

International Regulatory Update

18 – 22 August 2014

IN THIS WEEK'S NEWS

- ECB identifies systemically important payments systems
- Stress test 2014: EBA publishes final templates
- EBA publishes revised XBRL taxonomy for supervisory reporting
- Money market funds: ESMA publishes opinion on application of CESR guidelines
- EMIR: ESMA publishes responses to consultation on clearing obligation for interest rate swaps
- OTC Derivatives Regulators Group raises concerns over barriers to reporting to trade repositories
- ISDA publishes 2014 Credit Derivatives Definitions Protocol
- EMIR: BaFin publishes FAQs
- HKMA issues circular on engagement of external business referral service providers by authorised institutions
- Federal agencies provide additional guidance for certain resolution plans
- Recent Clifford Chance Briefings: Loan trading across the globe; Russian regulation of bankers' remuneration; and more. [Follow this link to the briefings section.](#)

ECB identifies systemically important payments systems

The European Central Bank (ECB) has [identified](#) four payment systems that are now under the new ECB Regulation on oversight requirements for systemically important payment systems (SIPS), which entered into force on 12 August 2014. The regulation covers large-value and retail payment systems in the euro area operated by both central banks and private entities, and is intended to ensure efficient management of legal, credit, liquidity, operational, general business, custody, investment and other risks as well as sound governance arrangements, with a view to promoting the smooth operation of safe and efficient payment systems in the euro area.

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

If you would like to continue to receive International Regulatory Update or would like to request a subscription for a colleague, please [click here](#).

To request a subscription to our Alerter: Finance Industry service, please email [Online Services](#).

If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Steven Gatti](#) +1 202 912 5095

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP, 10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

The four systems identified by the ECB are:

- TARGET2, operated by the Eurosystem;
- EURO1 and STEP2-T, operated by EBA CLEARING; and
- CORE(FR), operated by STET, a joint initiative of six major French banks.

They were identified according to the combination of at least two of four main criteria, i.e. the value of payments settled, market share, cross-border relevance and provision of services to other infrastructures. The Eurosystem will review this list annually on the basis of updated statistical data.

The Eurosystem has also undertaken a comprehensive review of the oversight standards for euro retail payment systems that are not SIPS initially adopted in June 2003. As the result of this review, the ECB has published the Revised Oversight Framework for Retail Payment Systems.

Stress test 2014: EBA publishes final templates

The European Banking Authority (EBA) has published its final [templates](#) for the 2014 stress test for all EU banks. The templates illustrate the type and format of data that will be disclosed in the stress test. The EBA, as coordinator of the stress test, will publish up to 12000 data points per bank across the whole of the EU.

The stress test will require disclosure in relation to banks' composition of capital, risk weighted assets, profit and loss, exposures to sovereigns, credit risk and securitisation. Following the exercise the EBA will disclose, for the first time, a fully loaded CRR/CRD4 Common Equity Tier 1 (CET1) capital ratio for each bank.

EBA publishes revised XBRL taxonomy for supervisory reporting

The EBA has published a new version of its [XBRL Taxonomy \(2.2\)](#) to be used by competent authorities for remittance of data under the EBA implementing technical standards (ITS) on supervisory reporting. The EBA has released the following items:

- the new taxonomy in XML files;
- information about the design of the taxonomy; and
- the EBA Data Point Model (DPM) contained in the implementing technical standards (ITS) of which the taxonomy is a standardised implementation, including both database and document representations.

The XBRL taxonomy includes a reference date of 31 December 2014 and version 2.2 is to be used for reports as

of this reference date and beyond. The previous version (2.0.1) is to be used for remittance to the EBA for reports with reference dates prior to 30 September 2014 and remittance of reports with reference dates between 30 September and 31 December 2014 are to use the existing taxonomy set version (2.1.0.1).

Money market funds: ESMA publishes opinion on application of CESR guidelines

The European Securities and Markets Authority (ESMA) has published an [opinion](#) on how national competent authorities (NCAs) should apply the recent modifications to the Committee of European Securities Regulators (CESR) guidelines on money market funds (MMFs).

ESMA reviewed the guidelines, which were written in 2010 by its predecessor CESR, for compliance with the Credit Rating Agencies Regulation (CRA). Article 5(b)(1) of the CRA required that ESMA should remove references to credit ratings in its guidelines that might trigger sole or mechanistic reliance on credit ratings. In a joint report produced with the other European Supervisory Authorities (ESAs) in February 2014, ESMA published amendments to the CESR guidelines on MMFs to reduce the risk of sole or mechanistic reliance on credit ratings.

The purpose of the opinion is to explain how NCAs should apply the modifications set out in the joint report when monitoring the application of the CESR guidelines by the relevant financial market participants.

ESMA will not reissue the CESR guidelines as ESMA guidelines, meaning that NCAs will not have to notify ESMA if they comply or intend to comply with the amended CESR guidelines, although ESMA has advised that it will monitor the application of the opinion by NCAs.

EMIR: ESMA publishes responses to consultation on clearing obligation for interest rate swaps

ESMA has published the [responses](#) it received to its July 2014 consultation paper on draft regulatory technical standards (RTS) concerning the clearing obligation for interest rate swaps (IRS) under the European Market Infrastructure Regulation (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 has also updated its [list](#) of CCPs that have been authorised to offer services and activities in the EU in accordance with EMIR. With the authorisation of CCP

Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A), there are now 11 CCPs authorised under EMIR.

OTC Derivatives Regulators Group raises concerns over barriers to reporting to trade repositories

The OTC Derivatives Regulators Group (ODRG) has [written](#) to the Financial Stability Board (FSB) to raise concerns regarding the existence of barriers to reporting to trade repositories.

The barriers identified in the ODRG's letter include data protection laws, blocking statutes, state secrecy laws, and bank secrecy laws. The ODRG warns that such barriers can prevent the reporting of counterparty identifying information to trade repositories and impede the effective supervision of reporting entities.

The ODRG believes that there is an urgent need for changes in certain jurisdictions to remove such barriers and recommends that:

- the FSB and G20 take measures to ensure that any such changes are implemented as quickly as possible;
- there is a role for the Standing Committee on Standards Implementation in helping to identify where barriers may exist and to determine and assess the process for the removal of such barriers; and
- there is a clear deadline for the steps to be taken to remove the barriers.

ISDA publishes 2014 Credit Derivatives Definitions Protocol

The International Swaps and Derivatives Association, Inc. (ISDA) has published the ISDA 2014 [Credit Derivatives Definitions Protocol](#). The Protocol is part of the implementation process for the 2014 ISDA Credit Derivatives Definitions, which ISDA published in February 2014.

The Protocol is designed to enable market participants to apply the 2014 Definitions to certain existing credit derivative transactions, thereby eliminating distinctions between those transactions and new transactions entered into on the 2014 Definitions. By adhering to the Protocol, market participants agree to amend transactions within the scope of the Protocol with all other adhering parties to incorporate the 2014 Definitions into the documentation for those transactions in place of the 2003 ISDA Credit Derivatives Definitions.

The adherence period for the Protocol is now open and will run until 12 September 2014. The documentation changes

set out in the Protocol will take effect on 22 September 2014 when trading using the new Definitions is scheduled to begin.

EMIR: BaFin publishes FAQs

The German Federal Financial Supervisory Authority (BaFin) has published a set of [frequently asked questions](#) (FAQs) on the European Market Infrastructure Regulation (EMIR). BaFin's FAQs supplement those published by the EU Commission and ESMA. Amongst other things, BaFin's FAQs address:

- the treatment of municipalities;
- the notification requirement for counterparties availing themselves of the intra-group exemptions under EMIR; and
- details of the EMIR audit obligation certain German non-financial counterparties have under the German Securities Trading Act.

BaFin's EMIR FAQs will be updated regularly.

HKMA issues circular on engagement of external business referral service providers by authorised institutions

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) regarding the engagement of external business referral service providers by authorised institutions. In a recent survey, the HKMA found that many authorised institutions engage external business referral service providers, which act as referral agencies for various types of credit business. The circular is intended to alert authorised institutions to recent cases involving complaints from the public about unfair or improper business practices adopted by some referral agencies and remind authorised institutions of the need to exercise care and due diligence when engaging business referral service providers.

Further, the circular notes that the use of business referral service providers by authorised institutions may constitute outsourcing. Where the use of a service provider does constitute outsourcing, the HKMA expects authorised institutions to have effective and adequate controls in place to monitor the business practices of the service provider and manage the associated risks in accordance with Module SA-2 of the HKMA Supervisory Policy Manual on Outsourcing. Authorised institutions should remain accountable to customers for any misconduct on the part of the business referral service providers. Even where the use of business referral service providers does not constitute outsourcing, authorised institutions are reminded

of the reputational and other risks if the service providers engaged by them engage in improper business practices or fail to treat customers fairly.

Authorised institutions are also reminded of the need to ensure that they comply at all times with the provisions of the Personal Data (Privacy) Ordinance in the handling and transfer to third parties of customer data.

Federal agencies provide additional guidance for certain resolution plans

The Federal Reserve Board (FRB) and Federal Deposit Insurance Corporation (FDIC) have provided further [guidance](#) to assist firms that will be filing resolution plans for the second time. Each plan will describe the company's approach for a timely and organized resolution under the US Bankruptcy Code in the event of material financial distress or failure of the company. In December 2013, one hundred and seventeen US bank holding companies with less than USD 100 billion in total nonbank assets and foreign-based firms with less than USD 100 billion in US nonbank assets were required to file their initial resolution plans with the agencies.

The second plans should be submitted to the agencies on or before 31 December 2014.

RECENT CLIFFORD CHANCE BRIEFINGS

Guide to loan trading across the globe

Clifford Chance has prepared the second publication of its Loan Trading Across the Globe guide, which is intended to provide all secondary loan market participants (whether a financial institution, fund or other non financial entity, on the buy side, the sell side or acting as a broker/dealer) with an insight into the principal local law issues to consider when trading loans in the secondary loan markets across various jurisdictions. The second publication incorporates 13 additional jurisdictions and covers Belgium, Czech Republic, England, France, Germany, Hong Kong, Italy, Luxembourg, The Netherlands, New York, Poland, Romania, Russian Federation, Singapore, Slovak Republic, Spain, Turkey, and Ukraine.

http://www.cliffordchance.com/briefings/2014/08/loan_trading_acrosstheglobe.html

Contentious Commentary – a review for litigators

Clifford Chance has prepared the latest edition of 'Contentious Commentary', a newsletter that provides a

summary of recent developments in litigation. The newsletter is produced by lawyers in the litigation and dispute resolution practice at Clifford Chance.

http://www.cliffordchance.com/briefings/2014/08/contentious_commentary-august2014.html

Russian Currency Control – More Freedom Under State Control

In early August 2014 amendments to the legislation on currency regulation and currency control entered into force, increasing the range of cases where money can be credited to accounts of Russian residents opened in banks outside Russia. The addition of such statutory provisions mitigates the risk of infringement of the currency control legislation by residents when using accounts outside Russia by reducing the possibility of varying interpretations of the legality of simple transactions performed by residents in accounts in foreign banks. Having thus eased restrictions on foreign accounts, the government is at the same time requiring more stringent reporting by residents.

This briefing discusses this development.

http://www.cliffordchance.com/briefings/2014/08/russian_currencycontrolmorefreedomunde0.html

Russia Rolls Out Regulation of Bankers' Remuneration from 2015

Effective 1 January 2014, a requirement was introduced to Russia's banking legislation stipulating that Russian banks' remuneration systems must adequately reflect the nature and scale of the operations carried out by the banks, the risks assumed by the banks and the financial results achieved. The legislation requires the deferral of bonuses, with the possibility of downward adjustments or cancellation. The Central Bank of Russia (CBR) has also been authorised to establish requirements for banks' remuneration systems and to evaluate compliance with such requirements. The CBR recently published Instruction No. 154-I On the Procedure for Evaluating a Credit Institution's Remuneration System and the Procedure for Sending a Credit Institution a Remuneration System Compliance Order.

This briefing discusses Instruction No. 154-I.

http://www.cliffordchance.com/briefings/2014/08/russia_roll_outregulationofbankers.html

Ban on food imports – Russia introduces counter-sanctions

Russia has introduced a one-year ban on the import of certain food and food products originating from the US, EU, Canada, Australia and Norway. The list of banned goods is set out in the Presidential Decree dated 6 August 2014 'On special economic measures aimed at national security of the Russian Federation'. The ban takes effect from 7 August 2014 and from such time all banned goods will be blocked at the border and not allowed to enter the Russian customs territory.

This briefing discusses the ban.

http://www.cliffordchance.com/briefings/2014/08/ban_on_food_importsrussiaintroduce0.html

Ukrainian Statutory Framework for Imposing Sanctions on Companies, Individuals and Foreign States

On 14 August 2014, the Verkhovna Rada of Ukraine passed the new Law of Ukraine 'On Sanctions'. It establishes a statutory framework for imposing specific economic and other restrictive measures in Ukraine. The Law will become effective after it is signed by the President of Ukraine and following official publication. The Law will prevail in the case of discrepancies between the Law and any other Ukrainian legislation already adopted.

This briefing summarises the Law.

http://www.cliffordchance.com/briefings/2014/08/ukrainian_statutoryframeworkforimposin.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.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2014

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.