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EBA and ECB publish results of 2014 EU-wide stress test and comprehensive assessment of largest euro area banks

The European Banking Authority (EBA) has published the results of the 2014 EU-wide stress test of 123 banks. In addition, the European Central Bank (ECB) has published the results of its comprehensive assessment of the resilience and positions of the 130 largest banks in the euro area as of 31 December 2013.

The 2014 EU-wide stress test results show an overall impact of the adverse macroeconomic scenario on the Common Equity Tier 1 (CET 1) ratio of 260 basis points over 3 years, with CET1 decreasing from 11.1% in 2013 to 8.5% in 2016.

The ECB's comprehensive assessment – which consisted of the asset quality review (AQR) and a forward-looking stress test of the largest euro area banks – found a capital shortfall of EUR 25 billion at 25 banks. Twelve of the 25 banks have already covered their capital shortfall by increasing their capital by EUR 15 billion in 2014. Banks with shortfalls must prepare capital plans within two weeks of the announcement of the results. The banks will have up to nine months to cover the capital shortfall.

The AQR showed that as of end-2013 the carrying values – or book values – of banks' assets need to be adjusted by EUR 48 billion, which will be reflected in the banks' accounts or prudential requirements. Furthermore, using a standard definition for non-performing exposures (any obligations that are 90 days overdue, or that are impaired or in default), the review found that banks' non-performing exposures increased by EUR 136 billion to a total of EUR 879 billion.

The comprehensive assessment also showed that a severe scenario would deplete the banks' top-quality, loss-absorbing CET 1 capital by about EUR 263 billion. This would result in the banks' median CET1 ratio decreasing by 4 percentage points from 12.4% to 8.3%.

SSM: ECB publishes Regulation on supervisory fees

The ECB has published a Regulation on supervisory fees (ECB/2014/41) under the Single Supervisory Mechanism (SSM). The SSM Regulation ((EU) No 1024/2013)) specifies that the ECB should levy an annual fee on all supervised banks within the SSM in order to recover the ECB's expenditure in relation to its supervisory functions. The ECB will directly supervise significant credit institutions within the SSM and oversee the functioning of the SSM as a whole. Credit institutions established in participating Member States and branches of credit institutions established in non-participating Member States that are located in participating Member States will be required to pay the fees, calculated on the basis of institutions' importance and risk profile, including risk weighted assets.

The ECB launched a consultation on its proposals on 27 May 2014 and in preparing the final regulation has made amendments where necessary. Alongside the Regulation, the ECB has also published a feedback statement on the consultation providing analysis of responses, comments received and a table summarising the amendments made to the original proposals.

The ECB assumed its supervisory tasks as part of the SSM on 4 November 2014.

EBA writes to Commission regarding breach of Deposit Guarantee Schemes Directive by Bulgarian National Bank

The EBA has published a letter to the EU Commission regarding its formal recommendation to the Bulgarian National Bank (BNB) and the Bulgarian Deposit Insurance Fund (BDIF), which was published on 20 October 2014 and notified the Bulgarian authorities of a breach of the Deposit Guarantee Schemes Directive (DGSD) following the BNB's decision to place two Bulgarian banks under conservatorship and suspend all payments in June 2014, leaving depositors with no access to their funds through these banks or a deposit guarantee scheme since that time.

The EBA letter to the Commission, issued under Art. 17 of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), is written in view of a possible formal opinion by the Commission. Alongside its letter to the Commission, the EBA has also published the responses it received from the BNB and BDIF to its formal recommendation, which provide no timetable for compliance.

CRD 4: EBA publishes opinion on application of prudential requirements for credit and investment firms

The EBA has published an opinion on the application of Art. 108 and 109 of the Capital Requirements Directive (CRD 4 – Directive 2013/36/EU) and Part One, Title II and Art. 113(6) and (7) of the Capital Requirements Regulation (CRR – Regulation (EU) No 575/2013) relating to the rules governing the levels of application of prudential requirements for credit and investment institutions (Pillar 1 and Pillar 2), in particular the exemption regime. The opinion responds to a call for advice by the EU Commission on 20 December 2013 on:

- whether the rules governing levels of application for the ICAAP (Art. 108 CRD 4) and for the review of an institution's arrangements, processes and mechanisms (Art. 109 CRD 4) are appropriate; and
- whether rules governing the application of Pillar 1 requirements on both an individual and consolidated basis are appropriate.

The opinion aims primarily at addressing the issue of whether the waivers under Pillar 1 and Pillar 2 are prudentially justified and whether they should be modified, clarified or more closely aligned. In preparing its opinion, the EBA took into account questionnaire responses from 22 national competent authorities (NCAs), which cover over 6000 supervised institutions. The opinion sets out considerations for future review of the use of waivers in order to take into account their interaction with banks' recovery and resolution strategies and intragroup financial support regime introduced by the Bank Recovery and Resolution Directive (BRRD) and allow for better alignment.

The Commission must report to the EU Council and EU Parliament on these aspects of CRD 4 and the CRR by 31 December 2014.

CRD 4: RTS on passport notifications and identifying geographical location of relevant credit exposures published in Official Journal

A Commission Delegated Regulation supplementing CRD 4 with regard to regulatory technical standards (RTS) on the identification of the geographical location of relevant credit exposures for calculating institution-specific countercyclical capital buffer rates and a Commission Delegated Regulation on the information to be notified when exercising the right of establishment and the freedom to provide services under CRD 4 have been published in the Official Journal.

Both Regulations will enter into force on 19 November 2014.

CRD 4: EU Commission reports on country-by-country reporting

The EU Commission has adopted a report to the EU Parliament and EU Council providing a general assessment of the economic consequences of country-by-country reporting (CBCR) by institutions. CBCR has been established under Article 89 of CRD 4 and is intended to enhance transparency and enable stakeholders to gain a better understanding of groups' structures, taxes paid and the nature of their business.

From 1 July 2014, all institutions falling within the scope of Art. 89 have been subject to requirements for annual reporting of certain elements of CBCR data:

- name, activities and geographical location;

- turnover; and
- staff numbers.

The other data elements of the CBCR have only been required from global systemically important banks (GSIBS) on a confidential basis since 1 July 2014:

- profit or loss before tax;
- tax on profit or loss; and
- public subsidies received.

The EU Commission report considers whether CBCR leads to significant negative economic effects in particular on competitiveness, credit availability, investment and financial stability and takes into account information received from the European Supervisory Authorities (ESAs), a study prepared by PwC and direct consultation with stakeholders. The PwC study has been published alongside the Commission's final report and includes the results of a literature review, econometric study, stakeholder survey, expert survey and review of the first disclosures by the GSIBs. The Commission has also published a feedback statement on submissions, feedback and comments from the GSIBs on their confidential disclosures.

The Commission's review establishes that the full application of CBCR should not be deferred and will apply in full to all institutions that fall within the scope of Art. 89 of CRD 4 from 1 January 2015.

Joint Committee of the ESAs consults further on mapping credit assessments to risk weights of ECAIs

The Joint Committee of the European Supervisory Authorities (ESAs) has published an addendum to its consultation on the mapping of the credit assessments to risk weights of External Credit Assessment Institutions (ECAIs) under the Capital Requirements Regulation (CRR). The original consultation (JC/CP/2014/01) on draft implementing technical standards (ITS) closed in June 2014 and this addendum, which has been published for further consultation, is intended to provide additional details of the application of the draft ITS for particular ECAIs and should be considered an extension of the consultation process.

The addendum contains:

- individual mapping tables of all relevant ECAIs based on objective information available for each ECAI in relation to the performance of its credit ratings;
- some additional aspects of the draft cost-benefit/impact assessment analysis on the impact to ECAIs; and
- an updated table for the long-run benchmark and clarification on the explanatory text relating to Art. 7 of the draft ITS.

Alongside the addendum, the EBA has also published individual draft mapping reports that illustrate how the rules proposed in the draft ITS were applied.

Comments on any proposals put forward in the addendum are due by 30 November 2014.

ESMA publishes public statement and guidelines on European common enforcement priorities for 2014 financial statements

The European Securities and Markets Authority (ESMA) has issued a public statement on the European common enforcement priorities for 2014, which is intended to promote the consistent application of International Financial Reporting Standards (IFRS) by listed companies and their auditors. ESMA has also published guidelines for competent authorities undertaking the enforcement of financial information under the Transparency Directive alongside its public statement and these will enter into force by 29 December 2014.

The common enforcement priorities focus on:

- preparation and presentation of consolidated financial statements and related disclosures;
- financial reporting by entities which have joint arrangements and related disclosures; and
- recognition and measurement of deferred tax assets.

ESMA has highlighted these topics either due to recent changes to accounting practices, or because current economic circumstances may pose particular challenges to issuers in the application of certain IFRS requirements.

Additionally, the public statement sets out topics that should be considered in preparation of 2014 financial statements, but which are not explicit enforcement priorities, in relation to:

- reporting by European banks following the European Central Bank (ECB) Comprehensive Assessment exercise; and
- quality, to ensure financial statements balance the adequate disclosure of an issuer's financial position, performance, cash flow and risk while avoiding being overloaded with financial information.

ESMA and national enforcers will supervise the application of IFRS requirements based on the priorities specified and national enforcers will incorporate these priorities into their reviews.

EMIR: First equivalence decisions for CCP regulatory regimes adopted

The EU Commission has adopted its first equivalence decisions for the regulatory regimes of central counterparties (CCPs) in Australia, Hong Kong, Japan and Singapore and published provisional versions of Implementing Acts on the equivalence of the regulatory framework of each jurisdiction for central counterparties made under the European Market Infrastructure Regulation (EMIR).

The EU Commission begins its assessment for equivalence if a non-EU CCP applies to obtain recognition from ESMA. Equivalence assessments are intended to ensure that the relevant rules operating in the third country satisfy the same objectives as in the EU. Following publication of the Implementing Acts in the Official Journal, CCPs in each jurisdiction will be able to obtain recognition in the EU and be used by market participants to clear standardised OTC derivatives as required by EU legislation, while remaining subject solely to the regulation and supervision of their home jurisdiction.

Benchmarks Regulation: EU Council Presidency publishes compromise proposal

The EU Council Presidency has published a compromise text for the proposed regulation on indices used as benchmarks in financial instruments and financial contracts.

Shadow banking: EU Council Presidency publishes compromise proposal for transparency of securities financing transactions regulation

The EU Council Presidency has published a compromise text for the proposed regulation on reporting and transparency of securities financing transactions.

The proposal, adopted by the EU Commission in January 2014, aims to prevent the biggest banks from attempting to circumvent the proposed ringfencing of potentially risky trading activities that may threaten financial stability from deposit-taking business by shifting activities to the shadow banking sector. This regulation is also intended to provide measures to enhance regulators' and investors' understanding of securities transactions.

FSB publishes global shadow banking monitoring report for 2014

The Financial Stability Board (FSB) has published its fourth annual global shadow banking monitoring report, which presents data from 25 jurisdictions and the euro area as a whole as at end 2013. The report's main findings include:

- the monitoring universe of non-bank financial intermediation (MUNFI), a measure based on the financial assets of other financial intermediaries (OFI), grew by USD 5 trillion in 2013 to reach USD 75 trillion;
- MUNFI assets have been relatively stable since 2008 and represent on average about 25% of total financial assets, roughly half of banking system assets, and 120% of GDP;
- MUNFI assets grew by 7% in 2013, driven in part by a general increase in valuation of global financial markets;
- the broad MUNFI estimate of non-bank financial intermediation was narrowed down from USD 62 trillion to USD 35 trillion based on a refined shadow banking measure to produce an estimate that focuses on shadow banking risks and based on more granular data reported by 23 jurisdictions;
- emerging market jurisdictions recorded the fastest growth rates in the shadow banking sector; and
- trust companies and other investment funds were the fastest growing subsectors globally in 2013.

The FSB highlights that ongoing work to narrow down the estimate of the shadow banking sector will benefit from the results of the information-sharing exercise on shadow banking entities and activities and forms part of the high-level policy framework for strengthening oversight and regulation of shadow banking entities, which commenced this year.

FSB reports on structural banking reforms

The FSB has published its report to the G20 Leaders Summit on cross-border consistencies and the global financial stability implications arising from structural banking reforms in various jurisdictions. The report, prepared in collaboration with the IMF and OECD, sets out information and perspectives from jurisdictions that have implemented structural banking reform measures and those that might be affected by those reforms. Most of the reforms referred to have involved a functional separation of types of financial activities through prohibitions, ring fencing or subsidiarisation.

The report discusses, in particular:

- perspectives from those affected jurisdictions towards the overall objectives of structural reform and on particular cross-border implications;
- implications for the mobility of cross-border capital flows; and
- the role of continued monitoring of structural reforms.

The FSB will continue its work with the IMF and OECD and provide an update to the G20 Finance Ministers and Central Bank Governors in 2016.

Basel Committee publishes finalised net stable funding ratio

The Basel Committee on Banking Supervision (BCBS) has published its final standard for the net stable funding ratio (NSFR) and timeline for its implementation. The NSFR was included in the 2010 Basel III agreement and is a significant component of the Basel III reforms. In addition to the liquidity coverage ratio (LCR), NSFR is part of BCBS' strengthened liquidity framework and is intended to meet its objective to reduce funding risk by requiring banks to fund their activities with sufficiently stable sources of funding in order to mitigate the risk of future funding stress.

The NSFR is the amount of available stable funding relative to the amount of required stable funding and has been developed in order to limit overreliance on short-term wholesale funding, encourage better risk assessment and promote funding stability. BCBS published a revised NSFR standard for consultation in January 2010 and the final standard retains the structure of that proposal, but incorporates certain key changes in relation to stable funding for:

- short-term exposures to banks and other financial institutions;
- derivatives exposures; and
- assets posted as initial margin for derivatives contracts.

The final standard also acknowledges that certain asset and liability items are interdependent and can therefore be viewed as neutral for the NSFR.

The NSFR will become a minimum standard by 1 January 2018.

CRD 4: PRA issues policy statement on changes to credit risk mitigation, credit risk, governance and market risk rules

The Prudential Regulation Authority (PRA) has published a policy statement (PS10/14) setting out the feedback, final rules and supervisory statements to implement the proposals in its June 2014 consultation paper (CP12/14) on updates regarding credit risk mitigation (CRM), credit risk, governance and market risk under the Capital Requirements Regulation and Directive (CRD 4).

PS10/14 covers the proposals in CP12/14 subject to a one-month consultation period, which closed on 8 August 2014.

The following changes have been made to PRA policy:

- the supervisory statement on credit risk mitigation (SS17/13) has been updated with the expectation that a firm wishing to use its own estimates of volatility adjustments shall provide the PRA with confirmation that it meets the requirements set out in CRR Articles 225(2) and 225(3), together with the information set out in SS17/13;
- the supervisory statement on market risk (SS13/13) has been updated with guidance for firms on how to report Risks not in VaR requirements in FSA005, and the European Banking Authority's common regulatory reporting framework (COREP);
- a new rule in Credit Risk 4 of the PRA Rulebook to introduce stricter criteria for the application of a 50% risk weight to certain commercial real estate exposures located in non-EEA countries; and
- guidance has been added to SYSC 4 of the PRA Handbook to clarify the PRA's interpretation of how the CRD 4 limits on directorships held by directors of significant firms apply to the individuals who manage the consolidated group.

CP12/14 also contained a proposal relating to an expectation that approval will no longer be granted for advanced internal ratings-based approach permissions. The consultation period for this proposal closed on 30 September 2014. The PRA will provide feedback and a final supervisory statement for this proposal in due course.

FCA consults on restrictions for retail distribution of CoCos and regulatory capital instruments

The Financial Conduct Authority (FCA) has published a consultation paper (CP14/23) on proposed restrictions to the retail distribution of contingent convertible securities (CoCos) and core capital instruments issued by mutual societies. The FCA is concerned that both of these types of securities are hard for investors to value and have complex and unusual features that are unlikely to be appropriate for ordinary retail investors. The proposed rules seek to enhance consumer protection by limiting their availability in the retail market.

The consultation paper sets out the FCA's proposal to make permanent the temporary product intervention measure restricting retail distribution of CoCos, which entered into force on 1 October 2014. The proposals would restrict the sale of CoCos to those meeting certain criteria in order to limit their availability to the retail market and extend the current temporary measures to certain pooled investments that invest wholly or predominantly in CoCos.

Proposals for regulatory share capital instruments issued by mutual societies, including core capital deferred shares (CCDS), extend to ordinary retail investors that are not certified as sophisticated investors or high net worth individuals. The FCA proposes requirements to provide these investors with specific risk warnings prior to investing and limit investments in these types of securities to 5% of net investible assets. The proposals currently only relate to primary issuance rather than the secondary market.

The FCA intends to publish its final rules in summer 2015 and implement permanent rules by 1 October 2015, when the temporary rules on CoCos expire. Comments on the consultation are due by 29 January 2014.

Fair and Effective Market Review consults on structures and conduct in FICC markets

The Fair and Effective Market Review (FEMR) has published a consultation paper on the wholesale fixed income, currency and commodity (FICC) markets in order to assess the fairness and effectiveness of these markets and identify areas for improvement. The FEMR was launched by the Chancellor in June 2014 as a joint exercise between HM Treasury (HMT), the Bank of England (BoE) and FCA to assess whether changes made following a series of high-profile abuses within wholesale financial markets have gone far enough to reinforce confidence and establish any further measures that should be taken. Final recommendations will be published in June 2015.

This consultation paper sets out the Review's perspective on what constitutes 'fair' and 'effective' in FICC markets and seeks views on:

- where deficiencies in fairness and effectiveness may lie based on a six-part framework of structural and conduct vulnerabilities to assess the most critical deficiencies and help inform potential solutions;
- the extent to which regulatory, organisational and technological changes since the financial crisis are likely to address perceived deficiencies, in order that the final FEMR recommendations to not duplicate existing efforts; and
- further steps that might be needed in particular FICC markets, setting out proposed measures for improving market structures and actions on conduct.

Comments on this consultation are due by 30 January 2015.

Central Securities Depositories Regulations 2014 published

The Central Securities Depositories Regulations 2014 (2014/2879), which implement certain articles of the EU Central Securities Depositories Regulation (CSDR), have been published. The Regulations designate the Financial Conduct Authority, the Bank of England and the Prudential Regulation Authority as the various competent authorities in relation to different provisions in the CSDR and provide those bodies with powers for enforcement of the CSDR and sanctions.

The Regulations come into force on 21 November 2014.

CSSF publishes circular on reporting requirements for credit institutions

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a new circular (no. 14/593) on reporting requirements applicable to credit institutions that have been introduced or will be introduced in 2014. The circular aims at reminding and informing credit institutions of recent and upcoming developments with regard to prudential reporting, including:

- requirements on an individual and consolidated basis in accordance with Commission Implementing Regulation (EU) No 680/2014 laying down implementing technical standards (ITS) on supervisory reporting according to the CRR;
- the implementation of reporting financial information (FINREP) on an individual basis;
- reporting tables introduced by the CSSF which are not covered by harmonised European reporting and which remain applicable; and
- reporting tables supplementing Commission Implementing Regulation (EU) No 680/2014 as required by the CRR in different areas (e.g. asset encumbrance).

The CSSF also draws attention to its handbook on reporting requirements for credit institutions, which is available on its website and will be regularly updated; an automatic update notification feature is available for credit institutions.

In addition to the questions and answers (Q&A) document on reporting requirements issued by the European Banking Authority (EBA) in the context of the Single Rulebook, which is available on the CSSF's website, the CSSF has announced that it will publish an additional Q&A document relating to reporting requirements introduced by the CSSF. Moreover, the CSSF will extend the notification threshold for large exposures on an individual basis and provides further detail on the transmission of prudential information to the CSSF in general.

A list of reporting tables and circulars which are not applicable or repealed as of, respectively, 1 January 2014 and 1 July 2014 is also provided.

Shenzhen Stock Exchange issues implementing rules on trading, subscription and redemption of securities investment funds

The Shenzhen Stock Exchange (SZSE) has issued the 'Implementing Rules on Trading, Subscription and Redemption of Securities Investment Funds on the Shenzhen Stock Exchange'. The Implementing Rules are intended to systemise and integrate the existing operational rules of SZSE on the trading, subscription and redemption of securities investment funds. Amongst other things, under the Implementation Rules:

- close-ended fund, ETF, LOF and structured fund are clearly defined;
- detailed rules on block trading, auction trading, subscription and redemption of the above types of funds are provided; and
- the transaction fees and trading unit flow fees for bond ETFs and listed market market funds are exempted for the time being.

The Implementing Rules became effective as of their issuance.

CSRC issues circular on securities companies participating in Shanghai – Hong Kong Stock Connect Scheme

The China Securities Regulatory Commission (CSRC) has issued a 'Circular on Relevant Issues for Securities Companies Participating in the Shanghai – Hong Kong Stock Connect Scheme'. Amongst other things, the circular states that:

- securities companies are required to implement technical system restrictions to ensure that sale proceeds from Hong Kong stocks cannot be used to purchase A-shares before T+2;
- the commission charged by securities companies may not be lower than the cost of service;
- PRC securities companies providing advisory services related to Hong Kong stocks to the relevant Chinese investors should be subject to the relevant CSRC regulations on securities investment advisory services;
- PRC securities companies providing advisory services relating to A-shares to Hong Kong investors in Hong Kong should obtain the relevant licence from the Securities and Futures Commission of Hong Kong; and
- where a Hong Kong licensed institution and its affiliated securities company in China that has the securities investment advisory licence jointly issue a research report on Hong Kong stocks to Mainland China investors, the research report should be signed by a securities analyst who is registered with CSRC.

CSRC consults on draft rules entrusting Shanghai and Shenzhen stock exchanges to carry out case investigations on a pilot basis

The CSRC has published a consultation draft of the 'Rules of the China Securities Regulatory Commission on Entrusting the Shanghai Stock Exchange (SSE) and Shenzhen Stock Exchange (SZSE) to Carry out Case Investigations on a Pilot Basis. The draft rules are intended to implement the State Council's requirement of 'cracking down on illegal or criminal activities in the securities and futures market' and strengthen the supervision of the PRC capital market.

Under the draft investigation rules, the CSRC may entrust the SSE and SZSE to investigate illegal activities such as fraudulent listing, insider trading, market manipulation and false representation. The investigation will be carried out in the name of the CSRC and the CSRC will make the decision after reviewing the findings of the investigation.

The consultation period ends on 16 November 2014.

CSRC amends takeover rules

The CSRC has published its amendments to the 'Administrative Measures on Takeover of Listed Companies' in order to implement the State Council's 'Opinion to Optimise the Market Environment for Enterprise Merger and Reorganisation', issued in March 2014. The amended takeover rules aim to simplify approval procedures and relax administrative restrictions on public mergers and acquisitions (M&A) and reorganisations. Among other things, the changes include:

- simplified requirements on disclosure of interests and the removal of the current requirement to copy a disclosure report to a CSRC local agency;
- no requirement for approval for a tender offer unless otherwise provided by the relevant laws;
- the performance guarantee for tender offers can be provided in the form of deposit of cash or securities as a performance bond, bank guarantee and/or a written undertaking to take joint and severable liabilities issued by the financial advisor; and
- the further expansion of the scope of scenarios qualified for automatic exemptions from a tender offer.

The amendments to the takeover rules will take effect on 23 November 2014.

CSRC and SFC enter into memorandum of understanding on Shanghai – Hong Kong Stock Connect

In order to set out the regime for cross-border regulation of the Shanghai – Hong Kong Stock Connect, the CSRC and the Hong Kong Securities and Futures Commission (SFC) have entered into a Memorandum of Understanding on Strengthening of Regulatory and Enforcement Cooperation under the Shanghai-Hong Kong Stock Connect. The MoU is intend to crack down on cross-border misconduct relating to the Stock Connect, including misstatements, insider dealing, market manipulation and other fraudulent activities, etc. Amongst other things, the MoU states that:

- one party should alert the other party immediately to any suspected misconduct in the latter's market, and notify the other party if it commences an investigation with a cross-boundary element;
- any party should provide timely, sufficient and effective assistance to the other party within its statutory authority upon the latter's request;
- in respect of significant and urgent cases relating to both jurisdictions, or where any of the suspects, witnesses or evidence are located in both jurisdictions, both parties may commence a joint investigation;
- both parties will enhance the scope of cooperation in the recognition and execution of administrative sanctions imposed by one another, and will jointly study the mutual recognition of the measures taken by self-regulatory organisations in both jurisdictions; and
- in respect of taking enforcement actions, both parties should prioritise the interest of investors in both jurisdictions.

Singapore and China further strengthen financial cooperation through new initiatives in the offshore RMB market

Singapore and China have signed an agreement to further strengthen financial cooperation through new path-finding initiatives in the offshore Renminbi (RMB) market, capital markets and insurance. In particular, agreement has been reached on two initiatives to strengthen economic and financial linkages between Singapore and China and further promoting the international use of RMB for trade and investment:

- commencement of direct currency trading between the Chinese Yuan and Singapore Dollar from 28 October 2014, which is intended to lower foreign exchange transaction costs and encourage greater use of the two currencies in cross-border trade and investment; and
- a proposal by Singapore to allow China-incorporated financial institutions to issue RMB-denominated debt instruments in Singapore directly, in order to help diversify long-term funding for Chinese financial institutions by allowing them to tap into the international institutional investor base in Singapore.

Singapore and China have also agreed to strengthen cooperation in the areas of capital markets and insurance with initiatives between:

- the Monetary Authority of Singapore (MAS) and the China Securities Regulatory Commission (CSRC) to study measures for enhancing collaboration between the derivatives markets of Singapore and China; and
- MAS and the China Insurance Regulatory Commission to explore collaborative initiatives in the area of catastrophe risk insurance.

MAS consults on proposed amendments to Notice 1111 on risk based capital adequacy requirements for merchant banks

The MAS has launched a public consultation on proposed amendments to MAS Notice 1111 on risk based capital adequacy requirements for merchant banks incorporated in Singapore. The proposed amendments are intended to incorporate key elements of the Basel III capital standards as set out by the Basel Committee on Banking Supervision (BCBS), strengthening the capital framework for merchant banks. The key amendments include the following:

- minimum capital adequacy ratio (CAR) requirements – in addition to the existing requirements of a minimum Tier 1 CAR of 6% and a minimum Total CAR of 8%, the MAS proposes to require Singapore incorporated merchant banks to maintain a minimum Common Equity Tier 1 (CET1) CAR of 4.5%;
- capital buffer requirements – to promote the conservation of capital and the build-up of adequate buffers above the minimums that can be drawn down in periods of stress, the MAS proposes to require Singapore-incorporated merchant banks to maintain additional amounts of CET1 capital in the form of a Capital Conservation Buffer, to be phased in starting from 0.625% of risk-weighted assets (RWAs) in 2016 and reaching 2.5% of RWAs in 2019. The MAS also proposes to introduce requirements on the Countercyclical Buffer for Singapore incorporated merchant banks. The Countercyclical Buffer, which may be applied in periods of excess credit growth, would range between zero and 2.5% of RWAs and be phased in between 2016 and 2019;
- definition of capital – to raise the quality of their regulatory capital base, the MAS proposes to enhance the definition of capital of Singapore-incorporated merchant banks;
- supervisory reporting of the leverage ratio – the MAS proposes to require reporting of the leverage ratio by Singapore incorporated merchant banks to the MAS. The definition of the leverage ratio would be aligned to that in the Basel capital framework; and
- counterparty credit risk – the MAS proposes to require Singapore-incorporated merchant banks to maintain capital for credit valuation adjustment risk arising from derivative transactions.

The MAS intends to provide Singapore-incorporated merchant banks a period of twelve months from the date of the issuance of the finalised capital adequacy rules to comply with the revised requirements.

Comments on the consultation paper are due by 17 December 2014.

MAS responds to feedback on consultation regarding leverage ratio disclosure requirements for banks incorporated in Singapore

The MAS has published its responses to the feedback it received in relation to its 6 August 2014 consultation paper on proposed amendments to MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore (the Notice) to implement Basel III leverage ratio disclosure requirements issued by the Basel Committee on Banking Supervision (BCBS) in January 2014.

The MAS has indicated that the revisions to the Notice to implement the leverage ratio disclosure requirements for Singapore-incorporated banks (reporting banks) will enhance the transparency and comparability of disclosures relating to the composition of the leverage ratio across banks. The revisions will take effect from 1 January 2015, in line with the BCBS' timeline for implementation of the leverage ratio disclosure requirements.

According to the MAS, the objective of the leverage ratio is to complement the existing risk-based capital framework by a non-risk based measure that limits the build-up of leverage in the banking sector. The minimum leverage ratio will be decided and announced at a later date, as the BCBS is monitoring and assessing the appropriate calibration of the ratio for internationally active banks.

The MAS has also made other revisions to enhance the clarity of its capital rules, which will similarly be implemented from 1 January 2015. Leverage ratio supervisory reporting requirements will be implemented from 31 December 2015.

Amongst other things, the MAS has confirmed that:

- according to the revised Notice, the cash portion of the variation margin has to be received in the same currency as the currency of settlement of the derivative contract;
- a reporting bank may exclude central counterparty (CCP) trade exposures to a qualifying CCP from the calculation of its derivative exposure measure if the reporting bank is not, based on the contractual arrangements with the client, obligated to reimburse the client for any losses suffered due to changes in the value of its transactions in the event that the qualifying CCP defaults;
- it will monitor the developments at the BCBS on the incorporation of the Standardised Approach for measuring Counterparty Credit Risk into the leverage ratio framework when considering revisions to the calculation of potential future exposures of derivative transactions; and
- supervisory reporting for Schedule 1C will be implemented from 31 December 2015 to provide banks with more time to operationalise their systems to implement the reporting requirements.

HKMA and Banque de France sign MOU on renminbi business cooperation

The Hong Kong Monetary Authority (HKMA) and Banque de France (BDF), the French central bank, have signed a memorandum of understanding (MOU) with respect to strengthening cooperation on renminbi business development in Hong Kong and Paris. The MOU is intended to enhance the depth and breadth of expertise in renminbi business in both centres in order to bring about mutual benefits. As part of the strengthened cooperation, HKMA and BDF will work together to facilitate more dialogue and collaboration between financial institutions and other corporates from Hong Kong and Paris with a view to promoting greater use of:

- the renminbi for trade and investment;
- renminbi liquidity flows;
- availability of renminbi financial products and services; and
- market arrangements and infrastructures for conducting renminbi transactions safely and efficiently in the two centres.

Revised capital rules and new liquidity rules for banks gazetted

The HKMA has announced that the Banking (Amendment) Ordinance 2012 (Commencement) Notice 2014, the Banking (Capital) (Amendment) Rules 2014, and the Banking (Liquidity) Rules have been gazetted to implement the second phase of Basel III requirements.

The Banking (Amendment) Ordinance 2012 (Commencement) Notice 2014 will bring into effect from 1 January 2015 the provisions of the Banking (Amendment) Ordinance 2012 relating to the powers of the HKMA to make rules prescribing the liquidity requirements for authorised institutions (AIs). The other provisions, which were necessary for the implementation of the first phase of Basel III capital standards in Hong Kong, have been in effect since 1 January 2013.

The Banking (Capital) (Amendment) Rules 2014 introduce amendments to the Banking (Capital) Rules in order to implement the second phase of the Basel III capital standards with additional capital buffers, namely the 'Capital Conservation Buffer', the 'Countercyclical Capital Buffer' and, for banks identified as systemically important, the 'Higher Loss Absorbency Requirement'. The capital buffers are intended to bolster the resilience of banks by incentivising them to build and hold capital in 'good times' that they can draw upon in 'bad times', if and when necessary, to absorb shocks arising from any financial and economic stress.

The Banking (Liquidity) Rules are intended to implement the Basel III Liquidity Coverage Ratio (LCR), which seeks to promote banks' resilience to short-term liquidity risks by ensuring that they have sufficient high quality liquid assets to meet their obligations for at least 30 calendar days under an acute stress scenario. According to the HKMA, the LCR will only apply to AIs designated by the HKMA as 'category 1 institutions' under the Liquidity Rules, mainly covering internationally active AIs or those larger or more sophisticated AIs that are significant to the general stability of the local banking system. Other AIs not designated as category 1 institutions ('category 2 institutions') will be subject to the Liquidity Maintenance Ratio (LMR), a modified version of the existing Liquidity Ratio. The requirements relating to the LMR are also set out in the Liquidity Rules.

Subject to the views of the Legislative Council, the subsidiary legislation is expected to come into operation on 1 January 2015.

Indian government reviews FDI policy on foreign investment limit for construction development sector

The Indian Government has announced its decision to allow 100% foreign direct investment (FDI) in the construction development sector through the automatic route. The Government has laid down certain conditions, which include:

- limits on the minimum area to be developed;
- specific requirements on the investee company in relation to a minimum FDI, set at USD 5 million within six months of commencement of the project with possible subsequent tranches across the life of the project or a period of ten years;
- rules on investors exiting the project; and
- a mechanism under which the Foreign Investment Promotion Board may consider the repatriation of FDI or transfer of a stake between non-resident investors before the completion of the project on a case by case basis.

FSS to conduct regular evaluation of internal audits at credit-specialised finance companies

The Korean Financial Supervisory Service (FSS) has announced its decision to conduct regular evaluation of internal audits at credit-specialised finance companies (CSFCs). The FSS formed a joint task force with the Credit

Finance Association and thirteen CSFCs in June 2014 in response to insufficient internal audit and operating internal control systems at CSFCs. The joint task force has developed an internal audit function assessment for CSFCs, excluding credit card companies, which includes 22 components of evaluation within three categories: internal control environment and activities and their effectiveness.

The composite rating for the overall status of CSFC's internal control is based on a scale of one to five, with one representing the highest rating and five the lowest rating. A CSFC is required to maintain a certain ratio of staff to support internal control functions. Other measures including the appointment a full-time internal auditor whose tenure is guaranteed by the institution's Articles of Incorporation or appointing a compliance officer to a high level position and will merit high scores. The FSS has indicated that a CSFC should carry out internal audits on its own or in response to a regulatory request, conduct a preliminary compliance check-up thoroughly and provide internal control education to its employees for more than once in six months. Heavy sanctions imposed on a CSFC, such as institutional warning or failing to report financial accidents, it will be given negative scores.

The FSS intends to conduct evaluations semi-annually from the end of December 2014. CSFCs with lower ratings will be subject to close monitoring, as well as longer and more frequent examinations if necessary. After a one-year trial period, evaluation results will be made public on a regular basis beginning in 2016.

RECENT CLIFFORD CHANCE BRIEFINGS

MiFID2 for Asset Managers and Private Banks

The landscape of European asset management is set to change, with the implementation of MiFID2 in January 2017. Although it is too early to tell precisely what this landscape will look like, as in many cases the Level 1 framework is to be supplemented by detailed Level 2 implementing measures, a number of key issues are emerging. In particular, these concern product manufacturing and distribution, driven primarily by new rules on product governance, inducements, the introduction of the concept of 'independent advice' and the review of what constitutes complex and non-complex products.

This briefing examines these issues and explores some of the more pressing questions for the asset management and private wealth industry.

http://www.cliffordchance.com/briefings/2014/10/mifid2_for_assetmanagersandprivatebanks.html

New York Court of Appeals Holds That Separate Entity Rule Prevents Restraint of Assets Held in Foreign Banks' Branch Accounts By New York Courts

On 23 October 2014, New York's highest court issued a ruling answering a question certified to it by the United States Second Circuit Court of Appeals regarding whether the 'separate entity rule' precludes a judgment creditor from ordering a garnishee bank operating branches in New York to restrain a debtor's assets held in branches of the bank outside of New York. The New York Court of Appeals answered in the affirmative, holding that 'a judgment creditor's service of a restraining notice on a garnishee bank's New York branch is ineffective under the separate entity rule to freeze assets held in the bank's foreign branches.'

This briefing discusses the ruling.

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