within twelve months after its entry into force, comply with the new rate for the purposes of calculating their specific countercyclical capital buffer.

Belgium implements bail-in tool

A law and two royal decrees amending the Belgian Banking Law (the law of 25 April 2014 on the status and supervision of credit institutions) and implementing the bail-in tool into Belgian law have been published in the Moniteur Belge (C – 2015/03480 and C – 2015/03479).

The BRRD had already been largely transposed into Belgian law by the Banking Law, which anticipated the BRRD. However, the Banking Law was adopted prior to the publication of the final text of the BRRD and the new law and royal decrees make various conforming changes to Banking Law to adapt its provisions to the BRRD.

The provisions relating to the bail-in tool entered into effect on 1 January 2016.

In addition, the new law confirms that any reduction or conversion into equity of a liability to which the bail-in tool has been applied does not benefit co-debtors, guarantors or security providers in respect of the bailed-in liability. The parties may, however, opt out of this principle and agree that a guarantee or security will not be protected against a bail-in.

This is particularly relevant as regards guarantees granted by Belgium in the context of bank bail-outs. These guarantees will remain effective if the bank concerned is ever subject to a bail-in, notwithstanding the fact that the underlying indebtedness would then be 'treated as discharged for all purposes' pursuant to Article 53(3) of the BRRD.

The new law and royal decrees also implement certain provisions of CRD 4 into Belgian law.

Bank of Spain sets capital buffers for systemic institutions and countercyclical capital buffer for 2016

The Bank of Spain has announced the approval of the creation of capital buffers for systemic institutions and the setting of the countercyclical capital buffer for 2016. These measures have been adopted pursuant to the faculties granted to the Bank of Spain by Law 10/2014, of 26 June, on the regulation, supervision and solvency of credit entities and by Royal Decree 84/2015, of 13 February, developing Law 10/2014, of 26 June 2014, on the regulation, supervision and solvency of credit entities.

The financial crisis led to the development of special prudential measures regarding financial stability and the creation of specific capital buffers for global systemically important institutions (G-SIIs) and for the other systemically important institutions (O-SIIs). The Bank of Spain has published a press release including a list of specific capital buffers.

In addition, the Bank of Spain has agreed to set the countercyclical capital buffer (CCB) applicable to credit exposures in Spain at 0% from 1 January 2016. These percentages will be revised each quarter.

Bank of Spain issues circular on information required for determination of calculation basis for contributions made to Deposit Guarantee Fund of Credit Entities

The Bank of Spain Circular 8/2015, of 18 December, to entities and branches participating in the Deposit Guarantee Fund of Credit Entities about the information required for the determination of the calculation basis for contributions made to the Deposit Guarantee Fund of Credit Entities has been published in the Spanish Official Gazette. The circular sets out the balances that form the

calculation basis for contributions to be made to the Deposit Guarantee Fund of Credit Entities.

The circular includes the following measures:

- credit entities and their branches must provide the Bank of Spain with quarterly reports regarding the calculation basis for contributions to the Deposit Guarantee Fund. Accordingly, the Bank of Spain will submit such information to the Deposit Guarantee Fund on a quarterly basis; and
- deposits will be valued based on their nominal amount plus accrued interest until the date on which the information is delivered. On structured deposits, the principal amount will be the amount paid by the counterparties before segregating the implicit derivatives. Securities and other guaranteed financial instruments will be valued based on their quotation value on the last day of the relevant quarter. In the case of unlisted securities or financial instruments, they will be valued at their reasonable value unless such estimation could not be done, in which case they will be valued at their nominal or redemption value.

Finally, the circular derogates the Bank of Spain Circular 4/2001 of 24 September.

The circular entered into force on 25 December 2015.

SFC issues circular on reporting of OTC derivatives transactions to HKMA trade repository

The Securities and Futures Commission (SFC) has issued a circular to licensed corporations in relation to the reporting of over-the-counter (OTC) derivatives transactions to the Hong Kong Monetary Authority (HKMA) trade repository.

The circular informs licensed corporations that a new phase of system implementation for the HKMA's OTC derivatives trade repository (HKTR) is scheduled for launch in May 2016. The new phase introduces refinements to the existing reporting procedures and technical specifications. It also introduces enhancements that will cater for the expanded mandatory reporting regime (when implemented). Further details relating to the new phase are set out in the HKMA's updated Administration and Interface Development Guide (AIDG). Licensed Corporations with activities that may be subject to mandatory reporting obligations have been advised to take the HKMA documents into account when preparing for reporting to the HKTR.

HKMA publishes list of designated domestic systemically important authorised institutions for 2016

The Hong Kong Monetary Authority (HKMA) has completed its annual assessment of the list of designation of domestic systemically important authorised institutions (D-SIBs). Based on the assessment results, the list of authorised institutions designated as D-SIBs remains unchanged compared to the first list of D-SIBs published by the HKMA on 16 March 2015. The HKMA intends to update the list annually.

Under the D-SIB framework, each of the authorised institutions designated as a D-SIB will be required to include a higher loss absorbency (HLA) requirement into the calculation of its regulatory capital buffers within a period of 12 months after the formal notification of its designation. In line with the phase-in arrangements in the frameworks issued by the Basel Committee on Banking Supervision (BCBS) for assessing D-SIBs and global systemically important banks (G-SIBs), the full amount of the HLA requirement will be phased in from 2016 to 2019 in parallel with the capital conservation buffer and countercyclical capital buffer.

Amendments to commence crowdfunding rules approved by Korean Cabinet

The Financial Services Commission (FSC) has announced that the crowdfunding rules will take effect on 25 January 2016 as the relevant amendments to the Enforcement Decree of the Financial Investment Services and Capital Markets Act have been approved by the Cabinet. The amendments stipulate details regarding the scope of issuers and registration requirements for crowdfunding intermediaries.

The key provisions under the crowdfunding rules include the following:

- scope of issuers – smaller and start-up companies with business operations for less than seven years are to be allowed to issue securities through crowdfunding. The condition regarding the business operations tenure does not apply to venture companies, and small and medium enterprises (SMEs) engaging in projects such as technology development and cultural business;
- registration requirements of crowdfunding intermediaries – to be registered as an intermediary for a crowdfuning offering, a company must have a minimum capital of KRW 500 million and meet requirements similar to those of investment advisory services and discretionary investment services;

- limits on capital raising by issuers – a company is allowed to raise up to KRW 700 million per year through crowdfunding;
- limits on investments by investors – investors are subject to differentiated caps on the amount of investments depending on their professional knowledge of investment and risk-taking capacity; and
- sale of securities by investors – in principle, investors are prohibited from selling securities within a year of issuance. However, issuers, large shareholders and professional investors are exceptionally allowed to sell their holdings within a year.

MAS publishes guidelines and notice to all holders of a capital markets services licence for real estate investment trust management

The Monetary Authority of Singapore (MAS) has published the Notice and Guidelines to all holders of a capital markets services (CMS) licence for Real Estate Investment Trust (REIT) management.

The Notice sets out requirements relating to the remuneration of directors and executive officers, the composition and duties of the audit committee and the conduct of board minutes for holders of a CMS licence for REIT management.

The Guidelines set out guidance for holders of a CMS licence for REIT management, including guidance on:

- minimum licensing criteria;
- corporate governance arrangements;
- disclosure requirements on remuneration of directors and executive officers; and
- compliance arrangements.

Australian government consults on measures relating to resilience and collateral protection and client money reforms

The Australian Government has released a consultation package on measures relating to resilience and collateral protection, and client money reforms. The proposed amendments aim to:

- enable Australian entities to enforce rights in respect of margin provided by way of security in connection with certain derivatives in the manner required by international standards;
- clarify domestic legislation to support globally coordinated policy efforts and provide certainty on the operation of Australian law in relation to the exercise of termination rights (also known as close-out rights) under derivatives arrangements; and
- enhance financial system stability by protecting the operation of approved financial market infrastructure.

Furthermore, the proposals are designed to enable superannuation trustees and life companies to grant security in the manner required to access certain international capital markets and liquidity.

Australian Government releases draft legislation relating to regulation of crowd-sourced equity funding

The Australian Government has released draft legislation relating to the regulation of crowd-sourced equity funding (CSF). The legislation is intended to make it easier and less expensive for small businesses, including start-ups, to raise equity from the general public while ensuring adequate investor protection. Under the proposed legislation, a person that offers CSF investments will be providing a 'crowd-funding service' and will be required to hold an Australian financial services licence. Such persons may also be required to hold an Australian markets licence. Additionally, requirements in respect of the CSF offer document, investor risk acknowledgement and risk warning will apply. Further, intermediaries will be subject to 'gatekeeper obligations' (which requires the intermediary to undertake a 'reasonable standard' check).

SEC issues annual staff reports on credit rating agencies

The US Securities and Exchange Commission (SEC) has released two annual staff reports on credit rating agencies registered as nationally recognized statistical rating organizations (NRSROs).

The first annual report is mandated by the 2010 Dodd-Frank Act and requires SEC examiners to perform risk assessments of specific areas. This report concludes that NRSROs have enhanced understandings of their obligations as regulated entities and that, at many firms, operational improvements made in prior years are being further integrated and enhanced.

The second annual report is mandated by the 2006 Credit Rating Agency Reform Act. This report examines the state of competition, transparency, and conflicts of interest at NRSROs. The report concludes that certain smaller NRSROs have continued to increase their market share, specifically for credit ratings of asset-backed securities. The report also discusses new requirements for NRSROs that took effect in June to address internal controls,

conflicts of interest, disclosure of credit rating performance statistics, procedures to protect the integrity and transparency of rating methodologies, disclosures to promote the transparency of credit ratings, and standards for training, experience, and competence of credit analysts.

CFTC proposes an alternative to its fingerprinting requirement for non-US persons

The Commodity Futures Trading Commission (CFTC) has proposed an additional exemption from its fingerprinting requirement for non-US persons applying for CFTC registration. This exemption would only be available for individuals who have not resided in the United States since reaching 18 years of age. Any such person's registered firm would instead need to certify that it has completed a criminal history background check that meets specified standards and to comply with related recordkeeping requirements.

If adopted, this proposal would supersede CFTC Staff No-Action Letters 12-49 and 13-29 (the DSIO Letters) without prejudice to those who have already relied on either of these letters. The proposal generally adopts the approach taken in DSIO Letters, except that the proposed objective standards specified for background checks would replace the DSIO Letters' more subjective requirement that 'a reasonable criminal history background check using a reputable commercial service' be performed.

The CFTC is seeking public comments on these proposed amendments. The comment period will end 30 days after publication in the Federal Register.

FINRA sets out 2016 focus on supervision, liquidity and securities firms' culture

The US Financial Industry Regulatory Authority (FINRA) has published its 2016 Regulatory and Examination Priorities Letter focusing on three broad issues – supervision, risk management and controls, and liquidity. The Letter also highlights firm culture, conflicts of interest and ethics, and the role each of these plays in the way a firm conducts its business.

Supervision, risk management and controls will involve reviews of anti-money laundering, cybersecurity, the management of conflicts of interest and technology management, as well as outsourcing and data quality. Liquidity will involve investigation of firms' contingency funding plans with respect to their business model and in connection with testing for marketwide and idiosyncratic stresses. It will also analyze high-frequency-trading firms' liquidity planning and controls.

Other areas of importance in 2016 will include:

- firms' observation of excessive concentrations and recommendations, particularly regarding complex, speculative or illiquid products;
- seniors and vulnerable investors; and
- private placements and Regulation A+ offerings.

RECENT CLIFFORD CHANCE BRIEFINGS

The SFTR – new EU rules for securities financing transactions and collateral

The EU Securities Financing Transactions Regulation – or SFTR – has now been published in the Official Journal and will come into force on 12 January 2016, although many requirements are subject to transitional provisions. The SFTR is integral to the European Commission's strategy to reduce perceived 'shadow banking' risks in the securities financing markets and forms part of the EU's response to the Financial Stability Board's August 2013 policy proposals on Securities Lending and Repos.

This briefing paper outlines the key requirements of the SFTR and discusses some of the issues for the market as it prepares for implementation.

http://www.cliffordchance.com/briefings/2016/01/the_sftr_new_eu_rulesforsecuritiesfinancin.html

Drafts of new Polish regulations on taxation of financial institutions and large retailers

The Act on Tax on Certain Financial Institutions has already been adopted by the lower house of the Parliament, while the draft Act on Tax on Large Retail Stores in the Republic of Poland is still subject to governmental and parliamentary discussion and may therefore be subject to changes affecting both the details or even some of the more fundamental principles of the new regulation. The government estimates that these taxes may contribute almost PLN 7 billion in tax revenue (PLN 4-5 billion from the tax on certain financial institutions and PLN 2 billion from the tax on large retail stores) to the State budget. The new law is expected to come into force at the beginning of 2016 (i.e. in the case of Act on Tax on Certain Financial Institutions – from 1 February 2016 and in the case of Act on Tax on Large Retail Stores – from 1 March 2016).

This briefing paper provides an overview of recent developments in the area of tax law which the new Polish government plans to implement.

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

Bank M&A in Egypt – Key regulatory and process considerations

Egypt has seen a flurry of M&A transactions in recent years. This briefing paper sets out a high-level overview of certain regulatory and process considerations in the context of a typical bank M&A deal in Egypt.

http://www.cliffordchance.com/briefings/2016/01/bank_m_a_in_egyptkeyregulatoryandproces.html

Clifford Chance Comment: OFAC Issues New Cyber-Related Sanctions Regulations

To ring in the new year, the US Treasury Department's Office of Foreign Assets Control (OFAC) issued the Cyber-Related Sanctions Regulations, 31 CFR Part 578, on 31 December 2015 (the Cyber Sanctions Regulations). In its release of these implementing regulations, OFAC noted that they have been 'published in abbreviated form for the purpose of providing immediate guidance to the public.' OFAC explained that it 'intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, including regarding 'cyber-enabled' activities, and additional general licenses and statements of licensing policy.' Companies are well advised to consider appropriate steps to mitigate their risks arising under these new regulations.

This briefing paper discusses the new regulations.

http://www.cliffordchance.com/briefings/2016/01/ofac_issues_new_cyber-relatedsanction.html

Clifford Chance Comment: The SEC'S Evolving Integration Doctrine – New guidance on combining offering methods

In 2015, in a trilogy of releases on early-stage capital-raising, the US Securities and Exchange Commission (SEC) took bold steps to clarify its integration guidance. The result changes the textbook on how various securities-based offering methods can be combined. A long-required five-factor test that often blunted the concurrent use of different offering methods has now been replaced in many contexts with a unitary framework. This focuses on whether advertising and solicitation in one offering is improperly conditioning the market for another. In addition, updated integration safe harbors permit (or propose to permit) the serial use of different offering methods without risk that two such offerings might be deemed to be a single offering (integrated). This new guidance gives companies more flexibility than they had before to conduct concurrent and serial offerings using different methods within the US menu of early-stage capital-raising options.

This briefing paper discusses the new SEC Solicitation Guidance.

http://www.cliffordchance.com/briefings/2015/12/the_sec_s_evolvingintegrationdoctrine-ne.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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Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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