

International Regulatory Update

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Short Selling: EU Commission adopts Delegated Regulation on calculation of long and short positions within a group

The EU Commission has adopted a [Delegated Regulation](#) under the Short Selling Regulation (SSR) which corrects Commission Delegated Regulation (EU) No 918/2012 to ensure legal certainty in relation to Article 13(3) on calculating positions for legal entities within a group that have long or short positions in relation to a particular issuer. The correction follows a request for clarification from the European Securities and Markets Authority (ESMA) on 23 October 2013.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal.

Payment Services: EU Council Presidency publishes compromise texts on PSD 2 and Multilateral Interchange Fees Regulation

The Presidency of the EU Council has published compromise texts on the proposals for a [second Payment Services Directive](#) (PSD 2) and a [regulation on interchange fees for card-based payment transactions](#) (MIF Regulation).

EBA publishes 2015 work programme

The European Banking Authority (EBA) has published its [work programme](#) for 2015, describing its main objectives and aims for the forthcoming year.

The development of a Single Rulebook for banking across the EU will remain the EBA's main focus but it also intends to:

- monitor capital levels of EU banks following the EU-wide stress test in 2014;
- continue working with colleges of supervisors to ensure effective cooperation and oversight of cross-border institutions and on the expansion of the EBA's remit in home host cooperation to resolution in 2015;
- issue guidelines in relation to the Mortgage Credit Directive, the Payment Accounts Directive, the proposed new Payment Services Directive (PSD2) and on structured deposits under MiFIR; and
- work on a report analysing consumer trends in crowd funding and continue to monitor virtual currencies.

An [annex](#) setting out specific tasks has been published alongside the work programme.

Securitisations: EBA consults on simple, standard and transparent products for potential regulatory recognition

The EBA has published a [discussion paper](#) for consultation on the European securitisation market. The paper is the EBA's initial response to the EU Commission's call for advice on identifying a prudentially sound securitisation market and its regulatory treatment.

The paper proposes a distinction be made between 'qualifying securitisations' and other securitisations, which would be determined by establishing whether the securitisation meets the criteria for simplicity, standardisation and transparency, and an assessment of credit quality of the underlying exposures. Those qualifying securitisations would enable a new class of securitisation products that are prudentially sound to become subject to specific regulatory recognition.

Comments on the consultation are due by 14 January 2015. The EBA intends to release final technical advice in the second quarter of 2015.

CRD 4: EBA reports on discretionary remuneration practices in banking sector

The EBA has published an [opinion](#) and [report](#) on discretionary remuneration practices across the EU banking sector. Under the Capital Requirements Directive (CRD 4) variable remuneration is limited to 100% of fixed remuneration (200% with shareholders' approval). A number of institutions have altered their remuneration policies to include role-based allowances which they treat as fixed remuneration but which have an impact on the limit of the ratio between variable and fixed remuneration under CRD 4.

The EBA opinion, which is addressed to the EU Commission and competent authorities, is based on information collected in the EBA's investigation and establishes a number of considerations that are important when assessing whether allowances should be classified as variable rather than fixed remuneration in line with CRD 4. It calls on supervisors to ensure that such practices comply with EU rules. The annexed report provides an overview of the investigation into the nature of these allowances and discusses:

- different types of allowances;
- common features of role-based allowances; and

- an analysis of role-based allowances within the context of CRD 4.

Competent authorities have until 31 December 2014 to ensure institutions comply with the criteria highlighted in the EBA report and CRD 4 requirements. The EBA will consult on updated guidelines by the end of 2014 with an intention to implement these in the first half of 2015.

Shadow banking: FSB sets out regulatory framework for haircuts on non-centrally cleared securities financing transactions

The Financial Stability Board (FSB) has published a regulatory [framework](#) for haircuts on non-centrally cleared securities financing transactions. This framework is part of the FSB's policy recommendations to address shadow banking risks in relation to securities financing transactions, and takes into account public responses received on the consultative proposals issued on 29 August 2013 as well as the results of a two-stage quantitative impact study (QIS). In revising the framework, the FSB has decided to raise the levels of numerical haircut floors based on the QIS results, existing market and central bank haircuts, and data on historical price volatility of different asset classes.

The document includes a consultation on whether the numerical haircut floors should be expanded to cover non-bank to non-bank transactions. The consultation closes on 15 December 2014.

FSB publishes guidance on resolution of non-bank financial institutions

The FSB has reissued the '[Key Attributes of Effective Resolution Regimes for Financial Institutions](#)', incorporating guidance on their application to non-bank financial institutions and on arrangements for information sharing to support the effective resolution of cross-border financial institutions.

Four new Annexes to the Key Attributes set out guidance covering:

- resolution of Financial Market Infrastructures (FMIs), including central counterparties (CCPs), and resolution of systemically important FMI participants;
- resolution of insurers;
- client asset protection in resolution; and
- information sharing for resolution purposes.

The Annexes have been developed by the FSB in conjunction with relevant standard-setting bodies (the Committee on Payment and Market Infrastructure (CPMI),

International Association of Insurance Supervisors (IAIS) and International Organization of Securities Commissions (IOSCO). They were issued for public consultation in August 2013 and have been revised in light of the comments received.

The Annex on FMI resolution, together with a report on [FMI recovery published by CPMI and IOSCO](#), is intended to provide a comprehensive set of guidance on recovery and resolution for different kinds of systemically important FMI.

The Annex on resolution of insurers elaborates in further detail on the resolution framework for systemically important insurers and seeks to assist authorities and firms in implementing the resolution planning requirements set out in the policy measures for global systemically important insurers (G-SIIs) published by the IAIS in July 2013.

The Annex on client asset protection in resolution builds on IOSCO's report on recommendations regarding the protection of client assets of January 2014.

The Annex on information sharing for resolution purposes sets out principles for the design of national legal gateways and confidentiality regimes to allow the exchange with domestic and foreign authorities of non-public information that is necessary for planning and carrying out resolution. It also includes provisions on information sharing and confidentiality that should be included in the institution-specific cross-border cooperation agreements that the Key Attributes require for all global systemically important financial institutions (G-SIFIs).

FSB consults on resolution of G-SIFIs in jurisdictions not represented on crisis management groups

The FSB has launched a consultation on a [draft guidance note](#) on resolution of global systemically important financial institutions (G-SIFIs) in jurisdictions not represented on crisis management groups (CMGs) under the 'Key Attributes of Effective Resolution Regimes for Financial Institutions'. In particular, the consultation considers cooperation and information sharing arrangements with host authorities in non-CMG host jurisdictions following an agreement to develop recommendations for the G20. CMGs have to be established to develop effective cross-border resolution plans for G-SIFIs and comprise the key authorities from jurisdictions that are home or host to entities that are material to an effective resolution of a group. The guidance discusses instances in which a firm's operations are locally systemic to the host jurisdiction but not material to the resolution of the overall group and therefore not represented in the CMG.

The draft guidance discusses four main areas:

- the process for identifying non-CMG host jurisdictions;
- criteria for assessing the systemic nature of G-SIFI's in non-CMG host jurisdictions;
- cooperation and information sharing arrangements; and
- classes of information to be shared between home authorities and non-CMG host jurisdictions.

Comments on the consultation are due by 1 December 2014; the FSB has specified five questions that it seeks responses to, which are set out on the consultation webpage.

ISDA Resolution Stay Protocol agreed with major banks

The International Swaps and Derivatives Association (ISDA) has [announced](#) that the ISDA Resolution Stay Protocol has been agreed in principle by 18 major global banks (G-18) who have committed to implement the protocol by the time of the Brisbane G20 Summit in November.

The protocol will impose a stay on cross-default and early termination rights within standard ISDA derivatives contracts between G-18 firms in the event one of them is subject to resolution action in its jurisdiction. Adhering parties will be contractually opted into provisions within certain qualifying special resolution regimes that limit the exercise of termination rights in order to capture cross-border trades. The contractual approach is intended to support current statutory regimes and ensure wider, more consistent application.

The protocol will become effective on 1 January 2015 for the G-18 firms, which are implementing the protocol on a voluntary basis from November 2014. US bankruptcy related provisions which will only become effective upon relevant regulations being issued by US regulators.

HM Treasury consults on payment systems falling under new Payment Services Regulator regime

HM Treasury has launched a [consultation](#) on the designation of payment systems for regulation by the Payment Services Regulator (PSR), the new competition-focused economic regulator for retail payment systems in the UK established under the Financial Services (Banking Reform) Act 2013.

In April 2014 the PSR was incorporated as a subsidiary of the Financial Conduct Authority (FCA) and the PSR will be fully operational from April 2015. This consultation sets out

the payment systems HM Treasury intends to designate to be brought under regulation by the PSR:

- Visa;
- Mastercard; and
- the main interbank systems, including Bacs, CHAPS, Faster Payments, Link and the cheque clearing system.

Comments on the consultation are due by 11 November 2014. Designation orders following the final HM Treasury decision will be made in time for the PSR assuming its regulatory responsibilities.

Deposit Guarantee Schemes Directive: German Finance Ministry publishes draft implementing Act

The German Federal Finance Ministry (Bundesfinanzministerium) has published a [draft Act](#) to implement the new Deposit Guarantee Schemes Directive 2014/49/EU (DGSD), which amends existing rules on deposit protection schemes.

The draft Act provides for the replacement of the existing German Deposit Protection and Investor Compensation Act (Einlagensicherungs- und Anlegerentschädigungsgesetz) (EAEG) by two separate Acts – one dealing with depositor protection in accordance with the DGSD and one dealing with investor protection in accordance with Directive 97/9EC on investor compensation schemes.

State Council issues decision temporarily adjusting relevant special administrative measures on access to industries in China (Shanghai) Pilot Free Trade Zone

The State Council has issued the [Decision](#) on Temporarily Adjusting the Relevant Special Administrative Measures on Access to Industries in the China (Shanghai) Pilot Free Trade Zone' to further open up the China (Shanghai) Pilot Free Trade Zone.

The decision further eases restrictions on foreign investment in the shipping, manufacturing, mining and quarrying, transportation, online sales, real estate agency, photography and other industries in the China (Shanghai) Pilot Free Trade Zone.

CBRC issues implementing measures on administrative approvals of foreign-invested banks

Following a public consultation period, the China Banking Regulatory Commission (CBRC) has issued the [Implementing Measures](#) on Administrative Approvals of Foreign-invested Banks'. The Implementing Measures supersede the 'Implementing Measures on Administrative Approvals of Foreign-invested Financial Institutions' and

are intended to provide more flexibility and streamline the administrative approval process for establishing foreign-invested banks in China.

Amongst other things, under the Implementing Measures:

- qualified foreign-invested banks may establish more than one sub-branch in the same city;
- the minimum working capital requirement on a foreign-invested bank's sub-branch is removed and it is now generally required that foreign-invested banks should have the working capital which is compatible with the business scale in place before establishment of a sub-branch;
- a new section headed 'Issuance of Debts and Capital Replenishing Instruments' is introduced, whereunder eligible wholly foreign-owned banks and joint venture banks may issue debts and capital replenishing instruments either abroad or within China upon the CBRC's approval; and
- certain favourable treatments applicable to the banks of Hong Kong, Macau and Taiwan are specified.

The Implementing Measures took effect immediately.

Bank of Korea and People's Bank of China announce renewal of bilateral currency swap arrangement

The Bank of Korea (BOK) and the People's Bank of China (PBOC) have [announced](#) the renewal of the Korean Won-Chinese Yuan bilateral currency swap arrangement and decided to keep its size at 64 trillion KRW/360 billion RMB. The renewed arrangement will be effective for three years from 11 October 2014 to 10 October 2017 and could be extended by agreement between the two central banks.

The central banks believe that the renewal of the currency swap arrangement will contribute to promoting bilateral trade between the two countries and regional financial stability. The two sides also expect that the decision will serve as a foundation for further enhancing the financial and monetary cooperation between the two central banks.

Bank of Thailand issues guidelines for financial institutions submitting information for determination of BIBOR

The Bank of Thailand (BOT) has issued [guidelines](#) for financial institutions regarding the submission of information by Bangkok Interbank Offered Rate (BIBOR) contributors. This is in order to improve market stability and consumer protection as well as to comply with IOSCO's Principles for Financial Benchmarks.

The guidelines prescribe that a BIBOR contributor must have a committee specifically responsible for the submission process and issue an internal manual to ensure that submissions are made by competent staff and are correct and timely. To ensure transparency, a BIBOR contributor must put in place:

- a validation process;
- a data storage system for a specified period of time to enable auditing; and
- measures to deal with any conflicts of interest in the submission process.

The guidelines will become effective on 1 January 2015.

Federal Reserve Board publishes guidance on competitive review process for bank acquisitions, mergers, and other transactions

The Federal Reserve Board (FRB) has published guidance, in the form of a list of [frequently asked questions](#) (FAQs), regarding the competitive review process for bank acquisitions, mergers, and other transactions. The guidance provides answers to questions that have been raised by banking organizations considering filing applications, and explains changes to the application process mandated by the Dodd-Frank Act. The FAQs, which were developed jointly with the Department of Justice, also explain factors considered by both agencies in conducting competitive analysis for bank applications.

RECENT CLIFFORD CHANCE BRIEFINGS

EMIR – CCPs and Trade Repositories

The market infrastructure to support EU derivatives reforms is quickly taking shape. This year has seen the first authorisations of EU central counterparties (CCPs), triggering the first clearing obligation procedure under the EU regulation on OTC derivatives, central counterparties and trade repositories (EMIR). The EMIR reporting regime, in force since 12 February 2014, is supported by a number of EU trade repositories (TRs) which are registered with, and directly supervised by, the European Securities and Markets Authority (ESMA). Progress has, however, been slower for non-EU CCPs and TRs.

This briefing sets out the current status of CCPs and TRs in the EU, with a look forward to what can be expected next.

http://www.cliffordchance.com/briefings/2014/10/emir_ccps_and_traderepositories.html

Financing companies – a new domestic status for credit and lending business in France

Since 1 October 2014, French non-deposit taking credit institutions no longer qualify as credit institutions under the French legislation. Instead, they shall be 'financing companies', a new status created by Ordinance no. 2013 544 of 27 June 2013. For those who did not elect for such a status before that date, the new specialised credit institution status is available, provided that they pursue a deposit-taking business.

This briefing explains the main features of both statuses.

http://www.cliffordchance.com/briefings/2014/10/financing_companiesanewdomesticstatusfo.html

New regulatory framework for collective investment undertakings in Spain

On 18 July 2014, the Official Gazette published the Draft Bill which will transpose the Alternative Investment Fund Managers Directive (AIFMD) in Spain.

The transposition of the AIFMD in Spain through the Draft Bill will entail the amendment of the Spanish Private Equity Act, which regulates closed-ended funds, and the amendment of the Spanish Collective Investment Undertakings Act, which regulates open-ended funds.

This briefing analyses the transposition of the AIFMD and discussing the developments that the AIFMD brings to open-ended collective investment undertakings.

http://www.cliffordchance.com/briefings/2014/10/new_regulatory_frameworkforcollectiv.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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