

International Regulatory Update

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CSDR: Level 2 measures published in Official Journal

The following Level 2 measures under the Central Securities Depositories Regulation (CSDR) have been published in the Official Journal:

- [Commission Delegated Regulation \(EU\) 2017/389](#) of 11 November 2016 supplementing the CSDR as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States;
- [Commission Delegated Regulation \(EU\) 2017/390](#) of 11 November 2016 supplementing the CSDR with regard to regulatory technical standards on certain prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services;
- [Commission Delegated Regulation \(EU\) 2017/391](#) of 11 November 2016 supplementing the CSDR with regard to regulatory technical standards further specifying the content of the reporting on internalised settlements;
- [Commission Delegated Regulation \(EU\) 2017/392](#) of 11 November 2016 supplementing the CSDR with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories;
- [Commission Implementing Regulation \(EU\) 2017/393](#) of 11 November 2016 laying down implementing technical standards with regard to the templates and procedures for the reporting and transmission of information on internalised settlements in accordance with the CSDR; and
- [Commission Implementing Regulation \(EU\) 2017/394](#) of 11 November 2016 laying down implementing technical standards with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with the CSDR.

PRIIPs: EU Commission adopts amended RTS on KIDs

The EU Commission has adopted [amended regulatory technical standards](#) (RTS) on key information documents

(KIDs) under the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation.

This follows the EU Parliament's decision in September 2016 to reject the original RTS adopted by the Commission in June 2016 and to return them to the Commission for revision.

The Commission's amendments concern multi-option PRIIPs, performance scenarios, comprehension alert and presentation of administrative costs in relation to biometric components of insurance-based investment products.

CRR: EU Commission reports to EU Parliament and Council under Article 459

The EU Commission has submitted a [report](#) to the EU Parliament and EU Council on market developments potentially requiring the use of Article 459 of the Capital Requirements Regulation (CRR) in the past year.

The Commission, assisted by the European Systemic Risk Board (ESRB), is mandated to submit the report under Article 459 CRR and the Commission may impose, for a period of one year, stricter requirements concerning the level of banks' own funds, large exposures, or public disclosure, under specific conditions.

The Commission has identified no circumstances that would warrant the use of Article 459 and neither the ESRB nor the European Banking Authority (EBA) have recommended to the Commission to take action at this stage.

The Commission will continue to monitor relevant market developments.

CRR: EBA proposes improvements to decision-making framework for supervisory reporting

The European Banking Authority (EBA) has issued an [opinion](#) to the EU Parliament, EU Council and EU Commission on improving the decision-making framework for supervisory reporting under the CRR. The opinion follows an EBA peer review on implementing technical standards (ITS) establishing supervisory reporting requirements in the EU, which concluded that a legislative initiative to improve the decision-making framework is necessary.

In particular, the EBA proposes that supervisory reporting requirements are adopted directly through its own implementing technical decisions rather than via ITS. The EBA takes the view that the current endorsement process for ITS may include systemic and significant delays in the

adoption process, which disrupts the ability to update reporting requirements on a predictable schedule and poses challenges for financial institutions and supervisors.

The EBA also proposes that full EU institutional and stakeholder accountability is maintained through mechanisms that include consultation and cost-benefit analysis, a streamlined scrutiny right for the Commission, a regular report on the reporting compliance burden, and the possibility of extending the scope of the Board of Appeal review to cover such decisions.

EBA publishes final guidelines on LCR disclosure

The EBA has published its [final guidelines](#) on liquidity coverage ratio (LCR) disclosure.

The aim of the guidelines is to improve transparency and comparability of LCR and other liquidity risk management related information. The guidelines include:

- a qualitative and quantitative harmonised table for the disclosure of key information, primarily on liquidity risk management, as laid down by the Capital Requirements Regulation (CRR); and
- quantitative and qualitative harmonised templates, with their instructions for use, for the disclosure of the LCR composition and levels.

The guidelines are consistent with the EBA Pillar 3 guidelines in terms of scope and date of application, and will apply to credit institutions covered by the LCR Delegated Regulation and identified as Globally and Other Systemically Important Institutions (G-SIIs and O-SIIs). The EBA recommends that other credit institutions should apply these guidelines at the discretion of the relevant competent authority or on a voluntary basis. The guidelines will apply from 31 December 2017.

EBA publishes final draft RTS on unencumbered and encumbered asset disclosures

The EBA has published [final draft RTS](#) on the disclosure of encumbered and unencumbered assets under the CRR.

The EBA has prepared the draft RTS under the mandate in Article 443 of the CRR, which refers to unencumbered assets, while taking into account the European Systemic Risk Board (ESRB) Recommendation on the funding of credit institutions (ESRB/2012/2), which also refers to encumbered assets. As such, the EBA has drawn up the RTS to cover both unencumbered and encumbered assets.

The draft RTS set out the data which is required to be disclosed by institutions and the relevant templates to be

completed and published, alongside line-by-line instructions for completing them. The RTS are intended to substantially enhance the level of disclosure compared to the EBA guidelines currently in place.

The final draft RTS have been submitted to the EU Commission for adoption.

Fintech: FCA and Financial Services Agency of Japan exchange letters on cooperation framework

The Financial Conduct Authority (FCA) and Financial Services Agency of Japan (JFSA) have exchanged letters on a cooperation framework to support innovative fintech companies.

The exchange of letters between [the FCA](#) and [the JFSA](#) provides a regulatory referral system for innovative businesses from Japan and the UK seeking to enter the other's market. The cooperation framework is intended to assist Japanese innovators interested in entering the market the FCA oversees and to provide knowledge to UK firms hoping to enter the Japanese market.

Another aim of the exchange of letters is to encourage the FCA and JFSA to share information about financial services innovation in their respective markets, reduce barriers to entry in a new jurisdiction and further encourage innovation in both countries.

FCA publishes findings from follow-up reviews on dealing commission and best execution

The FCA has published its findings from two follow-up reviews relating to [dealing commission expenditure](#) and the [delivery of best execution by investment managers](#).

In July 2014 the FCA published the findings from its thematic review of best execution and payments for order flow. In its follow-up review, the FCA found that firms were slow to improve client outcomes in best execution and that many firms had not conducted a robust gap analysis since 2014, meaning much of the poor practice outlined in the thematic review had not been addressed.

The FCA's second set of findings followed up on arrangements in relation to its guidance and expectations on how investment managers use dealing commission. The FCA identified poor practice at most of the firms it reviewed and found that several could not demonstrate meaningful improvements in terms of how they spend their customers' money through their dealing commission arrangements.

The FCA plans to continue its work on the use of dealing commission and best execution in 2017 and will consider appropriate action against any firms that are not fulfilling their obligations.

BaFin publishes revised MaComp

The German Federal Financial Supervisory Authority (BaFin) has published a [revised circular](#) 2/2010 (WA) on the Minimum Requirements for the Compliance Function and Additional Requirements Governing Rules of Conduct, Organisation and Transparency pursuant to sections 31 et seq. of the German Securities Trading Act (MaComp).

BaFin has revised BT 3.2 MaComp by including a new requirement for investment services undertakings (Wertpapierdienstleistungsunternehmen) when forwarding third party information. Every investment services undertaking needs to adequately flag third party information as information provided by third parties when forwarding such information to third parties.

In addition, BaFin has revised BT 5 MaComp with respect to definitions which have been moved from the German Securities Trading Act to Article 20 of the Market Abuse Regulation (EU) No 596/2014 (MAR).

Ministerial order approving amendments to AMF General Regulation concerning collective investment schemes published

A [Ministerial order](#) (Arrêté) dated 27 February 2017 approving amendments to the [General Regulation](#) of the Autorité des marchés financiers (AMF) has been published in the French Journal Officiel.

In particular, the amendments concern the following measures:

- the implementation of redemption gates in undertakings for collective investments in transferable securities (UCITS) and certain alternative investment funds (AIFs) – following the entry into effect of the Sapin II law and the AMF's December 2016 public consultation on the terms for implementing redemption gates, the new articles 411-20-1 and 422-21-1 of the AMF General Regulation determine the situations in which management companies may introduce and use gates and the conditions in which a fund's instruments of incorporation may provide for redemptions to be provisionally gated. The articles specify the situations constituting 'exceptional circumstances' in which gates may be activated; and
- the conditions for the delegation of portfolio management of UCITS and AIFs – articles 313-77 and 318-58 have been amended in order to give flexibility to the conditions of such delegation and enlarge its scope to 'entities authorised or registered for the purpose of asset management', as such entities are now listed therein regarding UCITS, and whether the delegation concerns the portfolio management or risk management of an AIF that is indifferently open to non-professional investors or professional investors.

These amendments entered into force on 8 March 2017, i.e. the day following publication of the Ministerial order.

Dutch bonus cap: DNB explains parent company requirement in context of Brexit

The Dutch Central Bank (DNB) has [clarified](#) that a Dutch holding company (forming part of a large international group of companies) can be the head of a group of EU based companies for the purposes of the Dutch remuneration rules. The Dutch holding company need not be the ultimate parent of the companies in the group. It can be an intermediate holding company and the group can have an ultimate parent outside the EU.

The DNB's clarification allows for staff of the Dutch holding company to receive variable remuneration of 100% (instead of 20%) if at least 75% of all staff within the EU group of companies has predominantly worked outside the Netherlands during at least three out of five consecutive years. It also allows for entities that do not fall under the Dutch holding company to remain out of scope of the Dutch remuneration rules entirely.

MiFID2: Ministry of Development and Finance presents draft Act on implementation

The Ministry of Development and Finance has presented a [draft Act](#) amending the Act on Trading in Financial Instruments and Certain Other Acts, the purpose of which is to implement the revised Markets in Financial Instruments Directive 2014/65/EU (MiFID2) in the Polish legal system and to ensure the application of the Markets in Financial Instruments Regulation (EU) 600/2014 (MiFIR).

The draft has been sent for inter-ministerial and public consultations.

Korea-Indonesia bilateral currency swap arrangement extended

The Bank of Korea (BOK) and Bank Indonesia have [agreed](#) to extend their bilateral local currency swap arrangement for another three years to March 2020.

The arrangement allows for the exchange of local currencies between the two central banks of up to KRW 10.7 trillion or IDR 115 trillion. In particular, the arrangement will also ensure the settlement of trade in local currency between the two countries even in times of financial stress to support regional financial stability.

The effective period of the facility will be three years, and could be extended by mutual consent of both sides.

SGX consults on proposed changes to minimum bid size, forced order range and trading hours for securities market

The Singapore Exchange (SGX) has published a public [consultation paper](#) on proposed adjustments to the equities market structure aimed at addressing market conditions, while balancing the diverse objectives and interests of different segments of participants in the market ecosystem. The key proposals include the following:

- increasing the minimum bid size for stocks and relevant securities trading in the SGD 1.00 to SGD 1.99 range;
- widening of the forced order range for stocks and relevant securities from the current +/- 20 bids to +/- 30 bids; and
- a new 60-minute mid-day trading break (from 1200h to 1300h) for the securities market, for participants to manage their orders and for SGX to publish an indicative equilibrium price.

Comments on the consultation paper are due by 29 March 2017.

SGX mandates minimum allocation of Mainboard IPOs to retail investors

The Singapore Exchange (SGX) has [announced](#) that all Mainboard initial public offering (IPO) companies will be required to allocate to retail investors at least 5% or SGD 50 million, whichever is lower, of their offer size. The introduction of the minimum IPO allocation is intended to facilitate greater retail participation in Singapore's equities market. The new rules on the minimum allocation are effective from 2 May 2017.

The SGX received formal feedback from 20 respondents via the public consultation which ended in March 2016. Informal engagements with stakeholders were also held to gather feedback. The SGX will continue to monitor the public subscription trends of IPOs to ensure that the minimum allocation amounts are appropriate for the Singapore market.

SFC issues reminder on implementation of expanded short position reporting

The Securities and Futures Commission (SFC) has issued a [reminder](#) to market participants that, with effect from 15 March 2017, reporting will be required for reportable short positions in all designated securities eligible for short selling specified by the Stock Exchange of Hong Kong Limited (SEHK). This follows the completion of a two-month pilot test of the short position reporting service.

The SFC has also updated the [frequently asked questions](#) (FAQs) on short position reporting to provide further clarification of short position reporting requirements relating to designated securities with multiple-currency counters.

RECENT CLIFFORD CHANCE BRIEFINGS

The impact of Trump and Brexit on global trade, global businesses, and their supply chains

Global trade is undergoing fundamental change. Brexit, President Trump's intention to put 'America first' and Asia's focus on trade liberalisation and globalisation will have a dramatic impact on trade for years to come.

This briefing paper discusses the potential repercussions for businesses and their supply chains.

https://www.cliffordchance.com/briefings/2017/03/the_impact_of_trumpandbrexitonglobaltrade.html

Companies need to get ready as more mandatory reporting requirements on non-financial issues take effect

The UK Companies Act 2006 has recently been amended to reinforce and expand the requirements on certain large UK companies to report on non-financial issues. The amendments require certain companies to provide information on new areas such as anti-bribery and anti-corruption; companies already subject to reporting requirements in relation to social, environmental and human rights matters now face more comprehensive requirements in these areas.

This briefing paper provides an overview of the legislation, explains how this will affect UK companies and briefly considers the broader trend towards mandatory reporting that this measure reflects.

https://www.cliffordchance.com/briefings/2017/03/companies_need_togetreadyasmoremandator.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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