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Briefing note

International Regulatory Update

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IN THIS WEEK'S NEWS

- ESMA consults on clearing obligation for interest rate and credit default swaps
- ESMA adds Keler CCP to list of authorised CCPs
- ESMA publishes final guidelines on accounting enforcement
- CRR/CRD 4: EBA publishes opinion on macroprudential tools
- EBA publishes final draft RTS on model extensions and changes for market risk
- EBA publishes final draft RTS on margin periods of risk for treatment of clearing members' exposures to clients
- EBA publishes final guidelines on significant credit risk transfer for securitisation transactions
- EBA consults on framework for common supervisory procedures and methodologies
- EBA consults on resolution planning and measures to address impediments to resolvability
- EBA consults on types of tests, reviews or exercises that may lead to public support for institutions
- ECB publishes opinion on securities financing transactions proposal
- Financial Policy Committee launches review of leverage ratio
- PRA and FCA publish review of barriers to entry for new banks
- FCA publishes 2013/14 annual report
- FCA publishes discussion paper on use of dealing commissions regime
- FCA consults on competition in wholesale securities and investment markets
- HM Treasury issues statement on money laundering controls in overseas jurisdictions
- German Federal Government publishes proposal for BRRD and Banking Union implementation
- CRR/CRD 4: BaFin publishes circular on application of its former administrative practice
- CSSF issues circular on implementation of CSSF Regulation No 13–02 on out-of-court resolution of customer complaints
- Law on regulation, supervision and solvency of credit entities published

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- FINMA revises circular on banks' liquidity risks to reflect Basel III requirements
- Ukraine included in list of Model 1 IGA FATCA-compliant states
- SFC issues circular to SFC-authorised funds on disclosure of ongoing charges figure and past performance information
- SFC issues circular to SFC-authorised funds on disclosure of tracking difference and tracking error
- FSA publishes draft regulations on margin requirements for non-centrally cleared OTC derivatives
- FSA publishes draft amendments to central clearing, notification and reporting requirements for OTC derivatives transactions
- KRX implements new calculation method for substitute prices of debt securities
- KRX implements mandatory clearing service for Korean won interest rate swap
- FSC announces financial regulatory reform
- MAS publishes Securities and Futures (Reporting of Derivatives Contracts) (Exemption) Regulations 2014
- MOF consults on draft Stamp Duties (Amendment) Bill 2014
- MAS consults on draft regulations for reporting of foreign exchange derivatives contracts
- Recent Clifford Chance Briefings: Merger control in the EU; SEC guidance on proxy voting; and more. Follow this link to the briefings section.

ESMA consults on clearing obligation for interest rate and credit default swaps

The European Securities and Markets Authority (ESMA) has launched two consultations on draft regulatory technical standards (RTS) concerning the clearing obligation for both interest rate swaps (IRS) and credit default swaps (CDS) under the Regulation on OTC derivatives, central counterparties and trade repositories (EMIR). EMIR introduces the obligation to clear certain classes of OTC derivatives in central clearing houses (CCPs) that are either authorised or recognised under its framework.

ESMA's draft RTS propose the following classes to be subject to central clearing:

- for IRS – basis swaps, fixed-to-float IRS, forward rate agreements and overnight index swaps on a range of currencies and underlying indices; and
- for CDS – European untranched index CDS (for two indices).

Comments on the IRS consultation paper are due by 18 August 2014 and on the CDS consultation paper by 18 September 2014. Final RTS will be drafted for the EU Commission following completion of these consultation exercises.

ESMA adds Keler CCP to list of authorised CCPs

ESMA has updated its list of central counterparties (CCPs) that have been authorised to offer services and activities in the EU in accordance with the European Market Infrastructure Regulation (EMIR). With the authorisation of Keler CCP (HU), there are now nine CCPs authorised under EMIR.

Meanwhile, the EU Commission has published an updated set of frequently asked questions (FAQs) on EMIR, which relate to the timing of implementation, the scope of the requirements and position of third country CCPs. A new section has been added for EU CCPs, discussing whether non-EU clearing members of EU CCPs providing services to clients are subject to the segregation requirements in Article 39 of EMIR.

ESMA publishes final guidelines on accounting enforcement

ESMA has published its final guidelines on the enforcement of financial information for listed entities in the EU. The guidelines set out:

- defining enforcement objectives and scope;
- the enforcement process at the national level; and
- coordination of enforcement activities at the European level.

The guidelines will apply to all national competent authorities and other bodies in the EU undertaking enforcement responsibilities under the Transparency Directive and are intended to strengthen and promote supervisory convergence amongst EU accounting enforcers.

The guidelines will now be translated into the official languages of the EU. Following the date of publication of the translations, relevant regulators will have two months to confirm to ESMA whether they comply or intend to comply

with the guidelines by incorporating them into their supervisory practices.

CRR/CRD 4: EBA publishes opinion on macroprudential tools

The European Banking Authority (EBA) has published an opinion concerning the macroprudential tools laid down in the Capital Requirements Directive and Regulation (CRD 4/CRR). The opinion responds to a call for advice issued by the EU Commission. It defines four objectives of macroprudential policy:

- to contribute to financial stability;
- to protect the European single market;
- rules should be clearly defined; and
- disclosure should be transparent.

The macroprudential tools under CRD 4/CRR are assessed against these objectives in the form of a 'traffic light' table to assess the effectiveness, efficiency and transparency of the rules, overlap between them and consistency with the Basel framework. An overall score is provided for each of the tools listed below:

- capital conservation buffer;
- countercyclical capital buffer;
- global systemically important institution (G-SII) tool;
- other systemically important institution (O-SII) tool;
- systemic risk buffer;
- Arts. 124 and 164 of CRR related to increased risk weights and loss given default;
- 'the flexibility package';
- Pillar 2; and
- Liquidity rules.

EBA publishes final draft RTS on model extensions and changes for market risk

The EBA has published final draft regulatory technical standards (RTS) on the conditions for assessing the materiality of extensions and changes of internal approaches when calculating own funds requirements for market risk under the CRR. The RTS complement and amend the previously published rules for credit and operational risk.

These RTS include:

- lists of qualitative criteria for classifying extensions and changes to internal models for market risk as material extensions and changes or extensions and changes of a lesser materiality;
- qualitative thresholds to be applied as 'back-stop' measures in addition to the lists of criteria; and
- the inclusion of standardised documentation to enable competent authorities to assess compliance.

The RTS introduce an additional threshold compared with credit and operational risk to exempt changes or extensions of less than 1% of each of the relevant Internal Models Approach (IMA) risk numbers from the computation of the backstop thresholds.

EBA publishes final draft RTS on margin periods of risk for treatment of clearing members' exposures to clients

The EBA has published final draft RTS on the margin periods of risk (MPOR) used by financial institutions acting as clearing members for the calculation of their capital requirements for exposures to clients under the CRR. The RTS specify MPOR in a different manner for different classes of derivatives to be used in both the internal model method (IMM) and non-internal methods in order to cover the spectrum of derivative types for all counterparty credit risk (CCR) models. In particular, for the IMM MPOR will be an input into the model, whereas for non-internal models MPOR will determine a multiplier of the exposure value that is less than one.

These RTS will form part of the Single Rulebook.

EBA publishes final guidelines on significant credit risk transfer for securitisation transactions

The EBA has published a final set of guidelines intended to support both originator institutions and competent authorities in the assessment of significant risk transfer (SRT) for securitisation transactions and ensure harmonised assessment and treatment of significant risk transfer across all EU Member States.

The guidelines include:

- requirements for originator institutions when engaging in securitisation transactions for SRT;
- requirements for competent authorities to assess transactions that claim SRT;
- requirements for competent authorities when assessing whether commensurate credit risk has been transferred to independent third parties; and
- a standard template on how competent authorities should provide information to the EBA for approved transactions claiming SRT.

The EBA will provide advice to the EU Commission by 31 December 2017 on whether a binding technical standard is required on SRT.

EBA consults on framework for common supervisory procedures and methodologies

The EBA has launched a consultation on its draft guidelines for common procedures and methodologies for the supervisory review and evaluation process (SREP). These guidelines will be applied in the supervision of all institutions across the EU and are intended to foster a consistent supervisory culture across the single market. The guidelines provide a common framework for the work of supervisors in their assessment of risks to banks' business models, their solvency and liquidity.

Comments are due by 7 October 2014. The guidelines are expected to be applied by 1 January 2016, taking into account the results of the consultation.

EBA consults on resolution planning and measures to address impediments to resolvability

The EBA has published draft RTS under the Bank Recovery and Resolution Directive (BRRD) that specify the content of resolution plans and set out criteria on which resolution authorities' assessments of resolvability should be based. Accompanying the RTS, the EBA has also published draft guidelines on measures to reduce or remove impediments to resolvability for consultation.

The draft RTS set out eight categories of information which the resolution plan should contain:

- a summary;
- a description of the resolution strategy;
- arrangements for information;
- arrangements for operational continuity;
- financing;
- communication;
- conclusions of the assessment of resolvability; and
- responses from the institution or group.

In relation to the assessment of resolvability, the RTS propose a staged approach to recognise the need for proportionality, under which the feasibility of liquidation under normal insolvency procedures should be considered before identifying a preferred single-point-of-entry or multiple-point-of-entry resolution strategy as necessary. The RTS sets out the criteria under which the relevant choice between these options will be made.

The draft guidelines relate to circumstances in which resolution authorities identify during their assessment on the resolvability of a bank or banking group impediments to liquidation under normal insolvency proceedings or to the feasibility of resolution. The guidelines set out the requirements for an institution to propose possible measures to remove impediments and the circumstances under which resolution authorities may impose measures to remove obstacles where institutional proposals are insufficient, including a list of measures that resolution authorities can take on a case-by-case basis.

Comments are due by 9 October 2014.

EBA consults on types of tests, reviews or exercises that may lead to public support for institutions

The EBA has launched a consultation on guidelines on the types of tests, reviews or exercises that may lead to extraordinary public support measures for institutions. Under the BRRD, the need to use public financial support should be avoided as far as possible and resolution should be primarily and almost exclusively financed by private funds.

The need for extraordinary public support is identified by the BRRD as an indicator that an institution is failing or likely to fail. However, such support would not necessarily trigger resolution in exceptional cases where a specific list of elements and conditions set in the BRRD is met. Among these elements and conditions, the BRRD refers to public injections of own funds or purchase of capital instruments to address a capital shortfall resulting from a test, review or exercise. The proposed guidelines specify the types of tests, reviews and exercises and provide details of the main features of such measures.

Comments are due by 9 August 2014.

ECB publishes opinion on securities financing transactions proposal

The European Central Bank (ECB) has published an opinion on the proposed regulation on reporting and transparency of securities financing transactions. The ECB broadly welcomes the proposed regulation and makes specific observations around exempt transactions where the European System of Central Banks (ESCB) is a party, rehypothecation, reporting of data on SFTs and the EU Commission's power to amend the list of exemptions under Article 2(2).

The ECB includes suggested amendments to the text of the proposed regulation as an annex to the opinion.

Financial Policy Committee launches review of leverage ratio

The Financial Policy Committee has launched a consultation on the design of a leverage ratio framework for the UK. This forms part of the FPC's review of the role of the leverage ratio within the capital framework for banks, as requested by the Chancellor of the Exchequer in November 2013. The consultation paper sets out the FPC's analysis of the policy choices that would determine the role of the leverage ratio within this framework. The responses to the paper will inform the final review, intended to be published in November 2014. The review will not determine appropriate numerical values for the leverage ratio framework. These will be considered by the FPC at the point when the capital framework and too-big-to-fail priorities are concluded in 2015.

The FPC views the leverage ratio as an integral part of the capital framework and an effective complement to the existing framework of risk-weighted capital requirements and buffers. The consultation paper considers a range of issues, including:

- whether the leverage framework should mirror features of the existing risk-weighted framework – the main components of the risk-weighted framework include a minimum requirement, a capital conservation buffer, supplementary buffers for systemically important firms and a time-varying countercyclical capital buffer;
- the case for introducing a supplementary leverage ratio component to a subset of firms, for example ring-fenced banks and/or systemically important institutions, and whether this should be varied in proportion to the associated supplementary risk-weighted ratio;
- the merits of a time-varying leverage ratio component, which would be varied in a countercyclical manner as system-wide risks evolve over the cycle; and
- the quality of capital needed to meet the possible components of the leverage framework.

The consultation paper sets out the possible costs and benefits of applying a leverage ratio to different types of firms, as well as some high-level considerations related to a cost-benefit analysis of a leverage ratio framework.

The paper also considers the allocation of responsibilities over the leverage ratio framework. Based on the analysis so far, the FPC is minded to recommend to HMT that it be granted powers of direction over all components of the leverage ratio framework.

Comments are due by 14 August 2014.

PRA and FCA publish review of barriers to entry for new banks

The Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published a review of the changes introduced in 2013 to reduce the barriers to entry for new financial institutions. The purpose of the measures was to enable increased competition in the banking industry, to the benefit of customers. The changes focused on two key areas: reforms to and a simplification of the authorisation process for new banks and a shift in the prudential regulation, such as capital requirements, for new entrants.

The review found that:

- the PRA has authorised five new banks and there has been a substantial increase in the number of firms discussing the possibility of becoming a bank with the regulators;
- the regulators held pre-application meetings with over 25 potential applicants with a range of different business models;
- the new mobilisation option has been helpful for applicant firms that may previously have faced challenges in raising capital or investing in expensive IT systems without the certainty of being authorised;
- capital and liquidity requirements for new entrants are now lower than before, but are set against a requirement for a firm to show the regulators that it has a clear recovery and resolution plan in place in the event of it getting into difficulty in the future; and
- the minimum amount of initial capital required by a new entrant bank is GBP 1m compared to GBP 5m under the previous regime.

FCA publishes 2013/14 annual report

The FCA has published its annual report for 2013/14. The annual report looks at some of the key pieces of work undertaken by the FCA in its first twelve months, including:

- warning for customers on interest only-mortgages;
- review into mobile phone insurance;
- RDR six-month review;
- how the FCA intended to regulate consumer credit and payday lending;
- new rules under the Mortgage Market Review;
- Transitions Management Review; and
- retirement income study.

FCA publishes discussion paper on use of dealing commissions regime

The FCA has published a discussion paper (DP14/3) as part of its work on dealing commissions. The discussion paper reports on the FCA's recent supervisory findings and a series of roundtable and bilateral discussions with stakeholders that have examined how the use of dealing commission, specifically for the purchase of research, currently functions. The FCA believes unbundling research from dealing commissions would drive more efficient price formation and competition in the supply of research, particularly if this reform was achieved on an EU-wide basis.

The deadline for comments is 10 October 2014.

FCA consults on competition in wholesale securities and investment markets

The FCA has launched a review of competition in the wholesale securities and investment markets, and related activities, including markets and market infrastructure, investment banking, asset management and corporate banking. The review is intended to be an exploratory exercise that aims to highlight where competition may be weak or not working properly, and where further investigation may be merited through an in-depth market study. The review includes proposed criteria for determining which, if any, market studies should be conducted and outlines some areas where the FCA feels there may be competition issues or distortion of competition in the market. Views are sought, in particular, from suppliers and buyers of products and services from wholesale markets and other stakeholders who interact with such markets.

Comments are due by 9 October 2014.

HM Treasury issues statement on money laundering controls in overseas jurisdictions

HM Treasury has issued a statement containing its advice about risks posed by unsatisfactory money laundering and terrorist financing controls in a number of overseas jurisdictions.

The Treasury's advice follows the Financial Action Task Force's (FATF's) 27 June 2014 public statements which identified:

- jurisdictions with ongoing and substantial money laundering and terrorist financing risks; and
- jurisdictions with strategic deficiencies in their anti-money laundering and combating the financing of terrorism (AML/CFT) regime, which have developed an action plan with the FATF.

The Treasury's statement supersedes its previous advice issued in connection with AML/CFT deficiencies.

German Federal Government publishes proposal for BRRD and Banking Union implementation

The German Federal Government (Bundesregierung) has published draft legislation to implement EU legislation on bank recovery and resolution as well as the establishment of a Banking Union for the eurozone. Amongst other things, the proposed legislation includes the following:

- a comprehensive recovery and resolution Act that implements the EU Bank Recovery and Resolution Directive (BRRD) in Germany;
- amendments to existing laws to reflect the European Central Bank's role as a supervisory authority for the Banking Union;
- an Act to implement the intergovernmental agreement (IGA) of Member States of the eurozone on contributions to the single resolution fund for the Banking Union; and
- two Acts that will provide the requisite national legal framework for the direct recapitalisation of financial institutions through the European Stability Mechanism (ESM).

CRR/CRD 4: BaFin publishes circular on application of its former administrative practice

The German Federal Financial Services Supervisory Authority (BaFin) has published Circular 5/2014 (BA) on the application of its former administrative practice with respect to the Capital Requirements Regulation (CRR).

Following the entry into force of the CRR on 1 January 2014, the former German Solvency Regulation (Solvabilitätsverordnung) and the German Regulation on Large Exposures and Loans (Großkredit - und Millionenkreditverordnung) have been repealed and partially revised. The BaFin states in its circular that former circulars, guidance notes, explanations and communications given in relation to such regulations, including the predecessor of the Solvency Regulation (GS I), shall no longer be applicable.

However, the BaFin also notes that its statements given in such circulars, guidance notes, explanations and communications shall determine its administrative practice in future if they do not conflict with the CRR or more recent guidance, including statements in the Q&A process of the

European Banking Authority (EBA) and the EU Commission, provided that the BaFin explicitly declares such statements to be part of its administrative practice.

CSSF issues circular on implementation of CSSF Regulation No 13–02 on out-of-court resolution of customer complaints

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new circular 14/589, which repeals IML Circular 95/118 on handling customer complaints and provides clarifications on the implementation of CSSF Regulation No 13–02 regarding out-of-court resolution of customer complaints by professionals subject to supervision by the CSSF.

In particular, the new circular provides clarifications on the procedure of complaints handling that has to be implemented by professionals, on the role and responsibilities of the manager in charge of complaints handling and on the annual reporting of complaints to the CSSF. The circular also encloses a reporting template that may be used by professionals for their annual complaint reporting to the CSSF. The first report, covering the first half of 2014, will have to be filed with the CSSF no later than 1 March 2015.

Law on regulation, supervision and solvency of credit entities published

Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit entities has been published in the Spanish Official Gazette. The Law completes the Spanish implementation of the Capital Requirements Directive and Regulation (CRD 4/CRR), initiated by Royal Decree-law 14/2013 of 29 November on urgent measures adapting Spanish law to the EU rules on the supervision and solvency of financial institutions.

Law 10/2014 includes a package of measures aimed at:

- regulating the legal regime applicable to credit entities, establishing the requirements related to authorisations, suitability, good repute and corporate governance;
- regulating aspects related to the prudential supervision and solvency of credit entities, as well as a catalogue of sanctions;
- amending the Spanish Securities Market Law in order to adapt it to EU rules – in particular, it adjusts the regimes of preferred securities and financial conglomerates and also modifies the composition of the Managing Committee of the Deposit Guarantee Fund (Fondo de Garantía de Depósitos); and
- adapting the role of the Bank of Spain as supervisor in order to broaden its power and authority to carry out the supervision of credit entities.

The Law entered into force on 28 June 2014.

FINMA revises circular on banks' liquidity risks to reflect Basel III requirements

As part of the implementation of Basel III, the Swiss Federal Department of Finance will introduce in the Liquidity Ordinance a short-term liquidity ratio requirement (LCR) for banks. The Swiss Financial Market Supervisory Authority (FINMA) has accordingly published a revised Circular 2013/6 'Liquidity – banks' to reflect this requirement. Both the revised Circular and revised Liquidity Ordinance will come into effect on 1 January 2015.

The introduction of the LCR follows consultations held by FINMA, and aims to require banks to possess a minimum level of high-quality liquid assets as a liquidity reserve. The LCR will be implemented broadly in line with Basel III regulations, subject to some minor exceptions and additional points. Systematically important banks will be required to comply with the LCR requirements by 1 January 2015. For all other Swiss banks, the LCR requirement will be phased in gradually. Other Basel III requirements regarding liquidity (e.g. the structural liquidity ratio) will be separately implemented by 2018.

Ukraine included in list of Model 1 IGA FATCA-compliant states

The US Department of the Treasury has included Ukraine in the list of states close to reaching agreement with the US in relation to the Foreign Account Tax Compliance Act (FATCA). Ukraine was whitelisted under the Model 1 Intergovernmental Agreement (Model 1 IGA).

According to the Ministry of Finance of Ukraine, all formalities relating to the execution of the IGA are expected to be completed by the end of 2014. However, the inclusion of Ukraine in the list of states means that agreement has been reached in substance.

FATCA is a United States federal law that is aimed at reducing tax evasion by United States persons. It requires foreign financial institutions to identify their clients, and to report information to the US Internal Revenue Service (IRS) about accounts held by United States persons, including individuals who live outside the United States, and including accounts which are held indirectly through ownership

interests in non-US entities, from 1 July 2014. Non-compliance with FATCA by a foreign financial institution may result in punitive 30% withholding tax.

Under a Model 1 IGA, foreign financial institutions (such as financial institutions in Ukraine) must regularly report FATCA-required information to their local tax authority rather than to the IRS, which subsequently discloses such information to the IRS. Inclusion of Ukraine in the whitelist means that financial institutions in Ukraine are deemed to be compliant pending the execution and ratification of the IGA, and will remain compliant after this occurs. Financial institutions in Ukraine will not be required to report information directly to the IRS or be subject to withholding tax pending such executing and ratification.

SFC issues circular to SFC-authorised funds on disclosure of ongoing charges figure and past performance information

The Securities and Futures Commission (SFC) has issued a circular to management companies of SFC-authorised funds setting out the disclosure requirements of the ongoing charges figure in the product key facts statements (KFS), and past performance information in the KFS and on websites. Currently, the disclosure of the ongoing charges figure in the KFS and the past performance information in the KFS and on websites for SFC-authorised funds are optional.

Subject to the transitional arrangement set out in the circular, all funds authorised in accordance with the Code on Unit Trusts and Mutual Funds (UT Code) and which are marketed to the public of Hong Kong on or after the date of the circular, including those approved-pooled investment funds (APIFs) which are also authorised in accordance with the UT Code for public offering in Hong Kong, must disclose an ongoing charges figure in the KFS and past performance information in the KFS and on their websites as required under the circular. All mandatory provident fund schemes, constituent funds and APIFs which are not authorised in accordance with the UT Code for public offering in Hong Kong are excluded from the ongoing charges figure and past performance information disclosure requirements in the circular whilst they may still be subject to the applicable requirements of other regulators.

A transitional period of six months from the date of the circular will be provided for all existing SFC-authorised funds to update the KFS and if necessary their websites to reflect the latest ongoing charges figure and past performance information calculated and presented in accordance with the methodology set out in the respective guidelines in order to comply with the relevant disclosure requirements.

SFC issues circular to SFC-authorised funds on disclosure of tracking difference and tracking error

The SFC has issued a circular to management companies of SFC-authorised exchange traded funds (ETFs) and unlisted index funds to provide guidance on the disclosure requirements of tracking difference and tracking error. The requirements of tracking difference and tracking error are applicable to all SFC-authorised ETFs. In respect of SFC-authorised unlisted index funds, only the requirements concerning disclosure of tracking difference will be applicable, to the extent they relate to the offering documents.

The guidance, which is based on International Organization of Securities Commissions (IOSCO) recommendations relating to the regulation, operations and management of ETFs, is intended to improve transparency and help funds provide further information to investors concerning the performance tracking of ETFs and unlisted index funds.

The circular is effective from 4 July 2014. A transitional period of six months from the effective date will be provided for existing SFC-authorised ETFs and unlisted index funds, and ETFs and unlisted index funds for which applications for authorisation were submitted to the SFC prior to the effective date to comply with the applicable disclosure requirements in the circular. ETFs and unlisted index funds for which applications for authorisation are submitted on or after the effective date must comply with the requirements in the circular immediately upon the authorisation of such products.

FSA publishes draft regulations on margin requirements for non-centrally cleared OTC derivatives

The Financial Services Agency (FSA) has published draft regulations on margin requirements for non-centrally cleared OTC derivatives, which consist of draft amendments to a Cabinet Office Ordinance under the Financial Instruments and Exchange Act (FIEA) and the Supervisory Guidelines applicable to relevant financial institutions. Public comments are due by 4 August 2014 and, once finalised, the new regulations will generally take effect on 1 December 2015, with staged implementation of the initial margin requirement.

The content of the draft regulations is essentially the same as the framework proposed by the Basel Committee and

IOSCO in their September 2013 report on margin requirements for non-centrally cleared derivatives. However, the drafts propose that:

- in general, the margin requirements apply to Financial Instruments Business Operators (i.e. securities houses, investment managers and investment advisors) (FIBOs) and Registered Financial Institutions (i.e. banks and other financial institutions) (RFIs), but the margin requirements do not apply if, among other things:
  - such FIBOs/RFIs are not a Type I FIBO (i.e. securities house), a bank which is an RFI, an insurance company which is an RFI, Development Bank of Japan, Shoko Chukin Bank, Shinkin Central Bank, or Nochu Bank; or
  - the average outstanding notional amount (limited to OTC derivatives transactions subject to mandatory clearing or reporting and excluding transactions booked in trust accounts) of one party is less than JPY 300 billion;
- if a counterparty is not a FIBO or RFI, the margin requirements should not apply – however, if the counterparty is a foreign derivatives house and its outstanding notional amount of OTC derivatives transactions is likely to be JPY 300 billion or more, the margin requirements should apply;
- assets collected as initial margin should not be re-hypothecated, re-pledged or re-used at all notwithstanding paragraphs 5(iv) and 5(v) of the Basel Committee-IOSCO report; and
- the margin requirements should not apply to certain intra-group transactions.

In addition, even if financial institutions fall within the first exemption above, they are supposed to adopt certain appropriate systems to manage the variation margins.

FSA publishes draft amendments to central clearing, notification and reporting requirements for OTC derivatives transactions

The FSA has published draft amendments to an ordinance under the Financial Instruments and Exchange Act regarding the central clearing, notification and reporting requirements for OTC derivatives transactions.

Central clearing requirements generally apply to locally licensed Financial Instruments Business Operators (i.e. securities houses, investment managers and investment advisors) and Registered Financial Institutions (i.e. banks and other financial institutions, RFIs), with certain exemptions.

With respect to interest rate swaps (IRSs), parties to any transactions which are booked to trust assets (trust transactions) are currently exempt from the requirements. The amendments will narrow the scope of the exemption by no longer covering trust transactions with an average outstanding notional amount of JPY 300 billion or more.

In addition, as of 1 December 2014, parties to an IRS transaction are exempt from the requirement if at least one party to the transaction is not (i) a Type I Financial Instruments Business Operators (i.e. securities houses); (ii) a bank which is a Registered Financial Institutions; or (iii) other banking financial institutions (e.g. Development Bank of Japan Inc) (collectively, obligated operators). The amendments propose to add a fourth category of obligated operators for RFIs that are locally licensed insurance companies (Insurance RFIs).

The amendments are expected to be implemented on 1 December 2016.

As regards reporting and notification requirements, all obligated operators are currently subject to (i) reporting requirements and (ii) notification requirements under which, if their average outstanding notional amount of OTC derivatives transactions (i) was equal to or exceeded, or (ii) ceased to be equal to or exceed, certain thresholds (e.g. JPY 1 trillion from 1 December 2014 and JPY 300 billion from 1 December 2015), they must notify the FSA of this during a period between 1 April and 31 May each year.

The amendments propose to require Insurance RFIs to comply with the reporting requirements and also to subject both Insurance RFIs and trust transactions to the notification requirements.

These changes are expected to be implemented on 1 April 2015.

The FSA will accept comments on the draft until 4 August 2014.

KRX implements new calculation method for substitute prices of debt securities

The Korea Exchange (KRX) has implemented a new method for calculating substitute prices of debt securities listed in its bond market. Under the new method, the calculation interval has been shortened from a weekly to a daily basis. The new method uses a moving average based on closing prices of the immediately preceding five trading days. Therefore, the KRX now computes and announces substitute prices every trading day. Previously, the substitute prices were calculated only once every Friday

based on a simple average using closing prices of the immediately preceding five weekdays.

The new method is intended to allow market participants to know the exact collateral value of debt securities in possession by reflecting daily bond market situations, thereby increasing convenience to market participants. In addition, the KRX hopes that the new method will contribute to enhancing global confidence in the Korean capital market by reflecting the international standard.

KRX implements mandatory clearing service for Korean won interest rate swap

Following authorisation from the Financial Service Commission (FSC) to act as a central counterparty (CCP) for the clearing of over-the-counter (OTC) derivatives trading in September 2013, the KRX has commenced the mandatory clearing service for qualified Korean won denominated interest rate swaps (IRS) contracts between financial investment companies. The KRX has been providing the voluntary CCP clearing service for its member financial investment companies since 3 March 2014.

The clearing service is available to both domestic financial companies and branches of foreign financial companies operating in Korea. Prior to implementation of this service, the domestic branches of foreign banks were not permitted to participate in the KRX CCP clearing by their home country regulations. Consequently, the KRX has entered into arrangements with regulatory bodies of foreign countries including the US and EU to enable domestic branches of foreign companies to use its CCP clearing service.

FSC announces financial regulatory reform

The FSC has announced its plan for financial regulatory reform to create new opportunities and growth drivers for Korea's financial industry and economy. In addition, the FSC has conducted a series of reviews of a total of 3,100 financial regulations, 1,700 regulations of which were shortlisted for further reviews. Out of these, 700 regulations were finally chosen to be reformed. In particular, the FSC aims to:

- build a financial regulatory system for better regulation;
- strengthen support for the real economy and reduce financial consumers' inconvenience;
- create new markets and growth opportunities for the financial industry;
- abolish implicit regulations and administrative guidance;
- establish a permanent system for regulatory reform; and
- tighten market discipline to prevent side effects of easing regulations.

MAS publishes Securities and Futures (Reporting of Derivatives Contracts) (Exemption) Regulations 2014

The Monetary Authority of Singapore has published the Securities and Futures (Reporting of Derivatives Contracts) (Exemption) Regulations 2014. The regulations provide that the following are exempt from the reporting requirements relating to derivatives contracts under section 125 of the Securities and Futures Act (SFA):

- the holder of a capital markets services licence to carry on the business of fund management or real estate investment trust whose total value of managed assets does not exceed SGD 8 billion (an 'exempt manager'); and
- an approved trustee, under section 289 of the SFA, of a collective investment scheme managed by (i) an exempt manager, (ii) a registered fund management company or (iii) a person who carries on the business of fund management (but who is not a specified person).

The regulations are effective from 1 July 2014.

MOF consults on draft Stamp Duties (Amendment) Bill 2014

The Ministry of Finance (MOF) has launched a public consultation on the draft Stamp Duties (Amendment) Bill 2014. The draft Stamp Duties (Amendment) Bill 2014 provides for three changes to the Stamp Duties Act. The first two involve changes to existing stamp duty administration that arise from ongoing reviews of the stamp duty system. The third is a consequential amendment arising from the implementation of the Seller's Stamp Duty (SSD) for industrial properties, introduced as part of the property market cooling measures in 2013. The changes include:

- granting the Commissioner of Stamp Duties (COSD) the discretionary powers to allow stamp duty refunds to taxpayers when the COSD is able to ascertain that there is an overpayment of stamp duty, without the taxpayer having to lodge a refund claim, and to remove the requirement to surrender original instruments for refund claims;
- rationalising interest computation in the event of a claw-back of the stamp duty relief – where taxpayers choose to pay the duty upon execution of documents

and then apply for stamp duty relief, the MOF proposes to amend the Stamp Duties Act to charge interest from the date the stamp duty was refunded upon granting the relief to such taxpayers; and

- extending SSD relief to transfer of industrial properties arising from business restructuring – the proposed relief is to minimise the SSD impact on bona fide business restructuring involving transfer of industrial properties.

Comments on the consultation paper are due by 25 July 2014.

MAS consults on draft regulations for reporting of foreign exchange derivatives contracts

The Monetary Authority of Singapore (MAS) has launched a consultation on the draft regulations for reporting of foreign exchange derivatives contracts. The consultation and draft amendment regulations also propose other changes which will affect the OTC derivatives reporting regime in Singapore.

The key proposals are:

- to require the reporting of all foreign exchange (FX) derivatives which are forward, swaps and options – these will include non-deliverable forwards (NDFs), non-deliverable options and exotic options, but spot transactions will not be reportable;
- banks will commence reporting of FX derivatives contracts booked in Singapore on 1 April 2015 and those traded in Singapore (but not booked in Singapore) on 1 October 2015;
- reporting of FX derivatives by non-bank entities will be introduced at a later stage to be determined by MAS;
- the existing definition of 'traded in Singapore' will be amended to tie the execution of the transaction to a trader as opposed to a trading desk;
- to expand the list of data fields to include mark-to-market valuation and collateral information – this will be phased in; and
- to extend the 'masking' relief by one year – however, MAS proposes to remove all EU countries from the Fifth Schedule of the reporting regulations.

Comments on the consultation paper are due by 8 August 2014.

RECENT CLIFFORD CHANCE BRIEFINGS

European Commission consults on improving merger control

The European Commission is consulting on proposals to reform the EU merger control regime. The plans include an eye-catching proposal to extend the Commission's powers of review to acquisitions of non-controlling stakes where there is a competitive link.

The reforms would also make case referrals between the Commission and EU Member States more effective, and make certain procedures less onerous (including exempting review of joint ventures that operate only outside the EEA).

While the Commission's willingness to streamline its procedures should be welcomed, businesses will be concerned at plans to extend the Commission's powers of review to non-controlling interests.

This briefing discusses the proposals.

http://www.cliffordchance.com/briefings/2014/07/european_commissionconsultsonimprovingmerge.html

Financial Conduct Authority launches a review of competition in the wholesale financial services sector

The Financial Conduct Authority (FCA) has published a 'call for inputs' (CFI) which seeks industry-wide views on the functioning of competition in the wholesale financial services sector. The CFI covers a wide range of areas within wholesale finance and could lead in the first instance to one or more detailed market studies by the FCA. The FCA has asked for submissions by 9 October 2014.

This briefing discusses the key issues.

http://www.cliffordchance.com/briefings/2014/07/financial_conductauthoritylaunchesareviewo.html

SEC Issues Regulatory Guidance on Proxy Voting Responsibilities and Proxy Advisory Firms

On 30 June 2014, the Staff of the Securities and Exchange Commission's Divisions of Investment Management and Corporation Finance issued regulatory guidance regarding the responsibilities of registered investment advisers or investment advisers required to be registered with the Commission in voting client proxies and retaining proxy advisory firms, and on exemptions to the federal proxy rules that are often relied upon by proxy advisory firms.

This briefing discusses the SEC's guidance.

http://www.cliffordchance.com/briefings/2014/07/sec_issues_regulatoryguidanceonproxyvotin.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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