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Briefing note

International Regulatory Update

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MiFID2/MiFIR: Level 2 measures published in Official Journal

Level 2 measures under MiFID2/MiFIR have been published in the Official Journal.

Three Delegated Acts have been published:

- Commission Delegated Regulation (EU) 2017/567 supplementing MiFIR with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions;
- Commission Delegated Regulation (EU) 2017/565 supplementing MiFID2 as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of MiFID2; and
- Commission Delegated Directive (EU) 2017/593 supplementing MiFID2 with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

All three Delegated Acts will enter into force on 20 April 2017.

The following regulatory technical standards (RTS) under MiFID2 have been published:

- RTS 6 on the organisational requirements of investment firms engaged in algorithmic trading (Commission Delegated Regulation (EU) 2017/589);
- RTS 7 on organisational requirements of trading venues (Commission Delegated Regulation (EU) 2017/584);
- RTS 8 on the requirements on market making agreements and schemes (Commission Delegated Regulation (EU) 2017/578);
- RTS 9 on the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions (Commission Delegated Regulation (EU) 2017/566);
- RTS 10 on requirements to ensure fair and non-discriminatory co-location services and fee structures (Commission Delegated Regulation (EU) 2017/573);
- RTS 11 on the tick size regime for shares, depositary receipts and exchange-traded funds (Commission Delegated Regulation (EU) 2017/588);
- RTS 12 on the determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading (Commission Delegated Regulation (EU) 2017/570);
- RTS 13 on the authorisation, organisational requirements and the publication of transactions for data reporting services providers (Commission Delegated Regulation (EU) 2017/571);
- RTS 17 on the admission of financial instruments to trading on regulated markets (Commission Delegated Regulation (EU) 2017/568);
- RTS 18 on the suspension and removal of financial instruments from trading (Commission Delegated Regulation (EU) 2017/569);
- RTS 20 on the criteria to establish when an activity is considered to be ancillary to the main business (Commission Delegated Regulation (EU) 2017/592);
- RTS 21 on the application of position limits to commodity derivatives (Commission Delegated Regulation (EU) 2017/591);
- RTS 25 on the level of accuracy of business clocks (Commission Delegated Regulation (EU) 2017/574);
- RTS 27 on the data to be published by execution venues on the quality of execution of transactions (Commission Delegated Regulation (EU) 2017/575);
- RTS 28 on the annual publication by investment firms of information on the identity of execution venues and on the quality of execution (Commission Delegated Regulation (EU) 2017/576);
- RTS on exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations (Commission Delegated Regulation (EU) 2017/586).

The following RTS under MiFIR have also been published:

- RTS 1 on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (Commission Delegated Regulation (EU) 2017/587);
- RTS 2 on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (Commission Delegated Regulation (EU) 2017/583);
- RTS 3 on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations (Commission Delegated Regulation (EU) 2017/577);
- RTS 5 on the direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations (Commission Delegated Regulation (EU) 2017/579);
- RTS 14 on the specification of the offering of pre- and post-trade data and the level of disaggregation of data (Commission Delegated Regulation (EU) 2017/572);
- RTS 15 on clearing access in respect of trading venues and central counterparties (Commission Delegated Regulation (EU) 2017/581);
- RTS 22 on the reporting of transactions to competent authorities (Commission Delegated Regulation (EU) 2017/590);
- RTS 23 on the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities (Commission Delegated Regulation (EU) 2017/585);
- RTS 24 for the maintenance of relevant data relating to orders in financial instruments (Commission Delegated Regulation (EU) 2017/580); and
- RTS 26 specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (Commission Delegated Regulation (EU) 2017/582).

The RTS will enter into force on 20 April 2017.

EMIR: Delegated Regulation extending derivatives exemption for pension scheme arrangements published in Official Journal

Commission Delegated Regulation (EU) 2017/610 extending the transitional relief for pension scheme arrangements from central clearing for their OTC derivative transactions has been published in the Official Journal. The existing exemption has been further extended until 16 August 2018.

The Regulation entered into force on 1 April 2017.

SFTR: ESMA publishes final report on technical standards and certain amendments to EMIR

The European Securities and Markets Authority (ESMA) has published its final report on technical standards under the Securities Financing Transactions Regulation (SFTR) and amendments to the European Market Infrastructure Regulation (EMIR). ESMA's final standards set out provisions on:

- SFT reporting;
- data collection and availability;
- defined access levels for different public authorities;
- registration and extension of registration of trade repositories (TRs); and
- exchange of data on sanctions between authorities.

ESMA's final report also includes amendments to existing standards implementing EMIR, aimed to ensure a level playing-field for market participants with regard to registration and access rules.

ESMA has submitted its final draft technical standards to the EU Commission. The Commission has three months to decide whether or not to endorse them.

ESMA expects the SFTR implementing measures to enter into force by the end of 2017. Firms would have to start reporting their SFTs to TRs twelve months after the publication of the implementing measures in the Official Journal, while the reporting obligation itself would be phased-in over nine months.

Benchmarks Regulation: ESMA publishes final draft technical standards

ESMA has published its final report containing the draft regulatory and implementing technical standards (RTS/ITS) under the Benchmarks Regulation. These contain the detailed rules to implement the new European regulatory framework intended to ensure the accuracy and integrity of benchmarks across the European Union.

The draft RTS/ITS set out the behaviours and standards expected of benchmark administrators and contributors, and include provisions to ensure that:

- the full process of provision of a benchmark is checked by a new oversight function that administrators have to establish;
- the potential manipulation of benchmarks is minimised, through new rules regarding the methodology of calculation and the contribution of input data;
- conflicts of interest of administrators and contributors are properly managed; and
- there is a level playing field across different Member States for the authorisation and registration of benchmark administrators.

ESMA has submitted the final draft technical standards to the EU Commission, which now has three months in which to approve or reject them. The Benchmarks Regulation will apply from 1 January 2018.

Capital Markets Union: EU Commission adopts amended report on tackling national barriers to cross-border investments

The EU Commission has adopted a report on tackling national barriers to cross-border investments in the EU. The Commission adopted a first version of the report on 27 February 2017, but was made aware of certain inaccuracies, mainly due to incomplete or conflicting information, and has consequently adopted an amended version.

The report is based on the work of an expert group of Member States' representatives alongside the Commission to map national barriers to cross-border capital flows and find the best ways of tackling barriers identified as being not justified by public interest considerations or as being disproportionate. The report follows a call from the ECOFIN Council in 2015 for a roadmap to tackle national barriers and relates to the Commission's work on creating a Capital Markets Union (CMU).

The report distinguishes between different types of national barrier:

- ex ante barriers, which are of immediate concern when investors consider engaging in cross-border activity;
- in itinere barriers, which deter investors from maintaining or increasing their cross-border exposure; and
- ex post barriers, which lead to difficulties at the end of the investment process.

For each type of barrier, the report builds on the Commission's discussions with the expert group and proposes next steps. The barriers identified include withholding tax procedures, residence requirements imposed on the management of financial institutions and a lack of financial literacy.

The report calls on the Member States to endorse the proposed roadmap and take action accordingly.

EMIR: ESMA updates list of recognised third-country CCPs

ESMA has updated its list of recognised central counterparties (CCPs) to include six non-EU CCPs. ESMA has recognised the following entities:

- Dubai Commodities Clearing Corporation (DCCC);
- Clearing Corporation of India Ltd (CCIL);
- Nasdaq Dubai Ltd;
- Japan Commodity Clearing House Co., Ltd (JCCH);
- BM&FBovespa S.A., Brazil; and
- Nodal Clearing LLC, USA.

Under the European Market Infrastructure Regulation (EMIR), third country CCPs must be recognised by ESMA in order to operate in the EU.

Basel Committee publishes enhanced Pillar 3 disclosure framework

The Basel Committee on Banking Supervision (BCBS) has published a consolidated and enhanced framework for Pillar 3 disclosure requirements. This standard represents the second phase of the Committee's review of the Pillar 3 disclosure framework and builds on the revisions to the Pillar 3 disclosure published by the Committee in January 2015.

The enhancements in the standard contain three key elements:

- consolidation of all existing Basel Committee disclosure requirements into the Pillar 3 framework;
- introduction of a 'dashboard' of banks' key prudential metrics and a new disclosure requirement for banks which record prudent valuation adjustments; and
- updates to reflect ongoing reforms to the regulatory framework.

Excluding requirements which are new and/or depend on the implementation of another policy framework, the implementation date for existing disclosure requirements consolidated under the standard will be the end of 2017.

Basel Committee sets out interim regulatory treatment of accounting provisions

The BCBS has set out the interim regulatory treatment of accounting provisions and the standards for transitional arrangements under the Basel III regulatory capital framework. This is in response to upcoming international accounting standards, which require the use of expected credit loss (ECL) models rather than incurred loss models and incorporate forward-looking assessments in the estimation of credit losses.

The BCBS has decided, due to the limited time until the new standards come into effect, as well as to allow thorough consideration of its longer-term approach, to retain for the interim period the current regulatory treatment of provisions applied under the standardised and internal ratings-based approaches for credit risk. Jurisdictions may also introduce transitional arrangements in order to deal with any potential negative impact the introduction of ECL accounting may have on regulatory capital.

Basel Committee reports on banks' implementation of principles for effective risk data aggregation and reporting

The BCBS has published an update on banks' implementation of the principles for effective risk data aggregation and reporting, which were issued in 2013. Firms identified as global systemically important banks (G-SIBs) in 2011 and 2012 were required to fully adopt the principles from January 2016.

The report is based on the results of a self-assessment survey completed by authorities having supervisory responsibility for G-SIBs and notes that although some progress has been made, most G-SIBs have not fully implemented the principles.

The BCBS recommends that banks develop clear roadmaps to achieve full compliance with the principles and comply with them on an ongoing basis. The report also recommends that supervisors should:

- communicate the assessment results to their banks and provide the necessary incentives to achieve full compliance with the principles; and
- continue to refine their techniques to assess banks' compliance with the principles.

The BCBS intends to continue to monitor adoption of the principles. The BCBS also suggests that national supervisors apply the principles to institutions identified as domestically systemically important banks (D-SIBs) three years after receiving that designation.

Basel Committee consults on revisions to assessment methodology for global systemically important banks

The BCBS has published a consultation paper setting out proposed revisions to its 2013 framework for assessing and indentifying G-SIBs. The framework is intended to reduce the risk of G-SIBs failing by increasing their going-concern loss absorbency. It assesses the relative systemic importance of internationally active banks based on twelve indicators in five categories and maps the resulting score to buckets associated with a higher loss absorbency capital requirement.

The Committee has proposed the following revisions to the framework:

- removal of the cap on the substitutability category;
- expansion of the scope of consolidation to include insurance subsidiaries;
- amendments to the cross-jurisdictional activity definition;
- modification of the weights in the substitutability category and introduction of a trading volume indicator;
- revisions to the disclosure requirements;
- inclusion of further guidance on bucket migration and the associated surcharge;
- introduction of a transition schedule; and
- introduction of a new indicator for short-term wholesale funding.

Comments are due by 30 June 2017.

UK Prime Minister notifies European Council of intention to withdraw from EU

The letter from the UK Prime Minister, the Rt Hon Theresa May MP, notifying the European Council of the UK's intention to withdraw from the EU under Article 50(2) of the Treaty on European Union has been delivered to the European Council President, Donald Tusk. The letter also notifies the European Council of the UK's intention to leave the European Atomic Energy Community.

The letter sets out the UK Government's intention to leave with as little disruption as possible on each side and establish a new partnership with the EU which would take in both economic and security cooperation. The Government is seeking to agree the terms of this future partnership alongside those of withdrawal within the next two years.

The letter describes the Government's plan to bring forward legislation that will repeal the European Communities Act 1972 and, wherever practical and appropriate, in effect convert the body of existing EU law (the 'acquis') into UK law. The Government will publish a White Paper on this process on 30 March 2017 and will also bring forward several other pieces of legislation that address specific issues relating to the UK's departure from the EU with a view to ensuring continuity and certainty, especially for business.

The Prime Minister has confirmed that if the UK leaves the EU without an agreement, the default position of trading on World Trade Organisation (WTO) terms would apply, but the letter emphasises that this is not the outcome that either side should seek.

The letter proposes seven principles for the forthcoming discussions:

- constructive and cooperative engagement;
- striking an early agreement on the rights of citizens;
- working to determine the fair settlement of the UK's rights and obligations as a departing Member State alongside the terms of the future partnership;
- minimising disruption and providing as much certainty as possible;
- paying particular attention to issues relating to the land border with the Republic of Ireland and upholding the Belfast Agreement;
- beginning technical talks on detailed policy areas as soon as possible to advance the Free Trade Agreement between the UK and EU and prioritise work on the evolution of the UK and EU regulatory frameworks and dispute resolution mechanisms; and
- continuing to work together to advance and protect shared European values.

To coincide with the delivery of the letter, the Prime Minister delivered a statement to the House of Commons.

In response to the letter, the European Council has published a statement which highlights that its first priority in the negotiations will be minimising uncertainty for citizens, businesses and Member States, calling for an orderly withdrawal and a close partnership with the UK in future. President Tusk will share proposed negotiating guidelines with the 27 Member States for adoption by the European Council on 29 April 2017.

Brexit: UK Government publishes Great Repeal Bill White Paper

The Department for Exiting the European Union has published a White Paper on the Great Repeal Bill, which is intended to repeal the European Communities Act 1972 (ECA) and convert the body of EU legislation (the 'acquis') into UK law in order to provide maximum certainty when the UK leaves the EU.

In particular, the Government has set out its intention for the Great Repeal Bill to:

- repeal the ECA on the day the UK leaves the EU;
- convert directly-applicable EU law (EU Regulations) into UK law, which the Government proposes to do not by 'copying out' EU Regulations into UK law but by making clear that EU Regulations – as they applied in the UK the moment before it left the EU – will be converted into domestic law by the Bill and continue to apply until UK legislators decide otherwise;
- preserve all laws that the UK has made to implement EU obligations, including Directives, which have frequently been implemented under secondary legislation made under the ECA;
- ensure that UK courts will continue to be able to look to EU treaty provisions in interpreting the EU laws that are preserved;
- incorporate the rights that can be relied on directly in court by an individual into UK law;
- bring an end to the jurisdiction of the Court of Justice of the European Union (CJEU) in the UK while providing that any question as to the meaning of EU-derived law will be determined in the UK courts by reference to the CJEU's case law as it exists on the day the UK leaves the EU; and
- end the general supremacy of EU law and set out that where a conflict arises between EU-derived law and new primary legislation passed by the UK Parliament following Brexit that the newer legislation will take precedence over the EU-derived law that has been preserved.

The White Paper also sets out details of the powers to make secondary legislation that the Government proposes to create in order to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU, ensure the correct functioning of the legal system outside of the EU and enable domestic law to reflect the content of any withdrawal agreement under Article 50 of the Treaty on European Union.

Moreover, the White Paper considers the interaction between the Great Repeal Bill's provisions and the devolution settlements as well as the impact on the Crown Dependencies and Overseas Territories.

Alongside the White Paper the Department has also published guidance for business on its proposals and likely timescales.

HMT updates special resolution regime code of practice

HM Treasury (HMT) has updated the code of practice on the special resolution regime (SRR) under the Banking Act 2009. The code is intended to support the legal framework of the SRR and provide guidance as to how and in what circumstances the authorities will use the special resolution tools.

The code deals with banking institutions and CCPs and updates the version published in March 2015. In particular, changes to the Code of Conduct reflect changes to the Banking Act 2009 following the implementation of the Bank Recovery and Resolution Directive (BRRD), changes in the regulatory architecture and the changes following the Bank Recovery and Resolution Order 2016.

MiFID2 transposition: Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 made

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (SI 2017/488) has been made. The Regulated Activities Order (RAO) specifies regulated activities and investments for the purposes of the Financial Services and Markets Act 2000 (FSMA) and has been amended to include new specified activities and investments in order to transpose MiFID2.

In particular, the Order:

- specifies a new activity of operating an organised trading facility (OTF);
- adds a wide range of currency derivatives, binary contracts and emission allowances as specified investments; and
- extends certain requirements to firms selling or advising on structured deposits in relation to the activities of dealing in investments as agent, arranging deals in investments, managing investments and advising on investments.

In addition to transposing certain parts of MiFID2, the Order also makes some minor technical amendments for the purposes of the Alternative Investment Fund Managers Directive (AIFMD).

Certain provisions came into force on 1 April 2017. For all other purposes the Order will come into force on 3 January 2018.

MiFID2 will be largely transposed through FSMA, subordinate legislation under FSMA and rules made by regulators under FSMA. HMT is expected to lay two further statutory instruments shortly for the transposition of MiFID2.

BoE publishes details of 2017 stress tests

The Bank of England (BoE) has published details of the key elements of the 2017 stress tests for the UK banking system. The assessment will include two stress scenarios: an annual cyclical scenario (ACS) and a biennial exploratory scenario (BES).

The ACS will incorporate a severe and synchronised UK and global macroeconomic and financial market stress, as well as an independent stress of misconduct costs. Underlying domestic vulnerabilities are judged to be broadly unchanged overall, so the stressed outcomes for UK activity and unemployment are the same as in the 2016 ACS. The calibration of the global elements of the 2017 ACS reflects the judgement that global vulnerabilities are elevated and have increased somewhat over the past year.

The BoE's first BES is designed to examine banks' strategic responses to a structurally more challenging operating environment and consider how the UK banking system might evolve if recent headwinds to bank profitability persist or intensify. The test will assess the impact of banks' actions on both the real economy and the future resilience of the system to shocks. The test will have a seven year horizon to capture long-term trends.

The BoE will publish the results of the tests in the fourth quarter of 2017.

BoE publishes consultation feedback and final specification for reformed SONIA

The BoE has published a report containing feedback received to its consultation on the reform of the Sterling Overnight Index Average (SONIA) interest rate benchmark, setting out its response to the feedback and the specification for the reformed SONIA.

The BoE has responded to the feedback received by:

- not making any changes to the wording of underlying interest in the definition of SONIA;

- proceeding with the trimmed mean calculation methodology;
- amending the structure of the statement of methodology to draw out the individual aspects more clearly;
- clarifying the circumstances in which future evolution of the methodology would be contemplated and what the process would be; and
- clarifying the circumstances under which a contingency methodology would be used.

The BoE anticipates that the transition to reformed SONIA will occur in March or April 2018 and intends to announce the precise date for transition at least six months in advance of the transition.

PRA consults on internal ratings based approach

The Prudential Regulation Authority (PRA) has published a consultation paper (CP5/17) on proposed changes to Supervisory Statement SS11/13 'Internal Ratings Based (IRB) approach'. The updates are intended to clarify the PRA's expectations regarding areas of the IRB framework that have been identified by firms as unclear. This includes guidance on how firms can demonstrate that they meet the requirements of the Capital Requirements Regulation (CRR) on prior experience of using IRB approaches, as well as how external data will be used to supplement internal data for estimating probability of default and loss given default for residential mortgages.

The PRA also proposes to set two reference points for estimating probability of possession given default (PPGD) for residential mortgages for those firms that lack significant possession data.

Comments on the proposed changes are due by 28 June 2017.

LSB publishes new Standards of Lending Practice

The Lending Standards Board (LSB) has published new guidance to replace the Lending Code, called the Standards of Lending Practice.

The Standards of Lending Practice are voluntary and set the benchmark for good lending practice in the UK. Following a review of the Lending Code, the Standards of Lending Practice incorporate changes to the code regarding lending to small business customers, and extend protections beyond micro-enterprise customers to small businesses with a turnover of up to GBP 6.5 million.

The Standards of Lending Practice will become effective from 1 July 2017, with the applicable provisions within the Lending Code remaining in force until then.

PSR publishes guidance on Financial Penalty Scheme

The Payment Systems Regulator (PSR) has published a policy statement (PS17/1) and guidance on its financial penalty scheme.

The policy statement summarises feedback received to its consultation launched in November 2016 and confirms the PSR's decision to go ahead with its proposed approach.

The guidance sets out the financial penalty scheme and describes the method for allocating the money the PSR retains from penalty receipts. The PSR's chosen approach is to return the retained amount to fee payers through a reduction in the money collected from them in the following fee year, while ensuring that fee payers that became liable to pay a penalty do not get the reduction.

CSSF issues regulation on setting of countercyclical buffer rate

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued Regulation 17-01 on the setting of the countercyclical buffer rate for the second trimester of 2017.

The Regulation follows the Luxembourg Systemic Risk Committee's recommendation of 6 March 2017 (CRS/2017/002) and maintains a 0% countercyclical buffer rate for relevant exposures located in Luxembourg for the second trimester of 2017.

The Regulation entered into force on 1 April 2017.

German Federal Ministry of the Interior proposes amendments to regulation for identification of critical infrastructure

The German Federal Ministry of the Interior has published a draft ordinance to revise the regulation for the identification of critical infrastructure (Verordnung zur Bestimmung Kritischer Infrastrukturen nach dem BSI-Gesetz).

The Government proposes to amend the definition of critical infrastructure within the finance and insurance sector and identifies the following services as critical:

- cash supply;
- card-based payments;
- conventional payments;

- clearing and settling of securities and derivative transactions; and
- insurance services.

With respect to outsourcing arrangements, the draft clarifies that the operator of a critical infrastructure is the entity which directly controls (tatsächliche Sachherrschaft) such critical infrastructure.

The draft regulation is expected to enter into force in the second quarter of 2017.

Polish Financial Supervision Authority sets out recommended regulatory solutions on implementation of MiFiD2

The Polish Financial Supervision Authority has presented recommended regulatory solutions concerning the implementation of MiFID2 with respect to remunerating distributors of participation units of investment funds.

Amendment to Enforcement Order of Banking Act effective from 1 April 2017

An amendment to the Banking Act of Japan and other Acts was passed on 25 May 2016 (Act Amendment) and became effective on 1 April 2017. The Act Amendment called for amendments to the Enforcement Orders and Administrative Ordinances of the Banking Act of Japan and other Acts in order for them to provide detailed requirements relating to the Act Amendment. On 24 March 2017, the Financial Services Agency of Japan finalised these amendments, providing the following:

- clarification of the group management function of bank holding companies;
- enhancement of the financial intermediary function of banking groups by integrating common operations of banking group entities at the holding company level;
- a response to virtual currencies (introduction of a registration system, regulations, etc.); and
- a response to technological innovation due to the advancement of IT.

The main purpose of the Act Amendment is to deal with the rapid advancement of IT (including Fintech). In connection with this point, the Act Amendment enables banks or bank holding companies (both including their subsidiaries), by obtaining authorisation from the relevant Japanese governmental authorities, to hold more than 5% or 15% respectively of the total voting rights in companies which are expected to contribute to the sophistication of banking business, or the improvement of user convenience by using IT technology.

Amendment to Enforcement Order of Money Lending Business Act effective from 1 April 2017

On 24 March 2017, the Financial Services Agency of Japan finalised an amendment to the Enforcement Order of the Money Lending Business Act (MLBA) of Japan, which became effective on 1 April 2017.

Under the MLBA, any person who intends to conduct a money lending business is required to register unless an exemption applies. The amendment to the Enforcement Order adds two new exemptions.

One exemption applies where a member entity of a corporate group makes a loan to an entity which no longer belongs to the corporate group, provided that the borrower entity belonged to the corporate group for one year or more and the loan is made within one year of the entity leaving the corporate group. The scope of 'corporate group' is defined in detail in the administrative ordinance under the MLBA.

The other exemption applies where an entity makes a loan to a joint venture entity in which the wholly-owning parent company of the lender entity invests at least 20% of all the equity or holds at least 20% of all the shares, provided that all the equityholders or shareholders of the joint venture entity consent to the loan.

RECENT CLIFFORD CHANCE BRIEFINGS

ISDA and IIFM publish Islamic Credit Support Deed for Variation Margin

The International Swaps and Derivatives Association, Inc. (ISDA) and the International Islamic Financial Market (IIFM) have published an Islamic Credit Support Deed for Cash Collateral designed to be used with the ISDA/IIFM Tahawwut Master Agreement (TMA).

The publication of the 'ISDA/IIFM 2017 Credit Support Deed for Cash Collateral (VM)' (the TMA CSD) is a welcome and much anticipated addition to the suite of template documents for use with the TMA.

This briefing paper discusses the TMA CSD.

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

MiFID2 for Asia-Pacific

MiFID2 comes into force on 3 January 2018. As the deadline looms, the financial services industry in the EU is

gearing up for implementation. However, the impact of MiFID2 will be felt in Asia Pacific, far beyond the EU. APAC firms should also pay close attention to the new regime, as there are a number of areas of MiFID2 which could have a direct or indirect impact on them.

The majority of the MiFID2 Level 2 implementing measures have now been published, so we have a much clearer understanding of the practical implications of MiFID2 on APAC firms.

This briefing paper focuses on the issues that are most likely to have an impact, which include product governance, inducements and dealing commission, trading obligations, position limits for commodities derivatives and the new regime for accessing the EU market.

https://www.cliffordchance.com/briefings/2017/03/mifid2_for_asia_pacific.html

MIFID2 – the impact on non-EU firms

MiFID2 comes into force on 3 January 2018. As the deadline looms, the financial services industry in the EU is gearing-up for implementation. However, the impact of MiFID2 will be felt far beyond the EU. Non-EU firms also should pay close attention to the new regime, as there are a number of areas of MiFID2 which could have a direct or indirect impact on them.

The majority of the MiFID2 Level 2 implementing measures have now been published, so we now have a much clearer understanding of the practical implications of MiFID2 on non-EU firms.

This briefing paper focuses on the issues that are most likely to have an impact on non-EU firms, which include product governance, inducements and dealing commission, trading obligations, position limits for commodities derivatives and the new regime for accessing the EU market.

https://www.cliffordchance.com/briefings/2017/03/mifid2_the_impactonnon-eufirms.html

Brexit – The UK gives its article 50 withdrawal notice

The die is cast. The Rubicon has been crossed. Whatever your favoured expression, whether drawing on the Roman origins of the EU or otherwise, the delivery by the UK on 29 March 2017 of notice under article 50 of the Treaty on European Union means that the UK will in all probability leave the EU on the earlier of entry into force of a withdrawal agreement between the UK and the EU or, failing that, on 29 March 2019.

This briefing paper discusses the issues that the UK and the EU must address during the Brexit negotiation talks.

https://www.cliffordchance.com/briefings/2017/03/brexit_the_uk_givesitsarticle50withdrawa.html

Brexit – The White Paper on the Great Repeal Bill

The UK Government's White Paper on its forthcoming Great Repeal Bill offers a few high level indications as to the Government's plans for the Bill, but the detail, which could prove controversial, must await the publication of the Bill itself. The Bill is due to be introduced into Parliament at the start of its next session, likely to be in May 2017.

This briefing paper discusses the White Paper.

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

Brexit employment issues – an update

Article 50 has now been triggered. The instinctive reaction to the 'Brexit' vote was that it would have substantial implications for UK employment law. However, this may not be borne out in practice; at least not in the short term. The Government has proposed that the Great Repeal Bill will maintain the protections and standards that benefit workers; all current EU employment law will be converted into domestic law whatever future relationship the UK has with the EU.

Although the intention is that there will be no immediate change to EU derived employment laws, in practice EU derived legislation with a cross border element (such as that relating to European works councils and cross border mergers) may nevertheless require revision depending on the outcome of the Brexit negotiations.

This briefing paper provides an update on some of the key Brexit related employment law issues.

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

Tesco market abuse

On 28 March 2017, the FCA issued a Final Notice against Tesco plc and Tesco Stores Limited stating that Tesco committed market abuse on 29 August 2014 when Tesco plc issued a trading update containing an overstated profit forecast. The FCA found that the update created a false market in Tesco plc shares until 22 September 2014 when Tesco plc made a further announcement identifying the overstatement.

The FCA has decided not to impose a financial penalty in respect of this market abuse, but has instead imposed a requirement on Tesco to pay compensation to net purchasers of its shares and listed bonds between 29 August 2014 and 22 September 2014.

In parallel it has been announced that the SFO and Tesco Stores Limited have reached an agreement which, if approved by the Crown Court at a public hearing on 10 April 2017, will result in a Deferred Prosecution Agreement (DPA) in connection with 'substantially similar conduct' to that described in the Final Notice. If approved, the DPA will result in Tesco Stores Limited paying both a financial penalty of GBP 128,992,500 and the SFO's full costs. The other terms of the proposed DPA are not yet known.

This briefing paper discusses the FCA's findings and decision.

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

China regulator levies huge fine for market manipulation

China's securities regulator, the China Securities Regulatory Commission (CSRC), has levied one of its largest ever fines for market manipulation as authorities ramp up enforcement efforts. The CSRC penalised a businessman and his associates with confiscation orders and fines in excess of RMB 1.2 billion (USD 174 million) for manipulation of mainland-listed stocks. The latest action follows the regulator's RMB 3.5 billion (USD 507 million) fine of a separate party in February 2017 for market manipulation arising from false information disclosures. The news comes as the CSRC and Hong Kong's Securities and Futures Commission (SFC) ramp up their joint efforts to tackle cross-border market manipulation.

These two cases alone have already made 2017 a record year for CSRC fines, just a quarter of the way through the year. The CSRC levied RMB 4.3 billion in fines in 2016, up nearly three times from 2015's total which was itself a record.

This briefing paper discusses the two cases.

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