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Briefing note

International Regulatory Update

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Commissioner Hill sets out priorities for financial services and capital markets union

The new EU Commissioner for Financial Stability, Financial Services and Capital Markets Union, Jonathan Hill, has delivered a speech to open the Commission's high level conference on building a capital markets union across the 28 Member States.

The capital markets union is intended to help develop additional sources of funding for business and reduce capital cost. Proposals will relate to the use of debt securities to raise capital, including companies choosing to list on a growth market with access to investors across the EU, business angels and crowdfunding. The speech sets out the current challenges to a possible capital markets union arising from fragmentation in the EU with regard to:

- rules, documentation and market practice for products;
- tax;
- insolvency rules; and
- available information on credit and risk relating to smaller businesses.

Proposals for addressing these challenges will inform an action plan to be developed by summer 2015 and include:

- bringing forward current proposals on European Long Term Investment Funds (ELTIFs);
- developing an EU framework for high-quality securitisation;
- an assessment of covered bonds legislation;
- a global comparison of international private placement markets;
- enhanced SME credit information; and
- diversifying market finance instruments.

The speech also discusses the Commissioner's approach to his portfolio more broadly and the recurring themes of jobs and growth that will underpin the work of the Juncker Commission. The Commissioner's portfolio priorities include:

- implementation of agreed legislation;
- banking union, establishing the Single Resolution Board (SRB) and building up the Single Resolution Fund (SRF);
- taking forward proposals in relation to legislation on money market funds, benchmarks and bank structural reforms;
- working to ensure consistent implementation of international standards, in particular through cooperation with G20 countries especially stronger regulatory co-operation with the United States; and
- considering possible measures in relation to effective markets for retail products.

Single Supervisory Mechanism: ECB assumes supervisory functions

The European Central Bank (ECB) has assumed its supervisory functions under the Single Supervisory Mechanism (SSM). The ECB is now the direct supervisor for 120 significant banking groups in participating member states, representing 82% (by assets) of the euro area banking sector. The ECB will also oversee the SSM and set and monitor supervisory standards for the supervision of the remaining 3500 banks within the SSM that are directly supervised by national competent authorities (NCAs).

The ECB has re-issued its guide to banking supervision, previously published in September 2014, to coincide with the assumption of its new supervisory duties. The guide sets out:

- the ECB's supervisory principles;
- the functioning of the SSM; and
- the conduct of supervision in the SSM, including authorisations and overall quality and planning control.

The ECB intends the guide to be a practical tool that will be updated regularly to reflect new experiences that are gained in practice.

Financial Transaction Tax: EU Council Presidency reports on state of play

The EU Council Presidency has published a state of play report on the proposal for a Council Directive implementing enhanced cooperation in the area of a Financial Transaction Tax (FTT). EU Council negotiations in 2012 on a proposal for a Council Directive on a common system for FTT ascertained that the proposal would not have received unanimous support in the foreseeable future. Following this outcome, eleven Member States, comprising Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain, requested that the Commission submit a proposal to the Council that would authorise the introduction of a financial transaction tax in those states through enhanced co-operation, which the Commission made on 14 February 2013. The state of play document sets out the commitments made by the Working Party on Indirect Taxation and the main open issues which remain in relation to the taxation of transactions in derivatives and the application of issuance and residence principles to define FTT.

PSD2: EU Council Presidency publishes compromise text

The Presidency of the EU Council has published a compromise text on the proposal for a second Payment Services Directive (PSD2) to repeal the current Directive 2007/64/EC.

CRR: RTS on client exposure to transactions with underlying assets published in Official Journal

A Commission Delegated Regulation (1187/2014) setting out regulatory technical standards (RTS) for determining the overall exposure to a client or a group of connected clients in respect of transactions with underlying assets under the Capital Requirements Regulation (CRR) has been published in the Official Journal.

The RTS set out:

- the methodology for identifying and calculating the value of exposures to transactions with underlying assets;
- the procedure used to determine the contribution of underlying exposures to overall exposures to clients and groups of connected clients; and
- the conditions under which the structure of the transaction does not constitute an additional exposure.

CRR: EBA consults on materiality threshold for obligations past due

The European Banking Authority (EBA) has launched a consultation on draft regulatory technical standards on the materiality threshold of credit obligations past due under the CRR. The definition of default used in both the IRB Approach and Standardised Approach set out in the CRR specifies, among other things, that when an obligor is past due more than 90 days on any material credit obligation to an institution, its parent or subsidiaries, then a default will be considered to have taken place. The RTS set out the conditions for national competent authorities (NSAs) when setting the materiality threshold, including both the structure and application of the threshold, and are intended to harmonise practices across the EU and help reduce the burden of compliance on cross-border groups.

The EBA proposes that the materiality threshold should be composed of:

- an absolute threshold referring to the sum of all amounts owed by the obligor that are past due for a required number of days; and
- a relative threshold, which is the percentage of the sum derived from the absolute threshold in relation to the total credit obligations of the obligor.

The EBA proposes that default would be considered to have occurred when either or both of these limits have been breached.

Comments on the consultation are due by 31 January 2015.

EBA consults on guidelines for establishing standardised terminology for payment account fees

The EBA has published a consultation paper on a set of guidelines to be used by national competent authorities (NCAs) when establishing provisional lists of services that may be considered for the standardisation of fee terminology for payment accounts across the EU under the Payment Accounts Directive (PAD – Directive 2014/92/EU). The PAD is intended to establish standardised terminology fees at Member State level and EU-level, when services are identified as common to at least a majority of Member States. The EBA is tasked with developing the standardised terminology and accompanying information documents for consumers.

In order to carry out this work, the EBA requires NCAs to submit lists of between 10 and 20 of the most representative services linked to payment accounts that are most commonly used by consumers or generate the

highest cost for consumers, both overall and per unit, and offered by at least one payment service provider (PSP) in their jurisdiction. The guidelines are intended to ensure the consistent application of the criteria that NCAs rank services against in order to compile the lists. The guidelines also set out factors that NCAs should be taken into consideration, how the lists should be reported to the EBA and what supportive data should be obtained.

Once the lists have been submitted, the EBA will begin work to develop standardised terminology at EU-level. Comments on the consultation are due by 9 January 2015.

BRRD: EBA consults on contractual recognition of bail-in

The EBA has launched a consultation on draft regulatory technical standards on the contractual recognition of write-down and conversion powers under Article 55(3) of the Bank Recovery and Resolution Directive (BRRD). The consultation is part of the EBA's work to promote the effective application of recovery and resolution powers to banks and banking groups with a cross-border presence and to foster convergence of practices between relevant authorities and institutions across the EU.

The BRRD requires Member States to ensure that their resolution authorities have available powers to write-down and convert relevant liabilities of an institution at the point of non-viability and in the course of an application of the resolution tools.

In order to support the effective application of these powers in relation to liabilities governed by the law of a third country, the BRRD requires that agreements concerning relevant liabilities include a contractual term by which the creditor (or party to the agreement creating the liability) recognises that it may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is affected by the exercise of those powers by a Member State resolution authority.

The draft RTS developed by the EBA further determine the cases in which the requirement to include the contractual term does not apply. In particular the requirement to include a contractual term is displaced where a statutory regime in the third country concerned or an international agreement exists which provides for an administrative or judicial procedure to secure recognition of the application of the write-down and conversion powers by a Member State resolution authority. The draft RTS state that a Member State resolution authority may only determine that a third country law or international agreement is sufficient to displace the obligation to include the contractual term where a minimum set of elements specified in the RTS is identified.

The consultation runs until 5 February 2015.

OTC Derivatives Regulators Group reports to G20 on cross-border implementation issues

The OTC Derivatives Regulators Group (ODRG) has published a report to the G20 on OTC derivatives cross-border implementation.

The report provides an update on:

- the identification of cross-border issues since the St. Petersburg Summit;
- the continuing areas of focus for the ODRG, including further progress made bilaterally and in other fora;
- organised trading platforms (OTPs) and implementation of the G20 trading commitment, with focus on the status of foreign OTPs and OTP eligibility for discharging trading mandates;
- the continuing discussion on the development of a framework for early consultation among authorities on mandatory trading determinations;
- defining the circumstances where guarantor jurisdictions may extend regulation to transactions undertaken by guaranteed foreign affiliates; and
- the intent to explore the treatment of branches and non-guaranteed affiliates.

It consolidates the substance of previous reports made during 2014 to the G20 Finance Ministers and Central Bank Governors.

FSB publishes updated group of global systemically important banks

The Financial Stability Board (FSB) has published its annual update of the list of globally systemically important banks (G-SIBs) using end of 2013 data. The Agricultural Bank of China has been added to the list of banking groups identified as G-SIBs in 2013, increasing the overall number from 29 to 30.

In conjunction with the updated list of G-SIBs published by the FSB, the Basel Committee on Banking Supervision (BCBS) has published:

- a technical summary of the assessment methodology;
- the denominators that were used to calculate the scores of banks in the end of 2013 exercise;

- the cut-off score used to identify the updated list of G-SIBs; and
- the thresholds used to allocate G-SIBs to buckets for the purpose of determining each banks' higher loss absorbency (HLA) requirement, which will come into effect on 1 January 2016.

The list of G-SIBs will next be updated in November 2015.

FSB publishes progress reports on compensation practices and OTC derivatives market reforms

The FSB has published its eighth progress report on implementation of over-the-counter (OTC) derivatives market reforms.

The report finds that:

- the adoption of legislation, where this has been a necessary first stage of the reform process, is nearing completion;
- while jurisdictions vary in their stage of implementation of detailed regulations, the greatest progress to date has been made in adopting regulations implementing higher capital requirements for non-centrally cleared derivatives and trade reporting requirements;
- measures to promote trading on exchanges or electronic trading platforms continue to take longer than those in other reform areas;
- international standards and guidance in key areas such as bank capital requirements for central clearing exposures and recovery and resolution for financial market infrastructures, have been finalised over the course of 2014;
- bilateral and multilateral discussions addressing outstanding cross-border issues have intensified over the course of 2014; and
- across jurisdictions, the availability of market infrastructure, and market participants' use of that infrastructure, continues to gradually broaden.

The FSB has invited feedback on the report by 7 December 2014.

The FSB has also published its third progress report on the implementation of its 'Principles for Sound Compensation Practices and their Implementation Standards' by FSB jurisdictions.

The report finds that the implementation of the principles and standards is now essentially completed, although some implementation challenges remain. It also notes that a few FSB jurisdictions have not adopted one or a few principles or standards due to their non-applicability or incompatibility with local laws, and states that these jurisdictions should assess the risks posed by remaining gaps and take appropriate measures to address them.

The report recommends that FSB jurisdictions further improve the intensity and effectiveness of their supervision of compensation practices, and that they continue to foster the use of malus and clawback mechanisms by their supervised firms. The FSB will focus in its next progress report on the link between compensation structures and firms' risk appetite and governance frameworks, and will undertake further work on practices in the identification and treatment of material risk takers. The FSB will continue to engage with the industry to exchange views on trends and remaining challenges in this area, extending the focus in 2015 to compensation practices at significant insurance firms.

HMT consults on implementation of FPC proposals for leverage ratio framework

HM Treasury (HMT) has launched a consultation on the implementation of the Financial Policy Committee's (FPC's) recommendations for the leverage ratio framework published on 31 October 2014. The Chancellor of the Exchequer has accepted the FPC recommendations and HMT proposes to enact legislation to provide the FPC with the power of direction over:

- a minimum leverage ratio to apply to all PRA-regulated banks, building societies and investment firms, including global systemically important banks (G-SIBs) and other major UK domestic banks and building societies as soon as practicable and from 2018 for all other PRA-regulated firms;
- a supplementary leverage ratio buffer, to be phased in alongside risk-weighted systemic risk buffers from 2016 for global systemically important banks (G-SIBs) and leverage buffers from 2019 for ring-fenced banks and large building societies; and
- a countercyclical leverage ratio buffer (CCLB) that would apply to all PRA-regulated banks, building societies and investment firms.

The consultation paper includes the draft statutory instrument (SI) for the implementation of the powers of direction, The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order. HMT seeks views from stakeholders on the proposals and will publish a summary of consultation responses and an impact statement when laying the draft SI before parliament.

Comments on the consultation are due by 28 November 2014.

HMT launches call for information on digital currencies

HMT has launched a call for information on the benefits and risks of digital currencies. HMT considers digital currencies to be those that incorporate both a decentralised payment system and a related currency, to which a publicly visible ledger is exhibited and shared across a network. The call for information relates to digital currencies as a payment method and excludes virtual currencies, i.e. those controlled by their developers and used by members of a specific virtual community.

The call for information marks the beginning of a programme of work to be undertaken by HMT into how digital currencies could or should be regulated in the UK and is intended to inform HMT on:

- possible benefits of digital currencies, potential barriers to digital currency businesses establishing themselves in the UK and whether the Government should take action to support innovation in the financial technology (FinTech) sector; and
- possible risks presented by digital currencies, including to customers and financial stability, and whether action may be required to mitigate potential risks.

Responses to the call for information are due by 3 December 2014.

CMA launches market investigation into competition in UK banking sector

The Competition and Markets Authority (CMA) has launched an in-depth market investigation into competition in the banking sector. The market investigation will consider retail banking, in particular personal current accounts (PCA) and retail banking services for small and medium-sized enterprises (SMEs). Alongside this, the CMA will also review the SME banking behavioural undertakings given by nine clearing banks in 2002 following a report by the CMA's predecessor organisation, the Competition Commission.

The CMA made a provisional decision about these investigations on 18 July 2014 and following a period of consultation has decided to open these full investigations, which will be conducted alongside one another by a single Market Reference Group drawn from the CMA's panel of independent members. The terms of reference for these investigations defines an SME as a business that has annual sales revenues (excluding VAT and other turnover-related taxes) not exceeding GBP 25 million.

Once the Market Reference Group has been appointed a timetable will be published along with a proposed issue statement setting out the focus of the investigation, which will be released for consultation.

CRD 4: FCA and PRA publish joint policy statement on remuneration data collection

The Financial Conduct Authority (FCA) and Prudential Regulation Policy (PRA) have published a joint policy statement (FCA PS14/14, PRA PS11/14) on data collection on remuneration practices under the Capital Requirements Directive (CRD 4).

On 16 July 2014, the European Banking Authority (EBA) published revised guidelines on the data collection exercise regarding high earners and on the remuneration benchmarking exercise to ensure that the data collection is in line with the amended provisions in CRD 4. The policy statement follows a joint consultation on implementing the EBA's changes, which closed on 17 October 2014 and amends the existing template and requests more detailed information, including additional data on business area and the breakdown of remuneration.

The policy statement sets out changes that include additional requirements in the Benchmarking Report template and High Earners Report templates to enable the collection of more detailed data, such as additional business area data, and bringing more FCA-regulated firms into the scope of the High Earners Report.

The new rules will be incorporated as amendments to:

- the Supervision manual (SUP) in the FCA Handbook (SUP 16.17 (Remuneration Reporting) and associated forms and guidance notes; and
- the Remuneration part of the PRA Rulebook.

The rules took effect on 7 November 2014 and firms are required to submit data in the new template.

FCA announces early implementation of removal of requirement to publish interim management statements

The FCA has published a policy statement (PS14/15) on the implementation of the Transparency Directive Amending Directive's (TDAD) removal of the requirement to publish interim management statements. The FCA has decided to implement this change early and remove this requirement with effect from 7 November 2014.

The policy statement follows the FCA's consultation on these changes (CP14/12) and sets out the rules that came into force on 7 November 2014. The change affects issuers of shares admitted to trading on a regulated market where the UK acts as home Member State and the FCA's Disclosure and Transparency Rules (DTR) apply. Issuers may continue to publish interim management statements (or quarterly financial reports) on a voluntary basis if they choose.

German Federal Parliament agrees on Act to reduce dependence on ratings

The German Federal Parliament has agreed on a draft Act to reduce reliance on ratings. The Act is intended to implement recently enacted EU legislation on the regulation of rating agencies and the supervision of institutions for occupational retirement provision, undertakings for collective investment in transferable securities and alternative investment funds managers in respect of over-reliance on credit ratings.

German Federal Parliament agrees on several Acts to implement BRRD and Banking Union

The German Federal Parliament has voted in favour of draft legislation to implement EU legislation on bank recovery and resolution as well as the establishment of a Banking Union for the Eurozone on the basis of recommendations by its Financial and Budget Committees. Amongst other things, the 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).

Bank of Italy amends supervisory provision for banks in light of EU regulations on SSM

On 4 November 2014, the European Central Bank (ECB) fully assumed its supervisory tasks and responsibilities in the framework of the Single Supervisory Mechanism (SSM). As a consequence, the Bank of Italy has published a revised version of Circular no. 285 of 17 December 2013 (Supervisory Instructions for Banks) in order to reflect the changes introduced by, amongst others, Council Regulation (EU) no. 1024/2013 of 15 October 2013.

National Bank of Poland reports on loan and credit market

The National Bank of Poland (NBP) has published a report on the situation in the loan and credit market, which sets out the results of a survey of persons chairing loan and credit commissions. The report provides quarterly information about changes to loan and credit policy and demand for loans and credit noted by banks in Q3 2014 and projections for Q4 2014.

CSRC issues measures for supervision and administration of futures companies

The China Securities Regulatory Commission (CSRC) has issued the 'Measures for Supervision and Administration of Futures Companies', which introduce clearer rules for futures companies to follow and cover such areas as a futures company's setting up and termination, corporate governance, business conduct, client asset protection, information disclosure, etc. Amongst other things, under the measures:

- Chinese shareholders of futures companies can now be natural persons, legal persons and/or other organisations, while a foreign shareholder may now hold more than 5% shares by satisfying certain eligibility requirements and with the CSRC's approval;
- the following equity changes of a futures company are subject to the CSRC's approval: changing the controlling shareholder or the largest shareholder; a single shareholder's or affiliated shareholders' holding being increased to 100%; and a foreign shareholder (and its affiliates) holding more than 5% shares. A Chinese shareholder (and its affiliates) needs to obtain the approval of the local CSRC bureau to hold more than 5% shares in a futures company;
- futures companies can conduct commodity futures brokerage business upon establishment; financial futures brokerage business, brokerage services relating to futures traded on foreign exchanges and futures investment consulting business after satisfying the relevant eligibility requirements as recognised by the CSRC; and asset management business after completing the CSRC filing;

- there are requirements and procedures relating to establishing, acquiring and investing in futures institutions outside China; and
- certain restrictions on account opening are lifted so that foreign institutions can open futures accounts with Chinese brokers.

KRX and Shenzhen Stock Exchange sign MOU on strategic partnership

The Korea Exchange (KRX) and the Shenzhen Stock Exchange (SZSE) have concluded a memorandum of understanding (MOU) on establishing a strategic partnership.

The MOU specifies the scope of the partnership (e.g. employee secondment, information sharing) that was agreed on under a comprehensive MOU reached in October 2007. The MOU also sets out new commitments on areas of cooperation such as cross-listing of index products, development of a common index, and joint research projects regarding development of the bond market, establishment of off-shore Chinese Yuan products, support for small and medium enterprises (SMEs) and dual listing. In addition, the two parties have agreed to cooperate on long-term measures to attract cross-listing between the two exchanges such as refurbishment of relevant regulations, selection of target companies and marketing activities.

Korean FSS announces proposal for enhanced risk supervision on syndicated lending by credit cooperatives

The Korean Financial Supervisory Service (FSS) has announced that newly enhanced risk management standards on syndicated loans will be implemented by the national federations of agricultural, fisheries, and forestry credit cooperatives. The announcement comes in response to the continuing growth of credit cooperatives' syndicated lending – a group of credit cooperatives extending a loan to a single borrower – and the accompanying increases in loan delinquency.

Since new limits on credit extension for the same borrower – a borrower and persons specially related to the borrower – were imposed on 24 February 2012, credit cooperatives have been steadily expanding large syndicated lending. The FSS believes that the risk supervision of syndicated lending, however, has been less than satisfactory because of varying credit and risk standards across credit cooperatives despite heightened risks to their safety and soundness.

The newly enhanced risk management standards that will be implemented by the end of 2014 are expected to:

- limit the participation in a lending syndication to five credit cooperatives;
- exclude lenders with high delinquency and large syndication exposures;
- restrict lending to low-risk borrowers; and
- require independent appraisal of borrower collateral.

The national federations are also expected to set up new monitoring regimes for syndicated loans as a safeguard measure to ensure their performance.

Japanese FSA publishes administrative notices regarding liquidity coverage ratio to implement Basel III framework

The Japanese Financial Services Agency (FSA) has published administrative notices (kokuji) regarding the liquidity coverage ratio (LCR) applicable to international banks and certain financial institutions to implement the Basel III LCR framework issued in December 2010 and revised in January 2013.

The administrative notices set out a standard which aims to ensure that each bank or financial institution has an adequate stock of unencumbered, high-quality, liquid assets consisting of cash or assets that can be converted into cash at little or no loss of value in private markets to meet its liquidity needs for a 30 calendar days liquidity stress scenario. These assets are defined in the administrative notices as Qualified Liquid Assets (QLA).

The administrative notices were formulated based substantially on the LCR framework. One of the material differences is that it is not clear in the administrative notices if and how the governmental monitoring authority would allow banks or financial institutions to use their stock of QLA, entailing an LCR drop below 100%, if they encountered a liquidity stress scenario. The LCR framework expressly allows this, as maintaining the LCR at 100% under such circumstances could have undue negative effects on the bank or financial institution and other market participants.

The administrative notices will take effect as of 31 March 2015.

SGX streamlines rules for secondary-listed companies

Following the 2014 public consultation on the regulatory framework for secondary listings, the Singapore Exchange (SGX) has announced its decision to streamline the rules for secondary-listed companies to further enhance its stock market.

Effective 3 November 2014, the SGX will deem a company as coming from a 'developed' jurisdiction if both FTSE and MSCI classify the jurisdiction of the company's home exchange as 'developed'. All other jurisdictions will be treated as 'developing'. FTSE and MSCI have currently classified 23 jurisdictions including Singapore as 'developed'. Where a company is secondary-listed on the SGX and primary-listed on the main board of any of the 22 developed jurisdictions other than Singapore, the SGX will not impose additional regulatory requirements under the new framework. Such a company must remain primary-listed on its home exchange and comply with all relevant rules of its home exchange. This differs from the current framework where companies may face additional requirements once secondary-listed on the SGX. For a company from a developing jurisdiction, the SGX will review its home exchange's legal and regulatory requirements and may impose additional requirements to enhance shareholder protection and corporate governance standards.

The SGX has indicated that its website will contain more information on secondary listings from 3 November 2014, including a clear segregation between these and primary-listed companies, an indication whether the secondary listing is from a developed or developing jurisdiction, and the scope of additional regulatory requirements for each secondary-listed company, where applicable.

MAS responds to feedback on draft regulations for reporting of foreign exchange derivatives contracts

The Monetary Authority of Singapore (MAS) has published its responses to the feedback it received on its July 2014 consultation paper on the proposed Securities and Futures (Reporting of Derivatives Contracts) Regulations (Amendment) 2014.

Amongst other things, the MAS has confirmed that it has:

- revised the definition of 'traded in Singapore' to mean contracts executed by a trader who is employed in Singapore and contracts executed by a trader in Singapore who has been executing trades, or has been authorised to execute trades, for at least the last 30 days prior to the date of the contract;
- agreed to delay reporting of credit and interest rates derivatives contracts traded in Singapore until 1 November 2015; and
- excluded several categories of FX contracts from the reporting requirements.

The MAS has incorporated the various changes into the Securities and Futures (Reporting of Derivatives Contracts) (Amendment No. 2) Regulations 2014, which were issued on 31 October 2014 and came into operation on 1 November 2014.

RECENT CLIFFORD CHANCE BRIEFINGS

EMIR – Clearing Exemption for Pension Scheme Contracts

Pension schemes are important counterparties for firms active in the EU OTC derivatives market and the EU regulation on OTC derivatives, central counterparties and trade repositories (EMIR) provides a temporary exemption from the clearing obligation for certain contracts entered into by pension scheme arrangements.

This briefing discusses the pension scheme exemption under EMIR and how it affects firms dealing with pension schemes.

http://www.cliffordchance.com/briefings/2014/11/emir_clearing_exemptionforpensionschem.html

European Commission equivalence decisions a welcome development for Asia Pacific clearing houses

In a welcome development for clearing houses (CCPs) in Hong Kong, Singapore, Australia and Japan, the European Commission adopted its first equivalence decisions for the CCP regulatory regimes in these Asia Pacific jurisdictions on 30 October 2014. This paves the way for eleven CCPs from these jurisdictions to obtain recognition in the European Union, although cooperation arrangements still need to be put in place between the European Securities and Markets Authority and the relevant regulators.

This briefing discusses the equivalence decisions.

http://www.cliffordchance.com/briefings/2014/11/european_commissionequivalencedecisions.html

LCR and Securitisation – 2B or not 2B

The European Commission has now published the final draft of the Commission Delegated Regulation with regard to liquidity coverage requirement (the 'LCR Delegated Act'), likely to apply to EU banks from late 2015. Once approved, the LCR Delegated Act will, for the first time, create a detailed framework for a liquidity buffer required to cover their net liquidity outflows over a 30 calendar day stress period. The eligibility of a wide range of securitisation products is good news for the industry in principle.

This briefing explains the types of securitisation assets that will be eligible and exploring the possible consequences for the securitisation markets.

http://www.cliffordchance.com/briefings/2014/11/lcr_and_securitisation2bornot2b.html

European Court gives guidance on the winding up directive for banks

On 17 October 2014 a European Court in the case of Landsbanki hf v Merrill Lynch International Limited provided some much needed guidance on protecting the legitimate expectations of creditors and third parties for transactions entered into prior to the winding up or reorganisation of a bank. The case considers how acts entered into before a bank's winding up or reorganisation may be defended against challenges raised within those proceedings.

This briefing discusses the case.

http://www.cliffordchance.com/briefings/2014/11/european_court_givesguidanceonthewindingu.html

Indexing corruption in Asia Pacific

Transparency International publishes a Bribe Payer's Index (BPI) which provides help to companies seeking to accurately assess the risk of doing business in Asia Pacific or with a partner from the Asia Pacific Region. The BPI provides critical additional information to inform a company's due diligence efforts in the context of joint ventures, as well as mergers and acquisitions. Accurately assessing the bribery risk that a potential business partner or target company poses and taking appropriate measures to prevent corrupt payments in the future is absolutely critical in protecting against liability for third-party conduct under the US Foreign Corrupt Practices Act and for conduct by associated persons under the UK Bribery Act. Assuming that the risk is low because the country itself has a low risk of corruption ignores the potential behavior of companies operating outside their own country.

This briefing discusses the BPI.

http://www.cliffordchance.com/briefings/2014/11/indexing_corruptioninasiapacific.html

Strengthening regulation and oversight of shadow banking

On 14 October 2014, the Financial Stability Board issued a regulatory framework on haircuts for non-centrally cleared securities financing transactions. The framework sets out what the FSB calls 'qualitative standards' for the methodologies used to calculate 'haircuts' and, for the first time, seeks to impose minimum haircuts – numerical haircut floors – to be used by firms providing finance to non-banks.

This briefing summarises the FSB's proposals on haircuts and considers the likely impact on securities financing markets.

http://www.cliffordchance.com/briefings/2014/11/strengthening_regulationandoversightofshado.html

Dissecting the UK Government sukuk

The ground-breaking sukuk issuance by the UK Government earlier this year, the first of its kind by a European sovereign state, seeks to position the UK as an international hub for Islamic finance and tap Shari'a compliant investors.

This article uncovers how our team navigated previously undiscovered territory.

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

Luxembourg Legal Update – November 2014

The latest edition of our Luxembourg Legal Update offers a 360° view on recent legal developments in Luxembourg. The newsletter provides a compact summary and guidance on the new legal issues which may impact your business, particularly in relation to banking, finance, capital markets, corporate, litigation, funds & investment management, employment and tax laws.

http://www.cliffordchance.com/briefings/2014/11/luxembourg_legalupdate-november2014.html

Structuring joint ventures in Saudi Arabia – what every foreign investor should know

Saudi Arabia is a complex jurisdiction for non-GCC investors, with high transaction execution risks, yet it is also brimming with business opportunities. It is imperative that investors choose the right professional advisors to guide them through the legal framework and requirements that apply in this market.

This briefing sets out some of the considerations for non-GCC investors wishing to set up a joint venture in the Kingdom of Saudi Arabia.

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