

International Regulatory Update

12 – 16 September 2016

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EU Commission proposes acceleration of work on Capital Markets Union

The EU Commission has published a [communication](#) on the rapid finalisation of the first wave of initiatives on the Capital Markets Union (CMU), which was outlined in the CMU Action Plan in September 2015.

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In particular, the communication calls for agreement by the end of 2016 on proposals for:

- simple, transparent and standardised (STS) securitisations;
- new prospectus rules by way of a proposed Regulation; and
- strengthening venture capital markets and social investments.

The communication sets out proposals to support the development of national and regional capital markets in Member States within the first phase of measures.

The communication also calls for the rapid acceleration of work on the next phase of CMU, which includes:

- the Commission's intention to present a legislative proposal on business restructuring and second chance in autumn 2016, which is intended to foster convergence of insolvency proceedings;
- a benchmarking exercise on loan enforcement (including insolvency) regimes to evaluate delays, costs and value-recovery; and
- addressing taxation issues, including withholding tax refund procedures and the preferential tax treatment of debt over equity.

The communication also sets out proposals to develop further CMU priorities to support the development of personal pensions markets, fintech and covered bond markets, as well as reviews on regulatory convergence and the governance of the European Supervisory Authorities (ESAs).

The Commission will begin work on its 2017 mid-term review of CMU in the near future. The communication coincides with the EU Commission President's State of the Union (SOTEU) address to the EU Parliament.

PRIIPs: EU Parliament rejects RTS

The EU Parliament plenary session has [voted](#) to reject the regulatory technical standards (RTS) on key information documents (KIDs) under the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation and to return it to the EU Commission for revision.

The Commission will now have to propose new RTS for implementing the PRIIPs legislation, which is due to apply from 31 December 2016.

Basel Committee and EBA publish Basel III monitoring exercise results as at 31 December 2015

The Basel Committee on Banking Supervision (BCBS) has published the [results](#) of the tenth semiannual Basel III monitoring exercise, which summarises aggregate results as of 31 December 2015 and is intended to provide relevant stakeholders with a useful benchmark for analysis. The report comprises data from 228 banks, including 100 large internationally active Group 1 banks and 128 Group 2 banks, which are representative of all other banks.

The estimates in the report assume a fully-phased in implementation of the final Basel III requirements based on the 31 December 2015 data and sets out:

- analysis of risk-based capital requirements, including findings that Group 1 banks meet the Basel III risk-based minimum Common Equity Tier 1 (CET1) requirements as well as a target level of 7.0% (plus a surcharge on global systemically important banks (G-SIBs) as applicable). The report also identified that Group 1 banks continued to reduce their capital shortfalls relative to the higher Tier 1 and Total capital target levels. For Group 2 banks, no capital shortfall was identified for the CET1 minimum of 4.5%; and
- analysis of liquidity standards, including findings of:
 - weighted average liquidity coverage ratio (LCR) for the Group 1 banks of 125.2% and for Group 2 banks of 148.1%; and
 - weighted average net stable funding ratio (NSFR) for Group 1 banks of 113.7% and for Group 2 banks of 115.9%. Report

The European Banking Authority (EBA) has also published a [report](#) setting out the latest results of its monitoring exercise relating to the Capital Requirements Directive (CRD 4) and Regulation (CRR), which is run in parallel with the exercise carried out at a global level by the BCBS.

Based on 227 EU banks, overall the EBA has found:

- a total CET1 ratio of 12.7% assuming full implementation of CRD 4/CRR with only a small number showing a potential capital shortfall;
- an average LCR at 133.7%; and
- based on Basel III standards, in the absence of a finalised EU definition, an average NSFR of 107%.

Governors and Heads of Supervision endorse direction of Basel Committee reforms

The Group of Central Bank Governors and Heads of Supervision (GHOS) has [announced](#) that progress is being made in finalising post-crisis regulatory reforms to reduce excessive variability in risk-weighted assets (RWAs) and endorsed the broad direction of the Basel Committee's reforms. The GHOS discussed the Committee's ongoing cumulative impact assessment and concluded that, as a result of this assessment, the Committee should focus on not significantly increasing overall capital requirements.

AMLD 4: HM Treasury consults on transposition

HM Treasury has launched a [consultation](#) on the transposition of the Fourth Money Laundering Directive (AMLD 4) and on the parts of the Fund Transfer Regulation (FTR) which need to be transposed into national law. The consultation paper outlines the changes to and new requirements of AMLD 4 and seeks views on:

- the government's proposals for the aspects of AMLD 4 and FTR on which EU Member States are required to make decisions; and
- the issues identified in transposing these aspects into UK law.

The consultation also seeks practical examples of the ways in which the proposed changes will impact the anti-money laundering (AML) and counter-financing of terrorism (CFT) regime in the UK. Responses will be used to inform the government's final decisions on transposition, which will be implemented through legislation to come into force by June 2017.

Comments on the consultation are due by 10 November 2016.

CNMV adopts ESMA guidelines on cross-selling practices

The Spanish National Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has [notified](#) the European Securities and Markets Authority (ESMA) of its intention to comply with ESMA's guidelines on cross-selling practices.

The guidelines set out several principles for investment services firms to follow when providing their clients with investment services together with other services or products as part of a services package, or as a condition for the same package or agreement.

German Federal Government publishes draft law to reorganise duties of German Federal Agency for Financial Market Stabilisation

The German Federal Government has [proposed](#) a law to reorganise the setup and the duties of the German Federal Agency for Financial Market Stabilisation (FMSA).

FMSA's duties as the competent national resolution authority (NRA) will be taken over by the German Federal Financial Supervisory Authority (BaFin) as a separate department.

The administration and winding up of the German Single Resolution Fund will be taken over by the privately organised Financial Agency of Germany (Bundesrepublik Deutschland – Finanzagentur GmbH).

MiFID2: AMF consults on implementation of new rules on funding of research by investment firms

The French Autorité des marchés financiers (AMF) has launched a [consultation](#) ahead of the implementation of the new provisions on payment for research services used by investment firms providing investment advice on an independent basis or portfolio management, in the context of the forthcoming transposition into national law, to be completed by 3 July 2017, of the revised Markets in Financial Instruments Directive (MiFID2), which apply from 3 January 2018.

The consultation paper aims to provide practical answers to the main questions raised by this reform, in particular at this stage regarding the equity market. The application of the funding rules imposed by MiFID2 to research connected with fixed income trades will be subject to additional analysis.

CONSOB and Borsa Italiana approve amendments to Rules of the Markets and related instructions

The Commissione Nazionale per le Società e la Borsa (CONSOB) has [approved](#) the amendments to the Rules of the Markets managed and organised by Borsa Italiana S.p.A. through its Resolution no. 19704 of 3 August 2016. The amendments will enter into force on 26 September 2016 and are divided as follow:

- MTA market trading admission requirements for issuers operating mainly in the property rental sector and for SIIQs – this amendment offers an alternative divestment opportunity to the selling off of investment funds' real estate assets which may lead to a reduction

of costs in relation to the actual limited liquidity of the property market;

- MTA market trading admission requirements for investment companies – following the implementation of the Alternative Investment Fund Managers Directive 2011/61/EU (AIFMD), Borsa Italiana has rationalised the regulatory framework of the Market for Investment Vehicles (MIV). In order to proceed with the rationalisation of the MIV, it has set out a specific procedure in case of application for admission to trading on the MTA market of investment companies traded on the MIV which were subject to the previous regulatory systems;
- STAR-segment: compliance with the MAR in relation to black-out periods – the Market Abuse Regulation (EU) No 596/2014 (MAR) came into force on 3 July 2016. Requirements to be admitted and remain on the STAR Segment of the MTA Market include the obligation to prevent members of the governing and control bodies of STAR issuers, persons performing managerial functions, and executive managers, pursuant to CONSOB Regulation no. 11971/99, from performing, directly or through third-parties, any kind of transactions for the purchase, sale, subscription or exchange of shares or financial instruments linked to the latter for 15 days prior to the relevant board of directors' meeting for approval of the financial statements; and
- Fine tuning: introduction of the obligation to disclose the extraordinary nature of dividends – to complete the existing framework and to regulate the acquisition of relevant information to determine the price of shares, the Rules (together with the related instructions) also include specifications on the issuer's obligation to disclose any extraordinary dividend distribution proposal adopted by the board of directors'.

Bank of Italy consults on amendment to transitional regime regarding capital conservation buffer

The Bank of Italy has published a [consultation document](#) containing proposals to amend the transitional regime regarding the capital conservation buffer (CCB) that banks and Italian investment firms (SIM) are required to meet pursuant to the Bank of Italy Circular no. 285 of 17 December 2013 which sets out the Supervisory Provisions for Banks and the Communication dated 31 March 2014 on the application of EU prudential regulations to Italian investment firms and Italian groups of investment firms.

With this consultation document, the Bank of Italy announces its intention to bring the transitional regime in connection with the CCB under the ordinary regime provided for under CRD 4.

In particular, the CCB rate which applies to banking groups and banks not belonging to groups would be applied, pursuant to Article 160 of CRD 4, as follows:

- 1.250% from 1 January 2017 to 31 December 2017;
- 1.875% from 1 January 2018 to 31 December 2018;
- 2.5% as from 1 January 2019.

The proposed amendment meets the need to insure equal treatment of Italian banks compared to other euro area banking institutions.

Comments are due within 15 days of the publication of the consultation document.

CBRC issues guidance on creditors' committee of banking financial institutions

The China Banking Regulatory Commission (CBRC) has [issued](#) the 'Notice on Better Handling of Relevant Matters regarding the Creditors' Committee of Banking Financial Institutions', which is intended to further normalise relevant matters regarding the creditors' committee and to promote the restructuring of financial debts and support the development of the real economy.

Among other things, the following provisions are worth noting:

- the committee should be a consultative, self-regulatory and ad hoc organisation voluntarily initiated and established by more than three banking financial institution creditors of a distressed company with a relatively heavy debt burden. All CBRC-regulated creditors of the distressed company should join the committee, and other non-CBRC-regulated creditors can also choose to join;
- the distressed company selected for restructuring should satisfy relevant requirements, which include that (i) its development is consistent with the macro-economy, industrial and financial support policies of China; (ii) its products/services are marketable and prospective for further restructuring; and (iii) both the distressed company and its creditors are willing to proceed with the restructuring;
- the committee should collectively discuss and take relevant measures for the restructuring on a company-by-company basis, and perform its functions in a

market-driven, legal and fair manner. Any resolution regarding major issues of the committee (among others, passing of the restructuring plan) should obtain the consent of both (i) members representing more than 2/3 of the distressed company's outstanding financial debts (by amount), and (ii) 1/2 of the committee members (by headcount);

- to ensure the smooth operation of the distressed company during the restructuring, the committee can provide financing to the distressed company by way of syndicated loans or other types of financing instruments; and
- asset management companies (of both the central and local level) are also encouraged to proactively participate in the restructuring.

The Notice became effective as of its issuance.

HKMA launches development programme for independent non-executive directors

The Hong Kong Monetary Authority (HKMA) has [launched](#) a new development programme for independent non-executive directors (INEDs) of locally incorporated authorised institutions. Noting the increasingly important roles played by INEDs in cultivating the appropriate governance and culture of banks, the HKMA considers it appropriate to organise the development programme, which is designed to better equip and empower INEDs to perform their functions.

The development programme comprises three main components:

- experience and insight sharing conference – this is an annual event that would provide a platform for INEDs and the HKMA to share their past experience and insights, as well as to prepare for the challenges in the next year and beyond;
- thematic seminars – topical issues that are relevant to the work of INEDs will be covered in these seminars, which will be held from time to time; and
- on-boarding sessions – these sessions will be held to help newly appointed INEDs familiarise themselves with the evolving landscape of the banking industry and of the regulatory environment.

The HKMA expects INEDs' active participation in activities under the programme which, it states, will assist them to continue to fulfil the fit and proper requirement as directors of authorised institutions. It has also called on the management of authorised institutions to offer the necessary support to facilitate their INEDs' participation in

the programme. The first event under the programme is a thematic seminar on 'Account Opening, KYC Information Collection and Financial Inclusion', which will be held on 26 September 2016.

The HKMA has developed an electronic notification system to strengthen its communication with INEDs. Through this system, the HKMA will notify INEDs and the management of authorised institutions of the activities under the development programme and provide information which it considers useful to INEDs. The HKMA has advised the management of authorised institutions to ensure that all INEDs will be able to receive, in a timely manner, the information disseminated through the system.

SGX consults on refinements to minimum trading price framework

The Singapore Exchange (SGX) has reviewed the current minimum trading price (MTP) criteria to assess if the objective of reducing the risk of excessive speculation and potential manipulation can be achieved in a more calibrated and effective way. In this context, the SGX has launched a [public consultation](#) to refine the existing MTP framework.

The SGX's key proposals in the consultation paper are as follows:

- to revise the MTP Entry Criteria such that an issuer would be placed on the MTP watch-list only if it has recorded a volume-weighted average price (VWAP) of less than SGD 0.20 and an average daily market capitalisation of less than SGD 40 million over the last six months;
- to let an issuer exit the watch-list under the Revised MTP Entry Criteria if its VWAP is at least SGD 0.20 and its average daily market capitalisation is SGD 40 million or more over the last 6 months; and
- to reduce the frequency of reviews of the watch-list from a quarterly to a half-yearly basis.

Comments on the consultation are due by 23 September 2016.

Singapore and Switzerland sign cooperation agreement to foster cooperation on FinTech

The Monetary Authority of Singapore (MAS) and the Swiss Financial Market Supervisory Authority (FINMA) have [signed](#) a cooperation agreement to foster greater cooperation on FinTech. The initiative was launched at the second Financial Dialogue between the MAS and the State Secretariat for International Finance. The annual Dialogue aims to deepen bilateral cooperation and exchange views

on domestic and international financial market developments and policies. The second Dialogue touched on current trends in the global economic and financial markets, international financial regulatory reforms, and financial industry developments.

The co-operation agreement between the MAS and the FINMA provides a framework for FinTech companies in Singapore and Switzerland to expedite initial discussions on introducing new FinTech solutions in each other's market and understand regulatory requirements, to help reduce regulatory uncertainty and the time-to-market for new FinTech solutions. The agreement is intended to help create opportunities for FinTech businesses from Singapore and Switzerland to expand into each other's markets. The FINMA and the MAS have also committed to share information about emerging FinTech trends and regulatory issues pertaining to innovation.

New York Department of Financial Services proposes cybersecurity regulations

The New York Department of Financial Services (NYDFS) has issued a [proposed regulation](#) intended to protect financial institutions from potential cyber-attacks. The regulation would require banks, insurance companies, and other financial services institutions regulated by the NYDFS to establish and maintain a cybersecurity program designed to protect consumers and ensure the safety and soundness of the New York State's financial services industry. Among other things, the proposed regulation would require regulated financial institutions to:

- establish a cybersecurity program;
- adopt a written cybersecurity policy;
- designate a Chief Information Security Officer responsible for implementing, overseeing and enforcing its new program and policy;
- put in place policies and procedures designed to ensure the security of information systems and nonpublic information accessible to, or held by, third parties, along with a variety of other requirements to protect the confidentiality, integrity and availability of information systems.

The proposed regulation is subject to a 45-day notice and public comment period before its final issuance.

CLIFFORD CHANCE BRIEFINGS

Brexit – The constitutional endgame and the need to act now

Service of notice under article 50 of the Treaty on European Union will fire the starting gun on the formal process leading to the UK's departure from the EU. The High Court will decide in October the much-debated question of whether the Government can choose on its own to give notice under article 50 or whether it needs legislative approval first. But the legal complexities are not confined to this initial stage. The end of the lengthy withdrawal process will also bring with it considerable uncertainties, as well as practical complications. These issues in the endgame influence, perhaps even dictate, what the UK needs to be doing now to prepare the UK for life outside the EU. The sooner legislation is brought forward to lay the groundwork for withdrawal and to remove the uncertainties, the easier it will be.

This briefing paper discusses the constitutional uncertainties within the UK, as well as the scope of the work necessary to prepare for the UK's departure from the EU.

https://www.cliffordchance.com/briefings/2016/09/brexit_the_constitutionalendgameandthenee.html

Contentious Commentary Hong Kong – September 2016

Clifford Chance has prepared the latest edition of Contentious Commentary: Hong Kong, a newsletter that provides a summary of recent developments in litigation and dispute resolution.

This edition covers:

- Plaintiff prevails in distributor dispute
- Court continues injunction as fictitious transactions alleged
- Defendants spared jail in dispute with liquidator
- Courts reach different conclusions in misselling cases
- Applicants challenge SFC's right to give documents to foreign regulators
- Hong Kong follows traditional 'penalties' test
- Court of Final Appeal rules on directors' duties
- Bribery and money laundering under the spotlight
- Should expert reveal details of disciplinary proceedings against him?
- Conflicts of interest in expert evidence

- Court of Appeal refuses to examine correctness of arbitral award

https://www.cliffordchance.com/briefings/2016/09/contentious_commentaryhongkongseptember2016.html

Dubai's new 'super regulator'

Dubai recently introduced a new super regulator, the Dubai Economic Security Centre (DESC), which is intended to maintain the Emirate's position as a global financial and economic hub, to protect investors and deal with issues such as fraud, bribery, money laundering and terrorist financing. To achieve this objective, the DESC has at its disposal a broad range of powers which it may exercise in coordination with the existing authorities. Businesses in Dubai, including those located within the Dubai International Financial Centre (DIFC), should be aware of the DESC's mandate and the powers it wields.

This briefing paper details the DESC's key features, including the protection it provides to whistleblowers.

https://www.cliffordchance.com/briefings/2016/09/dubai_s_new_superregulator.html

SEC Amendments to Form ADV and the 'Books and Records' Rule under the Advisers Act

On 25 August 2016, the US Securities and Exchange Commission (SEC) adopted amendments to Form ADV and Rule 204-2 promulgated under the US Investment Advisers Act of 1940, as amended. Originally proposed by the SEC on 20 May 2015, the amendments make notable changes to the information required to be disclosed on Form ADV as well as expand advisers' recordkeeping requirements. In its adopting release, the SEC refines the concept of 'umbrella registration' by a family of advisers, increases disclosure requirements in respect of advisers' separately managed account (SMA) businesses, requires more information on the identity of certain third-party service providers, and instructs registered investment advisers (RIAs) to keep more records of communications and other written material that contain performance information. Compliance with the amendments will be required on 1 October 2017.

This briefing paper discusses the amendments.

https://www.cliffordchance.com/briefings/2016/09/sec_amendments_toformadvandthebooksan.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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