

# International Regulatory Update

16 – 20 October 2017

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#### **EU and US announce mutual recognition of derivative trading venues**

The United States Commodity Futures Trading Commission (CFTC) and the EU Commission have [announced](#) a common approach for the mutual recognition of EU and US derivatives trading venues. Under the approach both EU and US companies will be able to trade certain derivatives on their respective trading venues while complying with their trading obligations.

The aim of the common approach is to ensure that EU counterparties are able to comply with the trading obligation under MiFIR by executing mandated derivatives on EU authorised trading venues or CFTC-authorized swap execution facilities (SEFs) and designated contract markets (DCMs), while ensuring that US counterparties can comply with the trade execution requirement under Section 2(h)(8) of the Commodity Exchange Act (CEA) by executing swaps on certain EU authorised trading venues that are exempt from SEF registration pursuant to CEA section 5h(g), as well as on SEFs and DCMs.

The CFTC intends to adopt legal acts that put the approach into action, and Commission Vice President Valdis Dombrovskis intends to propose that the EU Commission adopts an equivalence decision covering the CFTC-authorized SEFs and DCMs that are notified to it by the CFTC.

The CFTC intends to notify the EU Commission of its list of eligible SEFs and DCMs, and the EU Commission intends to notify the CFTC of its list of eligible MiFID2/MiFIR and Market Abuse Regulation (MAR) compliant trading venues. The CFTC and relevant national competent authorities (NCAs) will also work towards concluding cooperation agreements to ensure the effective exchange of information and coordination of supervisory entities.

#### **EMIR: Commission Decision on equivalence of CFTC rules published in Official Journal**

[Commission Implementing Decision \(EU\) 2017/1857](#) on the equivalence of the legal, supervisory and enforcement arrangements of the USA for derivatives transactions supervised by the Commodities Futures Trading Commission (CFTC) to certain requirements under Article 11 of EMIR has been published in the Official Journal.

In carrying out its assessment, the Commission has assessed the outcomes of the USA's legal, supervisory and enforcement requirements, and their adequacy to mitigate the risks arising from contracts in a manner considered equivalent to the outcome of the requirements under EMIR. In particular, the decision concludes that CFTC rules on risk monitoring and mitigation for OTC derivative contracts not cleared by a central counterparty are equivalent to EMIR, and determines that US rules on obligations on the exchange of collateral ('margins') between counterparties are equivalent to EU rules. The Decision allows market participants to comply with only one set of rules and to avoid duplication or conflicting rules.

The Decision will enter into force on 3 November 2017.

#### **EU Commission launches fitness check of supervisory reporting**

The EU Commission has published a [roadmap](#) on an initiative to carry out a fitness check of supervisory reporting requirements in the financial sector. The assessment will evaluate requirements from a cross-sectoral point of view and consider several pieces of legislation in conjunction.

The assessment will consider:

- whether supervisory reporting requirements are meeting their objectives of effectiveness, relevance and EU added value;
- coherence between the different reporting frameworks; and
- efficiency.

The Commission intends to limit the assessment to Level 1 legislation, with a more in-depth evaluation of certain specific products, such as derivatives, where a more granular approach to reporting is used. The evaluation is being conducted alongside the Financial Data Standardisation (FDS) project, which is intended to map all existing supervisory reporting requirements down to the data element level with the aim of identifying overlaps and inconsistencies, and explore ways that technology and

harmonised data definitions could optimise requirements without compromising their objectives.

The results of the Commission's assessment will identify potential areas where compliance costs and the burden of reporting obligations could be reduced without compromising financial stability, market integrity, and consumer protection.

Feedback from stakeholders on the roadmap is due by 14 November 2017.

#### **SFTR: EU Commission reports on EU SFT markets and international risk mitigation**

The EU Commission has published a [report](#) addressed to the EU Parliament and Council under Article 29(3) of the Securities Financing Transactions Regulation (SFTR).

The report covers progress in international efforts to mitigate the risks associated with SFTs, including the Financial Stability Board's (FSB's) recommendations for haircuts on non-centrally cleared SFTs which were published in November 2015, and on the appropriateness of those recommendations in the EU.

#### **Sanctions and Anti-Money Laundering Bill introduced to UK Parliament**

The UK Government has introduced the [Sanctions and Anti-Money Laundering Bill](#) into the House of Lords, following a public consultation launched in April 2017. The Bill is intended to enable the UK government to continue to implement United Nations (UN) sanctions regimes, meet its international obligations and use sanctions as a foreign policy and national security tool once the UK leaves the EU. It is also intended to ensure anti-money laundering and counter-terrorist financing measures are kept up to date and continue to align with international standards.

Amongst other things, the Bill:

- provides powers to create sanctions regimes and make anti-money laundering and counter-terrorist financing regulations;
- enables the government to replicate the existing legal frameworks which are currently used to enforce sanctions;
- grants the government temporary powers for the two-year period after the UK has left the EU to add or remove names from lists of persons designated under any EU sanctions regimes that have been retained by the EU (Withdrawal) Bill and have not been replaced by a UK sanctions regime;
- provides a mechanism through which designated individuals and organisations can challenge sanctions imposed on them; and
- sets out consequential amendments to other, connected primary legislation (including the Immigration Act 1971, the Serious Crime Act 2007 and the Policing and Crime Act 2017).

The Bill's Second Reading in the House of Lords is scheduled to take place on 1 November 2017.

#### **Benchmarks: BoE announces date of implementation of SONIA reform**

The Bank of England (BoE) has [announced](#) that its reforms to the Sterling Overnight Index Average (SONIA) interest rate benchmark will take effect on 23 April 2018.

The reforms include:

- the BoE taking on the end-to-end administration, including the calculation and publication of SONIA;
- the coverage of SONIA being broadened to include overnight unsecured transactions negotiated bilaterally as well as those arranged via brokers, using the BoE's Sterling Money Market Data Collection as the data source;
- the averaging methodology for calculating SONIA changing to a volume-weighted trimmed mean; and
- the publication of SONIA moving to 09:00 on the business day following that to which the rate pertains.

The final day for which SONIA will be calculated and published by the WMBA using the current methodology will be 20 April 2018. For the rate pertaining to 23 April, SONIA will be calculated by the BoE using the reformed methodology and published at 9am on Tuesday 24 April; no data will be published on Monday 23 April.

The BOE has also published a document summarising the key features and policies of SONIA, including the governance arrangements and how SONIA will be calculated and administered.

The BoE intends to publish an assessment of its compliance with IOSCO's Principles for Financial Benchmarks following the implementation of the SONIA reforms.

#### **FCA launches asset management authorisation hub**

The Financial Conduct Authority (FCA) has [launched](#) a new asset management authorisation hub, which is intended to support new firms with the authorisation process.

Phase one of the hub will offer firms pre-application meetings, dedicated case officers and access to the new website portal. The FCA intends that the system will:

- clarify user expectations and support firms with better guidance on regulations and processes;
- make information easier to access via a dedicated portal for investment managers on the FCA's website;
- foster better engagement between the FCA and new entrants; and
- provide end-to-end support for firms moving through the start-up cycle.

The FCA expects to launch further phases of the hub in 2018.

#### **Fintech: FCA reports on first year of Regulatory Sandbox**

The FCA has published a [report](#) on the first year of operation of its Regulatory Sandbox. The sandbox opened for applications in June 2016 and has accepted 50 applications, of which 41 progressed to testing.

The report sets out how the sandbox has met its objectives to date, and further explains:

- how the sandbox operates;
- the impact on the market and the FCA's insights from testing, which include:
  - the speed of getting innovative ideas to market;
  - facilitating access to finance for innovators; and
- limitations that firms have faced when testing in the sandbox, such as accessing banking services, and smaller firms struggling to acquire customers to take part in their tests.

The FCA has highlighted that it is too early to draw conclusions on the overall impact of the sandbox, but views the first year as an early indication that the sandbox has been successful in meeting its overall objective and is providing the market with the benefits the FCA set out for it.

#### **Cooperation agreement between Autorité des Marchés Financiers and Abu Dhabi Global Market's Financial Services Regulatory Authority published**

The French Autorité des Marchés Financiers and the Financial Services Regulatory Authority of Abu Dhabi Global Market (ADGM), the International Financial Centre in Abu Dhabi, have signed a [cooperation agreement](#) to promote innovation in financial services in France and the United Arab Emirates (UAE). The agreement was signed by Robert Ophèle, Chairman of the AMF, and Richard Teng,

Chief Executive Officer of the Financial Services Regulatory Authority of ADGM.

#### **Post-trade transparency requirements: BaFin intends to authorise deferred publication of transaction details**

From 3 January 2018, the Markets in Financial Instruments Regulation (MiFIR) will introduce new requirements for post-trade transparency. In this respect, details of transactions in financial instruments executed on a trading venue generally have to be published as close to real-time as technically possible.

The German Federal Financial Supervisory Authority (BaFin) intends to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions, and has published the following draft general decrees (Allgemeinverfügungen) for consultation:

- authorisation of market operators and investment firms operating a trading venue to provide for [deferred publication of the details of transactions in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments](#) (Art. 7 para. 1 MiFIR);
- authorisation of market operators and investment firms operating a trading venue to provide for [deferred publication of transactions in respect of bonds, structured finance products, emission allowances and derivatives](#) (Art. 11 para. 1 MiFIR); and
- authorisation of investment firms, including systematic internalisers, to provide for [deferred publication of the details of transactions in respect of bonds, structured finance products, emission allowances and derivatives](#) (Art. 21 para. 4 MiFIR).

Comments on the draft general decrees may be submitted to BaFin until 14 November 2017.

#### **BaFin consults on draft revised circular on interest rate risk in banking book**

BaFin has published its [draft revised circular](#) on interest rate risk in the banking book. The revised circular will replace the BaFin's current circular of 2011. With the revised circular the BaFin intends to implement the European Banking Authority's (EBA's) 2015 guidelines on the management of interest rate risk arising from non-trading activities in such a way as to exclude having to withdraw new requirements following the current revision of the 2015 EBA guidelines and the expected changes resulting from CRR II and CRD V.

Comments are due by 17 November 2017.

### **BaFin consults on circular and template on solvency reporting for financial conglomerates**

BaFin has launched a consultation on a [proposed circular](#) regarding solvency reporting for financial conglomerates. BaFin has also published a [template](#) to be used for solvency reporting by financial conglomerates.

The proposed circular is intended to replace the German Solvency Regulation for Financial Conglomerates (Verordnung über die Angemessenheit der Eigenmittelausstattung von Finanzkonglomeraten) and is intended to ensure consistency with the requirements imposed by CRR, CRD 4, Solvency II and Commission Delegated Regulation (EU) No 342/2014.

The template will replace the templates which have been used for solvency reporting under the German Solvency Regulation for Financial Conglomerates.

Comments on the circular are due by 17 November 2017.

### **Consob publishes guidelines on inside information and on investment recommendations**

The Commissione Nazionale per le Società e la Borsa (Consob) has adopted [guidelines](#) on inside information and on investment recommendations, in the context of the Market Abuse Regulation (MAR).

The guidelines on inside information clarify how operators have to deal with sensitive information management and, in particular, with the production of a constantly updated insider list. In order to take account of the particularities of small and medium-sized enterprises, new simplified guidelines will be developed within the next months.

The guidelines on investment recommendations concern the fair presentation of investment recommendations and the disclosure of conflicts of interest as well as the conditions under which Consob could request the publication of recommendations.

### **Consob consults on amending Intermediaries Regulation to implement MiFID2 and primary legislation regarding Italian operations of third country firms other than banks**

Consob has issued a [consultation document](#) on a set of proposed amendments to Regulation no. 16190/2007 on intermediaries (Intermediaries Regulation) intended to implement MiFID2 and the Italian primary legislation (i.e., Legislative Decree no. 58/1998, as recently amended –

Italian Financial Act) in the context of operations in Italy of third country firms other than banks.

In particular, the amendments to the Intermediaries Regulation are intended to implement Article 28 of the Italian Financial Act, which sets out the authorisation regime governing third country firms other than banks.

Comments are due by 8 November 2017.

### **Financial Intelligence Unit issues communication on preventing terrorism financing**

Italy's Financial Intelligence Unit (FIU) has published a [communication](#) on preventing terrorism financing, which complements the FIU communication of 18 April 2016.

The indications given in the communication are the result of the FIU's data collection on financial flows and information operated through the suspicious transaction reports transmitted by financial intermediaries, professionals and other operators.

The recommendations are addressed in particular to financial players and concern, among other things:

- the need to pay attention to suspicious transactions, including, for example, repeated transfers of funds to risk areas, particularly when the counterpart is a subject related to extremism and radicalisation;
- the need to apply without delay freezing measures to subjects whose name appears in the lists of persons and associations suspected of financing terrorism; and
- the role played by money transfer agents in monitoring suspicious transactions.

### **PSD2: new Luxembourg implementing bill published**

A new [bill \(no. 7195\)](#) implementing the recast Payment Services Directive (PSD2) has been lodged with the Luxembourg parliament.

The bill implements PSD2 in Luxembourg's legal framework and, in particular, modifies the Luxembourg law of 10 November 2009 on payment services, as amended. The bill foresees an entry into force on 18 January 2018, in line with the PSD2 implementation deadline.

The lodging of the bill with the parliament constitutes the start of the legislative procedure.

### **CSSF carries out survey of amount of covered deposits held as of 30 September 2017**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF),



acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued a [circular](#) dated 9 October 2017 (CSSF-CPDI 17/09) regarding a survey on the amount of covered deposits held as of 30 September 2017.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions), and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The circular further draws members' attention to the provisions of the CSSF-CPDI Circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus and fiduciary accounts. The volume of eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) are to be reported where credit institutions wish to ensure deposit protection for relevant beneficiaries and in order to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members are requested to provide the data at the level of their legal entity, comprising branches located within other Member States, by 27 October 2017 at the latest. In order to transmit these data, institutions are requested to complete the table attached to the circular, which is also available on the CSSF website. The file containing the data should be duly completed in all cases, respect the special surveys naming convention, as defined by CSSF Circular 08/344, and be submitted over secured channels (E-File/SOFiE).

#### **Implementation Bill on Fourth Anti Money Laundering Directive submitted to Dutch Parliament**

The Dutch Cabinet has submitted a [bill](#) to Parliament to implement both the Fourth Anti Money Laundering Directive 2015/849 (AMLD 4) and the EU Regulation No 2015/847 on information accompanying transfers of funds in the Dutch AML Act (Wet ter voorkoming van witwassen en financieren van terrorisme).

AMLD 4 consolidates the core obligations as currently included in the Dutch AML Act, namely to conduct customer due diligence and report unusual transactions to the

Financial Intelligence Unit. The Directive also requires Member States to establish a central register of ultimate beneficial owners of companies (UBO register). This will be effected through a separate bill.

AMLD 4 had to be implemented in the domestic law of the EU Member States by 26 June 2017. As the Dutch Cabinet has not met this deadline, it intends to let the implementing act enter into force as soon as possible upon adoption.

#### **Dutch Ministry of Finance consults on legal framework for crowdfunding platforms**

The Dutch Ministry of Finance has launched a [consultation](#) on a policy document setting out how crowdfunding platforms, in particular those intermediating in bilateral loans, could be regulated further or in other ways than the current framework provides for, in respect of business continuity and safeguards for lenders and borrowers. This follows the increased growth of the crowdfunding sector in the Netherlands and recommendations by the International Monetary Fund (IMF) to strengthen the regulatory framework for crowdfunding platforms.

The document also discusses whether and how platforms should play a role in peer to peer lending, e.g. where both lender and borrower are consumers.

Comments can be submitted until 26 November 2017.

#### **FINMA extends derivatives reporting transition period for specific non-financial companies**

The Swiss Financial Market Supervisory Authority (FINMA) is granting non-financial companies with low derivatives trading volumes [more time](#) to start reporting to a trade repository. This extension period will end on 1 January 2019.

Under the Financial Market Infrastructure Act (FMIA), basically all market participants have a reporting obligation with regard to their derivatives transactions. The Federal Council made no changes to these requirements in the latest revision to the Financial Market Infrastructure Ordinance (FMIO).

However, it has come to FINMA's attention that non-financial companies are facing operational complexities in attempting to implement derivative reporting requirements in application of the Financial Market Infrastructure Act (FMIA). This concerns derivative transactions by so-called small nonfinancial counterparties (NFC-) conducted with foreign counterparties. FINMA is now extending the transitional provisions for these Swiss companies not

subject to FINMA supervision from 1 April 2018 to 1 January 2019, by issuing FINMA Guidance 05/2017. This is intended to give these companies enough time to adapt operations before the reporting requirement comes into force. The transition periods for large and small financial counterparties, large non-financial counterparties and central counterparties remain unchanged.

### **Banking (Amendment) Bill 2017 gazetted in Hong Kong**

The Hong Kong Government has [gazetted](#) the Banking (Amendment) Bill 2017. The Bill amends the Banking Ordinance to bring Hong Kong's regulatory regime up to date with the latest international standards on recovery planning and large exposure limits.

The Bill is intended to implement the latest standards issued by the Basel Committee on Banking Supervision (BCBS) in relation to financial exposure limits of authorised institutions by empowering the Hong Kong Monetary Authority (HKMA) to prescribe rules for such limitations.

In accordance with the recommendations of the Financial Stability Board, the Bill also empowers the HKMA to require authorised institutions to maintain, revise or implement a recovery plan, which should set out the measures that the institution can take to stabilise and restore its financial resources and viability in the event that it comes under severe stress.

The Bill will be introduced into the Legislative Council for first reading on 25 October 2017.

Subject to the passage of the Bill and legal drafting process, the HKMA intends to consult on the draft rules on equity exposures to replace the existing section 87 of the Banking Ordinance in early 2018, and the other components of the new exposure limits regime during the course of 2018.

### **SFC fully implements manager-in-charge regime**

The Securities and Futures Commission (SFC) has [announced](#) the full implementation of its manager-in-charge (MIC) regime following a six-month transition period which ended on 16 October 2017.

The MIC regime, introduced in December 2016, is intended to strengthen the accountability of the senior management of licensed firms and promote greater awareness of their obligations under Hong Kong's regulations. Under the regime, MICs of overall management oversight and key business line functions are required to be registered as responsible officers.

In addition, the SFC has reminded licensed corporations of HKMA [circular](#) requiring registered institutions to submit their up-to-date management structure information and organisational charts via email to both the HKMA and the SFC. To allow sufficient time for preparatory work, registered institutions are expected to report the required information starting from 16 March 2018 and not later than 16 April 2018.

### **HKMA issues guidance on management accountability at registered institutions**

The HKMA has issued guidance on management accountability at registered institutions. The guidance, set out in the [form](#) of [frequently asked questions \(FAQs\)](#), elucidates the expectations of the HKMA with regard to management accountability at registered institutions for conducting or supervising the conduct of businesses that constitute regulated activities.

Under the guidance, relevant information on individual chief executives, alternate chief executives, directors and managers affected under section 72B managers principally responsible for regulated activity business should be submitted to the HKMA and the Securities and Futures Commission (SFC). In addition, an organisation chart depicting the registered institutions' management and governance structure relevant to its regulated activity business should be provided.

To allow sufficient time for preparatory work, registered institutions are being provided with six months for preparation and are expected to submit the required information by 16 April 2018. For applications for registration as a registered institution or the addition of regulated activity/activities, applicants should also submit the required information to the HKMA in support of their applications starting from the same date.

The HKMA has also reiterated that under Part IX of the Securities and Futures Ordinance (SFO), a person involved in the management of the business constituting any regulated activity for which a registered institution is registered is a 'regulated person' who is subject to the disciplinary powers under the SFO.

### **FSC proposes amendments to regulation on supervision of banking business**

The Financial Services Commission (FSC) has [proposed](#) amendments to the Regulation on Supervision of Banking Business. The proposed amendments are intended to implement the net stable funding ratio (NSFR) and the

leverage ratio set out by the Basel Committee on Banking Supervision (BCBS).

The NSFR will be implemented to ensure banks employ stable sources of funding for their operational activities and reduce their longer-term funding risk. The minimum NSFR for banks is to be set at 100%.

The new leverage ratio will be implemented to control excessive leveraging by banks. The minimum leverage ratio is to be set at 3%.

Public comments on the proposed rule changes are due by 19 November 2017.

#### **MAS launches first consultation on draft Notices and Guidelines pursuant to Securities and Futures Act**

The Monetary Authority of Singapore (MAS) has published its first [consultation paper](#) on the draft Notices and Guidelines pursuant to the Securities and Futures Act (SFA). Given the wide-ranging amendments to the SFA, the MAS intends to consult on the draft Notices and Guidelines to support the implementation of the legislative amendments in two phases.

Pursuant to the changes introduced in the Securities and Futures (Amendment) Act 2017 (SF(A) Act), the MAS seeks comments on:

- a proposed new Notice and set of Guidelines on the Risk Fact Sheet for Contracts for Differences;
- amendments to SFA 04-N13 Notice on Risk-Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences;
- amendments to MAS Notices 7571, 11052, 1093, 8164, and SFA 04-N045, which relate to the Lending of Singapore Dollars to Non-Resident Financial Institutions; and
- a new set of Guidelines on the Interpretation of 'Persons Who Commonly Invest' in Division 3 of Part XII of the SFA.

Comments on the consultation paper are due by 3 November 2017.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Implementation of the UK's insurance linked securities framework moves closer**

The Risk Transformation Regulations, which implement the UK's new regulatory and tax framework for Insurance

Linked Securities (ILS), were laid before Parliament on 12 October and are expected to be passed in the next few weeks.

This briefing paper provides an overview of these Regulations and the UK's new ILS regime.

[https://www.cliffordchance.com/briefings/2017/10/update\\_implementationoftheuksinsuranc.html](https://www.cliffordchance.com/briefings/2017/10/update_implementationoftheuksinsuranc.html)

### **US Treasury Department announces new Iran policy and sanctions**

On 13 October, President Trump stated that he would not again certify that Iran was in compliance with the Joint Comprehensive Plan of Action (JCPOA) and signalled that he is likely to terminate the JCPOA unless Iran agrees to additional concessions. Further, the US Treasury Department imposed new sanctions against Iran's Islamic Revolutionary Guard Corp (IRGC) and affiliated entities.

This briefing paper discusses the new policy and sanctions, and their potentially far-reaching consequences.

[https://www.cliffordchance.com/briefings/2017/10/u\\_s\\_treasury\\_departmentannouncesnewira.html](https://www.cliffordchance.com/briefings/2017/10/u_s_treasury_departmentannouncesnewira.html)

### **2017 Dutch coalition agreement – tax impact on financial institutions**

On 10 October 2017, the new Dutch government published its coalition agreement. This briefing paper provides an overview of the key tax measures relevant for financial institutions.

[https://www.cliffordchance.com/briefings/2017/10/2017\\_dutch\\_coalitionagreement-taximpacto.html](https://www.cliffordchance.com/briefings/2017/10/2017_dutch_coalitionagreement-taximpacto.html)

### **Dutch tax reforms – impact on US multinationals**

This briefing paper discusses the key tax changes for US multinationals recently proposed by the new Dutch government.

[https://www.cliffordchance.com/briefings/2017/10/dutch\\_tax\\_reforms-impactonusmultinationals.html](https://www.cliffordchance.com/briefings/2017/10/dutch_tax_reforms-impactonusmultinationals.html)



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