

International Regulatory Update

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SFTR and EMIR: ESMA publishes technical advice on fees to trade repositories

The European Securities and Markets Authority (ESMA) has published a [final report](#) on technical advice to the EU Commission on fees for trade repositories (TRs) under the Securities Financing Transactions Regulation (SFTR). The report responds to a formal request from the Commission on 15 January 2016 and focuses on the technical aspects of the regulation on fees.

Under SFTR, ESMA is granted direct registration and supervision powers over TRs and will charge fees to fully cover ESMA's necessary expenditure relating to the registration, recognition and supervision of TRs. In order to ensure a level playing field across both the European Market Infrastructure Regulation (EMIR) and SFTR, ESMA also proposes certain changes to the way ESMA calculates fees for TRs under EMIR.

The technical advice sets out proposals for:

- an amendment to the general approach under EMIR relating to the treatment of surpluses and deficits in order to make it consistent with the new ESMA budgeting framework, and application of the same approach for the determination of fees under SFTR;
- simplification of the way the turnover of TRs is determined for the purposes of calculation of annual supervisory fees by including only revenues and excluding activity figures;
- lower fees in the case of extension of registration under SFTR, or in the case of concurrent application under both regimes;

- the calculation of fees for recognition of third country TRs and the reimbursement of the cost to national competent authorities (NCAs) in the case of delegation of tasks.

ESMA will submit the final report to the EU Commission.

MAR: ESMA publishes opinion on accepted market practices on liquidity contracts

ESMA has published an [opinion](#) on the points for convergence in relation to Market Abuse Regulation (MAR) accepted market practices (AMP) on liquidity contracts.

ESMA has decided to adopt the opinion to convey common criteria that liquidity contract AMPs should have in order to ensure a more consistent and convergent approach to the establishment of AMPs on liquidity contracts across the EU and to ensure transparency on the agreed points of convergence. ESMA sets out in the opinion what national competent authorities (NCAs) should consider when establishing such AMPs.

EBA writes to EU institutions on proposed amendments to CRD 4/CRR

The European Banking Authority (EBA) has [written](#) to the EU Commission Vice President Valdis Dombrovskis, whose portfolio includes Financial Stability, Financial Services and Capital Markets Union, the President of the EU Parliament, and the Minister of Finance of Malta, which holds the rotating EU Council Presidency, on the Commission's proposed Regulation and Directive amending the Capital Requirements Directive (CRD 4) and Regulation (CRR).

The letter is intended to complement opinions that the EBA has issued in relation to IFRS9 transitional arrangements (EBA/Op/2017/02) and on improving decision making for supervisory reporting (EBA/Op/207/03) in relation to:

- the net stable funding ratio (NSFR);
- the leverage ratio (LR); and
- remuneration.

In particular, the letter sets out suggested revisions that would mandate the EBA to carry out certain monitoring activities and develop technical standards in relation to the LR and reporting requirements for remuneration rules.

Fintech: ECON Committee votes on influence of technology on future of financial sector

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has [voted](#) to adopt a [draft report](#) on the influence of technology on the future of the financial sector, which calls on the EU Commission to develop an

action plan to enable new and innovative technologies to develop in the framework of the Capital Markets Union and Digital Single Market.

The draft report outlines key priorities such as:

- cybersecurity and data protection;
- interoperability and passporting of fintech services within the EU;
- providing a level playing field for traditional companies and start-ups; and
- controlled experimentation with new technologies and fostering financial education and IT skills.

The EU Parliament's plenary session is expected to vote on this report in May 2017.

FSB publishes thematic peer review on corporate governance

The Financial Stability Board (FSB) has published a [thematic peer review](#) on corporate governance. The peer review investigates how effectively FSB member jurisdictions have implemented the G20/OECD Principles of Corporate Governance for publicly listed, regulated financial institutions.

With the aim of strengthening corporate governance, both in terms of the frameworks and related rules and in terms of the practices of financial institutions, the FSB makes a number of recommendations to FSB member jurisdictions, standard-setting bodies and financial institutions. The recommendations focus on the following areas, among others:

- ensuring the basis for an effective corporate governance framework;
- disclosure and transparency;
- the responsibilities of the board;
- rights and equitable treatment of shareholders and key ownership functions; and
- the role of stakeholders in corporate governance.

Basel Committee publishes semiannual report on adoption of Basel regulatory framework

The Basel Committee on Banking Supervision (BCBS) has published a [progress report](#) on adoption of the Basel regulatory framework, which has been published on a semiannual basis since October 2011 under the Committee's Regulatory Consistency Assessment Programme (RCAP). The report sets out the adoption status of Basel III standards for each BCBS member jurisdiction as of end-March 2017.

Among other things, the report highlights that:

- all member jurisdictions have final risk-based capital rules, LCR regulations and capital conservation buffers in force;
- all but one member jurisdiction have issued final rules for the countercyclical capital buffers;
- all member jurisdictions containing global systemically important banks (G-SIBs) have final rules in force;
- 25 member jurisdictions have issued final or draft rules for frameworks in relation to domestic systemically important banks (D-SIBs); and
- 20 have issued final or draft rules for margin requirements for non-centrally cleared derivatives.

Moreover, although some members have reported challenges in implementing the standards relating to equity investments in funds, the standardised approach for measuring counterparty credit risk, bank exposures to central counterparties (CCPs) and Pillar 3 disclosure, the majority of member jurisdictions have issued final or draft rules. BCBS has found that member jurisdictions are now turning to the implementation of other Basel III standards, including those on TLAC holdings, the market risk framework, the leverage ratio and the net stable funding ratio.

MiFID2: PRA publishes second policy statement on implementation

The Prudential Regulation Authority (PRA) has published its second [policy statement](#) on the implementation of MiFID2 (PS9/17). The policy statement follows a consultation, launched in November 2016, to which the PRA received no responses. Therefore, apart from some minor drafting changes, the final rules are as consulted. The policy statement is relevant to banks, building societies, PRA-designated investment firms and their qualifying parent undertakings, which for this purpose comprise financial holding companies and mixed financial holding companies, as well as credit institutions, investment firms and financial institutions that are subsidiaries of these firms.

The policy statement sets out implementation arrangements for:

- authorisation in respect of a new MiFID investment activity;
- operation of an organised trading facility (OTF);
- emission allowances;
- the regulated activities of dealing, advising, managing and arranging structured deposits; and

- notification to the PRA for firms wishing to carry out certain activities.

The PRA's rules and, where relevant, sections of the supervisory statements will take effect from 3 January 2018, which is the date from which MiFID2 will apply in Member States.

PRA publishes policy statement on reporting requirements for ensuring operational continuity in resolution

The PRA has published a [policy statement](#) on reporting requirements for ensuring the operational continuity in resolution (PS10/17), which sets out final details of the data the PRA will collect in connection with the financial resilience policy set out within supervisory statement SS9/16 and the General Organisational Requirements and Outsourcing Parts of the PRA Rulebook.

The policy statement sets out feedback to the consultation paper (CP28/16) and details of several amendments to the draft rules and documents that the PRA consulted on. It also sets out final amendments to the Regulatory Reporting Part of the PRA Rulebook as well as final amendments to the PRA's supervisory statement on guidelines for completing regulatory reports (SS34/15) and the final template (PRA109) and instructions that implement the reporting requirements.

The amendments to the Regulatory Reporting Part and updates to SS34/15 set out in the policy statement will take effect from 1 January 2019. UK banks, building societies and PRA-authorized investment firms to which the Operational Continuity Part of the PRA Rulebook applies are required to submit the template 45 business days after the first reporting period ending 31 December 2019.

PRA publishes final rules on whistleblowing in non-EEA UK branches

The PRA has published a [policy statement](#) containing feedback and final rules following its consultation on whistleblowing in UK branches (CP35/16). In CP35/16 the PRA proposed that UK branches of non-EEA banks, as well as both EEA and non-EEA insurers, must inform their workers about the whistleblowing services offered by the PRA and the Financial Conduct Authority. It also proposed that any non-EEA deposit taker (not including insurers), with both a UK branch and a UK subsidiary, which is subject to the existing whistleblowing rules, must inform the UK branch staff of the subsidiary's whistleblowing channel.

Responses to the consultation were broadly supportive of the proposals and the PRA has made no changes to the final rules as a result of the consultation feedback.

However it has decided that the whistleblowing rules will not apply to UK branches of EEA insurers as initially proposed. The change to the scope aligns the rules for deposit takers with those for insurers. Therefore, the rules will not apply to UK branches of EEA deposit takers or insurers.

BoE publishes UK Money Markets Code

The Bank of England (BoE) has published a voluntary [UK Money Markets Code](#) setting out the standards and best practice expected from participants in the deposit, repo and securities lending markets.

The aim of the UK Money Markets Code is to provide a common set of principles in order to promote the integrity and effective functioning of the UK money markets.

The UK Money Markets Code supersedes and substantively updates existing guidance for participants in these markets provided by the Non-investment Products (NIPs) Code, the Gilt Repo Code and the Securities Borrowing and Lending Code. The BOE expects the UK

Money Markets Code to be embedded by the market by January 2018.

HMT publishes MoU with BoE on resolution planning and financial crisis management

HM Treasury (HMT) has published a Memorandum of Understanding ([MoU](#)) with the Bank of England, including in its capacity as the PRA, on resolution planning and financial crisis management. The MoU has been prepared and published in line with the provisions of Article 65 of the Financial Services Act 2012 and reflects requirements under the Bank of England and Financial Services Act 2016 for the BoE to inform HMT about the management and impact of firm failure.

Benchmarks: SONIA recommended as sterling near risk-free interest rate benchmark

The Working Group on Sterling Risk-Free Reference Rates has [announced](#) the Sterling Overnight Index Average (SONIA) as its preferred near risk-free interest rate benchmark (RFR) for use in sterling derivatives and relevant financial contracts.

Following cases of attempted manipulation and false reporting of global reference rates, in 2014 the Financial Stability Board (FSB) recommended the development and

adoption of alternative near risk-free benchmarks. In the UK, the Bank of England established the Working Group on Sterling Risk-Free Reference Rates to work towards this objective. The working group's recommendation will be subject to a market consultation, which the Bank of England aims to hold in the middle of 2017.

CSSF-CODERES issue circular on raising of 2017 ex-ante contributions to Single Resolution Fund

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), and the Luxembourg Resolution Board (Conseil de Résolution) have issued [Circular 17/04](#) dated 21 April 2017 containing information on the raising of the 2017 ex-ante contributions to the Single Resolution Fund (SRF).

The circular is addressed to all credit institutions established in Luxembourg and subject to the Single Resolution Mechanism (SRM) Regulation (EU) 806/2014, with the exception of Luxembourg branches of credit institutions established outside the EU. Luxembourg branches of credit institutions which have their head office in another Member State of the EU are covered by their head office.

The circular states that the 2017 ex-ante contributions to the SRF are due by 6 June 2017. The corresponding individual invoices will be distributed by the CSSF in the coming days. Affected credit institutions have to transfer the requested amounts to an account of the Fonds de résolution Luxembourg, which will in turn transfer the collected amounts to the SRF. The circular provides technical details on the computation of the contribution amount and informs relevant credit institutions of a substantial increase in most cases of the contribution compared to the 2016 ex-ante contribution.

The circular further points out that the conditions concerning irrevocable payment commitments (IPCs) remain unchanged compared to the 2016 contribution cycle. Credit institutions wishing to apply for IPCs in 2017 need to send the completed application form by 24 May 2017 to the CSSF and the Single Resolution Board.

CSSF issues survey on covered claims in connection with investment business

The CSSF, acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued a CSSF-CPDI [circular](#) (No 17/07) regarding a survey on covered claims in connection with investment business.

The circular is addressed to all credit institutions and investment firms incorporated under Luxembourg law, to the Luxembourg branches of non-EU credit institutions and investment firms, as well as to UCITS management companies and to alternative investment fund managers whose authorisation includes the management of portfolios on a discretionary basis.

The circular requests data from the members of the Système d'indemnisation des investisseurs Luxembourg (SIIIL) regarding the volume of covered claims (instruments and money) in relation to investment business of which members are debtors. For the purpose of this survey and to the extent portfolio management on a discretionary, client-by-client basis is provided, UCITS management companies and alternative investment fund managers are assimilated to investment firms.

The circular further clarifies that paragraphs 2 to 5 of CSSF-CPDI Circular 16/03 remain applicable.

The amounts of covered claims need to be reported based on the figures as at 31 December 2016. To this end, members are requested to submit their responses by 15 May 2017.

Polish Financial Supervision Authority adopts amendments to Recommendation H concerning internal control system in banks

The Polish Financial Supervision Authority (PFSA) has adopted [amendments](#) to Recommendation H concerning the internal control system in banks. The amendment is based on the following principles:

- the internal control system is deemed to be independent of the risk management system and is based on a separate set of control mechanisms that ensure the statutory objectives of the internal control system are met;
- the internal control system falls within the framework of the so-called three lines of defence model, which provides for adequate control systems and independent compliance monitoring mechanisms being assigned to each line of defence;
- a new approach to the control function, the aim of which is to enhance its operation in banks, has been introduced;
- strengthening the position of the compliance unit as a key element of ensuring compliance in banks, in addition to the control function;

- strengthening the position of internal audit as the third line of defence; and
- applying the proportionality rule by allowing certain exemptions for cooperative banks, marking the role of guidelines of the associating bank managing the institutional control system (or unit managing such control system) and indicating specific expectations for audit units within the control systems.

The PFSA expects the recommendation to be introduced by no later than 31 December 2017.

Act implementing Mortgage Credit Directive published in Polish Journal of Laws

The Act on Mortgage Credit and on Supervision of Mortgage Credit Intermediaries and Agents, which implements the provisions of the Mortgage Credit Directive (2014/17/EU – MCD), has been [published](#) in the Journal of Laws.

The Act details the procedure of granting mortgage credits and concluding mortgage credit agreements, and also indicates solutions to make the restructuring of indebtedness possible in the case where a consumer is unable to repay their liabilities. Among other things, the Act sets out that:

- mortgage credits may be granted only by domestic banks, branches of foreign banks, credit institutions, branches of credit institutions and cooperative loans and saving societies;
- mortgage credits may be granted only in the currency in which the consumer earns most of their income; and
- additional requirements for credit intermediaries.

Except for certain provisions, the Act will enter into force on 22 July 2017.

CNMV consults on technical training guide for employees of financial institutions

The Spanish National Securities Market Commission (Comisión Nacional del Mercado de Valores) (CNMV) has launched a [public consultation](#) on a technical guide for the assessment of the knowledge and capabilities of personnel informing and advising financial institutions.

The guide aims to clarify the criteria to be applied by the CNMV when evaluating the knowledge and capabilities of personnel who provide information and advise on institution sales networks, as required by MiFID2. The purpose of the guide is to improve the level of staff training in the best interests of clients or investors, entities and employees.

The guide sets out the specific knowledge required for financial institution sales network personnel who provide information and advisory services to clients and the characteristics of internal or external training to ensure that staff acquires such skills, as well as the organisational requirements to ensure and demonstrate compliance with the guide.

The guide will enter into force on 1 January 2018. The deadline for comments is 10 May 2017.

Decree changing name and composition of Observatory for the Security of Payment Cards published

Article 65 of Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life (Sapin II) extended the scope of the Observatory for the Security of Payment Cards to all means of payment.

A [Decree dated 6 April 2017](#) has now been published which changes the name of the Observatory to 'Observatoire de la sécurité des moyens de paiement' (Observatory for the Security of Means of Payment) while adapting its composition in order to integrate all the players involved in means of payment. All issuers of payment instruments are now required to provide the necessary information to the new Observatory for the Security of Means of Payment.

The Decree will enter into force on 1 June 2017.

ACPR publishes decision regarding powers delegated to Head of Resolution Division

A [decision](#), dated 30 March 2017, regarding the powers delegated by the Resolution Board of the Autorité de contrôle prudentiel et de résolution (ACPR), the French banking and insurance sector supervisor, to the Head of the Resolution Division (directeur de la résolution) has been published by the ACPR.

Powers have been delegated to the Head of the Resolution Division in the following specific areas:

- annual contributions to resolution funds;
- general provisions regarding measures for the prevention and management of banking crises;
- development of preventive recovery plans;
- development of preventive resolution plans;
- solvency analysis;
- resolution of transnational groups; and

- implementation of the provisions of the Single Resolution Mechanism (SRM) Regulation (EU) No 806/2014.

The Head of the Resolution Division shall report to the members of the college on the exercise of delegated powers at the first following college.

CAD and MAS partner with industry stakeholders to fight financial crime

The Monetary Authority of Singapore (MAS) and the Commercial Affairs Department of the Singapore Police Force (CAD) have [announced](#) the launch of the Anti-Money Laundering and Countering the Financing of Terrorism Industry Partnership (ACIP), a government-industry partnership to strengthen Singapore's capabilities in the fight against money laundering and terrorism financing (ML/TF).

The ACIP brings together selected industry participants, regulators, law enforcement agencies and other government entities to collaboratively identify, assess and mitigate the key ML/TF risks facing Singapore.

The ACIP comprises a steering group which will be jointly chaired by the CAD and MAS with senior representatives from the Association of Banks in Singapore and a pilot group of eight banks. It will provide a dedicated forum to exchange ideas and information to mitigate ML/TF risks based on the national threat assessment.

In addition, the ACIP will identify and prioritise the key ML/TF risks to focus on and commission various working groups to study these risks further. Relevant industry participants from both within and outside the financial sector will be invited to share and contribute to these working groups, which will comprise certain steering group members and other representatives from the broader industry. The working groups will share key information with the private sector and other stakeholders to enhance the collective understanding and mitigation of ML/TF risks.

It is intended that, through this collaborative partnership platform, Singapore will be able to better understand emerging risks and the typologies criminals use to launder money, and design better tools to detect and deter ML/TF activities.

FSC proposes enhanced prudential standards for specialised credit finance companies

The Financial Services Commission (FSC) has [proposed](#) amendments to the Regulations on Credit Finance Business that will set enhanced loan loss provisioning

standards for high-risk loans and asset classification criteria for installment finance and lease assets. The proposed amendments also provide for biometric authentication of credit card consumers.

The key proposals include the following:

- loan loss provisions for specialised credit finance companies' high-risk loan assets with an annual interest rate of 20% or higher will be increased by 30%;
- the asset classification standards for specialised credit finance companies' installment finance and lease assets will be raised so that they are comparable to those already in effect for banks and other financial services firms; and
- biometric authentication, together with personal signature and PIN, will be permitted as a means to verify the identity of credit card consumers for transactional purposes.

Public comments on the proposed rule changes are due by 3 May 2017.

SFC publishes report on retail futures brokers

The Securities and Futures Commission (SFC) has published its [report](#) on a fact-finding exercise on retail futures brokers which sought to understand the business profiles and major risk management controls and practices of ten major local futures brokers (the reporting firms). The information is intended to assist the SFC in supervising licensed corporations and help market participants understand the industry landscape and benchmark themselves among peers.

The key findings of the exercise include that most of the reporting firms' active clients were based in Hong Kong and the majority were individual clients. While most reporting firms dealt in both local and overseas futures contracts, dealing in local futures contracts represented about 70% of the reporting firms' client turnover and 46% of their commission income.

The exercise revealed that the reporting firms adopted inconsistent criteria to assess whether clients are 'established', raising concerns that individuals who are treated as established but do not have good financial standing or creditworthiness could expose brokers to undue financial risk.

A separate concern identified by the SFC is that information about setting-off arrangements, such as the specific terms and risks involved, might not be specified in clients' authorisations or otherwise provided to them. The SFC

notes that in cases where funds are transferred to cover a margin shortfall, the client might not be given an opportunity to decide to hold open positions subject to market risk or to stop loss by liquidating them.

The SFC has indicated that it will provide further guidance to the industry on the issues in due course.

SFC and HKMA publish joint consultation on prescription of additional markets and clearing houses and delta one warrants

The Hong Kong Monetary Authority (HKMA) and the SFC have issued a [joint consultation](#) on the prescription of additional markets and clearing houses, and the prescription of 'delta one warrants', for the purpose of the over-the-counter (OTC) derivatives regulatory regime. The consultation is in response to a recent request from market participants that certain products be excluded from the upcoming second phase of mandatory reporting.

The proposed prescriptions seek to address the concerns raised by excluding the following products from the definition of 'OTC derivative product', and consequently from the mandatory reporting obligation:

- products traded on, and cleared through, the additional markets and clearing houses proposed to be prescribed; and
- delta one warrants, a certain type of warrant with a strike price set at zero or near zero.

Comments are due by 26 May 2017.

FINRA issues guidance on social media and digital communications

The US Financial Industry Regulatory Authority (FINRA) has published [Regulatory Notice 17-18](#) (RN 17-18), which provides guidance on rules governing communications with the public through social media and digital communications.

RN 17-18's guidance supplements FINRA's prior guidance on communications with the public through social media sites and the use of personal devices for business communications, found in Regulatory Notices 10-06 and 11-36.

The Q&A section in RN 17-18 addresses, among other things:

- text messaging;
- FINRA's views on 'adopting' and becoming 'entangled with' third-party content through hyperlinks and in other situations;
- online testimonials and endorsements including unsolicited positive comments by third parties on social media sites about a registered representative's professional capabilities; and
- the permissibility of 'native advertising' (i.e., advertising content that bears a similarity to the news, feature articles, product reviews, etc. surrounding the advertisement online).

CLIFFORD CHANCE BRIEFINGS

European Fintech Regulation – An overview

The use of technology to deliver, enhance or 'disrupt' financial services is transforming the sector.

Fintech has the potential to increase efficiency and reduce costs, to improve access to, and delivery of, financial services, to enhance the customer experience and to create markets in new and innovative financial services products. It also poses risks, including money laundering, cyber-security, consumer protection and data privacy. However, despite these risks, financial institutions, regulators and challenger companies believe that fintech – and the opportunities it presents – should be embraced.

This briefing paper, prepared by Clifford Chance in cooperation with Kromann Reumert and Arthur Cox, outlines the complex regulatory framework for fintech products across the EU.

https://www.cliffordchance.com/briefings/2017/04/european_fintechregulation.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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