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Briefing note

International Regulatory Update

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- Recent Clifford Chance briefings: EMIR – CCPs and Trade Repositories; the APCOA restructuring; and more. Follow this link to the briefings section.

MiFID II/MiFIR: ESMA publishes final technical advice and consults on technical standards

The European Securities and Markets Authority (ESMA) has published its final technical advice on the possible content of the delegated acts required by several provisions of the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR) following a public consultation on proposals published on 22 May 2014. The final report summarises the responses to the consultation and sets out ESMA's final technical advice, which will now be sent to the EU Commission in accordance with ESMA's mandate.

Alongside the final technical advice, ESMA has also launched a consultation on draft Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) under MiFID II/MiFIR. The consultation paper is structured thematically and discusses technical standards in relation to:

- investor protection;
- transparency;
- data publication;
- micro structural issues;
- requirements applying on and to trading venues;
- commodity derivatives;
- market data reporting; and
- post-trading issues.

The draft technical standards set out, among other things:

- a trading obligation for shares and a double volume cap mechanism for shares and equity-like instruments;
- an obligation to trade derivatives on MiFID venues (regulated markets, multilateral (MTFs) or organised trading facilities (OTFs)) only;
- increased transparency for trading non-equity instruments;
- position limits and reporting requirements for commodity derivatives;
- rules on high frequency trading;
- provisions regulating access to central counterparties (CCPs), trading venues and benchmarks; and
- requirements for a consolidated tape of trading data.

Comments on the consultation are due by 2 March 2015.

EU Commission sets out work programme for 2015

The EU Commission has adopted its work programme for 2015, which sets out the actions the Commission intends to take over the next 12 months.

The headline plans for 2015 include:

- delivering on the Commission's Investment Plan for Europe;
- a Digital Single Market Package;
- a European Energy Union;
- an action plan on efforts to combat tax evasion and tax fraud;
- a European Agenda on Migration; and
- deeper Economic and Monetary Union.

The completion and implementation of the reforms of the financial regulatory framework in response to the financial crisis, including the implementation of the new banking supervisory and resolution rules, will remain a major area of the Commission's work. Amongst other things, the Commission intends to present a proposal on crisis management and resolution of systemic non-banking entities. The Commission will also begin preparatory work on how the single market for retail financial services can deliver more benefits to consumers.

The Commission intends to set out an action plan to build a Capital Markets Union, exploring ways of reducing fragmentation in financial markets, diversifying financing sources for the whole of the economy, improving access to finance for SMEs and strengthening cross border capital flows in the single market. In the short-term, it will propose a framework for high-quality securitisation in Europe, improving standardised credit information for SMEs, and will consider how to extend successful private placement schemes across the EU and review the Prospectus Directive to reduce administrative burdens on SMEs.

In addition, the Commission intends to work closely with the other EU institutions to encourage the adoption of a Financial Transaction Tax and reinforced rules against money laundering.

PRIIPs: Corrigendum published in Official Journal

A Corrigendum to the regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs) has been published in the Official Journal. The corrigendum corrects the original text of the regulation by changing the deadline for the European Supervisory Authorities (ESAs) to submit RTS under Article 8 to 31 March 2016.

AMLD 4: EU Parliament and EU Council reach agreement

The EU Parliament and EU Council have reached an agreement on the proposed text of the fourth Anti-money Laundering Directive (AMLD 4) following trilogue negotiations.

The agreed text includes rules that would introduce central registers listing information on the ultimate beneficial ownership of corporate and other legal entities, which will be accessible to national competent authorities (NCAs), their financial intelligence units, 'obliged entities' (such as banks for due diligence purposes), the public and others with a legitimate interest.

The proposed rules would also require banks, financial institutions, auditors, lawyers, accountants, tax advisors and real estate agents, among others, to be more vigilant about suspicious transactions made by their clients.

The proposals will now be put to a vote by the EU Council Permanent Representatives (COREPER) and the EU Parliament Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees.

EU Parliament and Council reach political agreement on MIF Regulation

The EU Parliament and EU Council have reached a political agreement on the proposed Regulation on Interchange Fees for Card-based Payment Transactions (MIF Regulation) following trilogue negotiations.

The regulation will introduce:

- maximum fees for consumer debit and credit cards, to be 0.3% of the transaction value for credit card transactions and 0.2% of the transaction value for cross-border debit card transactions. For domestic transactions, Member States will be able to apply the 0.2% cap to the annual weighted average transaction value of all domestic transactions within a card scheme;
- rules that allow retailers to choose which cards to accept; and
- new transparency rules for all transactions which are intended to remove major obstacles to technological innovation.

The new rules will not apply to so-called three-party card schemes in circumstances where the card is both issued and processed within the same scheme. Commercial cards will also be exempt from the new rules.

The regulation is expected to be formally approved by both the EU Parliament and Council in 2015.

CRR: Commission Implementing Decision on third country equivalence for purposes of credit risk weighting published in Official Journal

A Commission Implementing Decision on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures according to the Capital Requirements Regulation (CRR) has been published in the Official Journal. The Decision establishes a list of third countries whose supervisory and regulatory arrangements are considered equivalent to those applied in the EU with respect to credit institutions, investment firms and exchanges. The recognised third countries are listed in the annexes to the Decision. For those third countries recognised as equivalent, EU banks can apply preferential risk weights to relevant exposures to entities located in those countries including financial institutions, central and local governments and public sector entities in accordance with the CRR.

The Implementing Decision will enter into force on 1 January 2015.

CRR: EBA publishes final draft ITS on joint decisions for approval of internal models

The European Banking Authority (EBA) has published its final draft ITS on joint decisions for approval of internal models under the CRR. The ITS specify the supervisory cooperation in the joint decision process for an initial application to use, or material model extensions or changes to the internal ratings-based approach (IRB) for credit risk, the internal model method for counterparty risk (IMM), the advanced measurement approach for operational risk (AMA) and the internal models for market risk.

CRR: EBA consults on amendments to technical standards on liquidity coverage and leverage ratio supervisory reporting

The EBA has launched two consultations on draft ITS to amend Commission Implementing Regulation (EU) No 680/2014 specifying ITS on supervisory reporting of institutions according to the CRR with regard to the Liquidity Coverage Ratio (LCR) and Leverage Ratio (LR). The EU Commission adopted Delegated Acts specifying the LCR and LR respectively for credit institutions on 10 October 2014.

The draft ITS amending the existing ITS on supervisory reporting of the LCR include significant changes. The proposals set out new data items to be contained in new instructions and LCR supervisory reporting templates which will replace the current templates for credit institutions.

The draft ITS amending the existing ITS on supervisory reporting of the LR set out limited changes following adoption of the Commission Delegated Act which amends the definition of the LR in the CRR. The proposed amendments to the ITS mainly reflect an alignment with the standard on LR published by the Basel Committee on Banking Supervision (BCBS). The proposed template changes include removal, where obsolete, of lines and columns relating to the LR as in the current CRR.

Both sets of draft ITS also propose minor changes that reflect answers published in the Single Rulebook Q&As and corrections to legal references and clerical errors.

The EBA intends to submit final updated ITS to the EU Commission once both delegated acts are final following the non-objection period of the Council and Parliament. Comments on the consultation concerning draft LCR reporting ITS are due by 10 February 2015 and comments on the LR ITS consultation are due by 27 January 2015.

CRD 4: EBA consults on identification guidelines for other systemically important institutions

The EBA has published its final guidelines that specify the criteria for identifying institutions that are systemically important at an individual Member State or EU level, known as other systemically important institutions (O-SIIs) under Article 131(3) of the Capital Requirements Directive (CRD 4).

The guidelines aim to balance the need for convergence through an EU-wide framework to ensure comparability between Member States and the need to take into account the differing banking sectors in different Member State. The guidelines set out the criteria for the scoring process to determine the systemic importance of an institution based on:

- size;
- importance (including substitutability / financial system infrastructure);
- complexity and cross-border activity; and
- interconnectedness.

Competent authorities will obtain scores based on these criteria to identify institutions falling within an upper

threshold as O-SIIs and those falling within a lower threshold as not being O-SIIs. In a second step, competent authorities will be able to identify banks scoring between the lower and upper thresholds as O-SIIs using their supervisory judgment on the basis of a closed list of optional indicators included in the guidelines. Competent authorities may opt to exclude very small institutions from the identification process if they assess that these institutions are unlikely to pose systemic risk to the domestic economy, a measure intended to reduce the reporting burden on small institutions.

EMIR: EU Commission amends draft RTS on clearing obligation for interest rate swaps

The EU Commission has written to ESMA to confirm its intention to endorse, with amendments, the draft RTS on the clearing obligation for interest rate swaps (IRS) submitted by ESMA in October 2014 pursuant to Article 5 of the European Market Infrastructure Regulation (EMIR).

The amendments to the draft RTS made by the Commission include:

- postponing the starting date of the frontloading requirement;
- clarifying the calculation of the threshold for investment funds; and
- excluding from the scope of the clearing obligation non-EU intragroup transactions.

Banking Union: EU Council adopts regulation on fund contributions and appoints members of Single Resolution Board

The EU Council has adopted the following two implementing acts to supplement the Single Resolution Mechanism (SRM):

- a regulation determining the contributions to be paid by banks to the EU's Single Resolution Fund (SRF); and
- a decision appointing the chairperson, vice-chairperson and four other full-time members of the Single Resolution Board.

For Member States participating in the Banking Union, the national resolution funds set up under the Bank Recovery and Resolution Directive (BRRD) as of 1 January 2015 will be replaced by the SRF as of 1 January 2016.

While under the BRRD the target level of the national resolution funds is set at national level and calculated on the basis of covered deposits, under the SRM the target level of the SRF is the sum of the covered deposits of all institutions of Member States participating in the Banking Union. This leads to changes in the contributions banks have to pay under the SRM versus the BRRD.

In order to mitigate any abrupt increase in fees for banks in some Member States when switching from a national to a European target level, the implementing regulation provides for an adjustment mechanism during the initial period of eight years when the SRF will be built up. This phase-in period mirrors an eight-year mutualisation phase during which national compartments in the SRF will be gradually merged. Between 2016 and 2023, annual contributions by banks will be calculated in a manner that is increasingly based on the SRM target level.

Transparency Directive: EU Commission adopts Delegated Regulation on major holdings

The EU Commission has adopted a Delegated Regulation supplementing the Transparency Directive (Directive 2004/109/EC), as amended by Directive 2013/50/EU, and setting out regulatory technical standards on major holdings.

The delegated act concerns the calculation of the 5% threshold referred to in the exemptions from the notification requirements applicable for market making and for voting rights held in the trading book, including for a group of companies. In particular the delegated act specifies:

- the requirement for the aggregation of holdings for the purposes of calculating the 5% threshold referred to in the market maker and trading book exemptions;
- the methodology for calculating the number of voting rights associated with financial instruments referenced to a basket of shares or an index;
- the methodology for determining delta for the purposes of calculating voting rights relating to financial instruments which provide exclusively for a cash settlement; and
- clarification on the application of the trading book exemption to client-serving transactions.

The final delegated act will enter into force after it has been published in the Official Journal and will apply from 26 November 2015.

AIFMD: EU Commission adopts delegated regulation on information competent authorities must provide to ESMA

The EU Commission has adopted a delegated act on information that competent authorities must provide to ESMA pursuant to Article 67(3) of the Alternative Investment Fund Managers Directive (AIFMD). The

delegated act sets out information that national competent authorities are required to report each quarter to ESMA on the alternative investment fund managers (AIFMs) that are managing and/or marketing alternative investment funds (AIFs) under their supervision, either under the application of the passport regime or under their national regimes.

REMIT: EU Commission adopts implementing acts on data collection

The Agency for Cooperation of Energy Regulators (ACER) has welcomed the EU Commission's adoption on 17 December 2014 of Commission Implementing Acts on data collection under the EU Regulation on wholesale energy market integrity and transparency (REMIT - Regulation (EU) No 1227/2011) that were agreed at the REMIT Comitology Committee on 3 October 2014.

The implementing acts will enable ACER to collect information on wholesale energy market transactions and fundamentals and report any suspicious events to relevant National Regulatory Authorities (NRAs), which may impose sanctions if necessary. The implementing acts set out:

- the list of reportable contracts and derivatives;
- details, timing and form of reporting; and
- uniform rules on reporting information to the agency.

Several manuals to accompany the implementing acts were published as staff working documents on 9 December 2014 and will be finalised and adopted once the implementing acts enter into force, which will be twenty days following their publication in the Official Journal. Once the implementing acts enter into force, market participants and third parties will have nine months to prepare for the reporting of reportable wholesale energy contracts admitted to trading at Organised Market Places and fundamental data from the ENTSOs central information transparency platforms. Reporting requirements for the remaining reportable wholesale energy contracts will begin fifteen months after entry into force of the implementing acts.

Mortgage Credit Directive: EBA consults on draft guidelines on forbearance

The EBA has launched a consultation on draft guidelines relating to arrears and foreclosure in accordance with Article 28 of the Mortgage Credit Directive (MCD – Directive 2014/17/EU). Article 28 requires that Member States adopt measures to encourage creditors to exercise reasonable forbearance with consumers before foreclosure proceedings are initiated and the draft guidelines set out:

- requirements on policies and procedures;
- issues related to engagement with the consumer;
- provision of information and assistance to the consumer;
- the resolution process; and
- documentation of dealings with the consumer and retention of records.

The draft guidelines have been developed based on certain provisions of the EBA Opinion on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties, published on 13 June 2013 prior to the adoption of the MCD.

Comments on the consultation are due by 12 February 2015.

ESMA calls for EU-wide common approach to investment-based crowdfunding

ESMA has published an Opinion along with an advice on investment-based crowdfunding. The opinion clarifies the EU rules applicable to crowdfunding while the advice highlights issues for consideration by the EU institutions to achieve greater regulatory and supervisory convergence within the EU.

The opinion, addressed to NCAs, clarifies how crowdfunding business models fit into the existing regulatory framework. It also provides guidance to NCAs who may be considering how to regulate platforms operating outside the scope of the harmonised EU rules on the key risks inherent to crowdfunding and the key components of a regulatory regime to address them.

The advice, addressed to the EU Commission, the Parliament and Council, highlights ESMA's concern that strong incentives currently exist for crowdfunding platforms to structure their business models to fall outside the scope of regulation and asks them to consider policy options to reduce these incentives.

Rating agencies: ESMA publishes report on surveillance of structured finance ratings

ESMA has published the findings of an investigation into the way credit rating agencies (CRAs) conduct surveillance of structured finance credit ratings. The investigation focussed on the four largest CRAs providing credit ratings on these financial instruments in the EU and took place between October 2013 and September 2014.

In its investigation, ESMA has identified a number of shortcomings in several areas affecting the surveillance of structured finance ratings for the CRAs investigated and

weaknesses on the level of disclosure and transparency which could be detrimental to investor protection. The critical issues identified in one or more of the CRAs include:

- a lack of quality controls over information used and received from data providers;
- incomplete application of the full methodology during the rating monitoring process aggravated by insufficient disclosure of the different analytical frameworks used;
- delays in the completion of the annual review of ratings; and
- a need to strengthen the role of the internal review function and the activities it performs during the review of methodologies, models and key rating assumptions applied to structured finance ratings in order to ensure effective independence from the business lines responsible for credit rating activities.

ESMA will follow up with each of the CRAs subject to this investigation individually to ensure that the issues identified are resolved appropriately, and will monitor all other registered CRAs as part of its ongoing supervision. ESMA has not determined whether any of the report's findings constitute a breach of the CRA Regulation and may take action in due course.

CSDR: ESMA consults on implementing measures for new settlement regime

ESMA has published three consultation papers on proposed technical standards, technical advice and guidelines implementing the Central Securities Depositories Regulation (CSDR). The consultations are on:

- draft technical standards on settlement discipline, CSD requirements, and internalised settlement;
- draft technical advice on penalties for settlement fails and on the substantial importance of a CSD; and
- draft guidelines on the access to central counterparties (CCPs) or trading venues by CSDs.

ESMA intends to organise an open hearing on the CSDR consultation papers at its premises on 13 January 2015.

Comments on all three consultations are due by 19 February 2015.

BoE announces results of stress-test on UK banking system

The Bank of England (BoE) has published the results of the first concurrent stress testing exercise of the UK banking system, which looked at the effect of a severe 'tail risk' scenario on the eight largest UK banks and building societies. The scenario considered the effect of a very severe housing market shock and a sharp rise or snap back in interest rates on end-2013 balance sheets. The stress test built on the EBA's EU-wide stress test, results of which were published on 26 October 2014, and proposed a variant of the EU-stress test scenario.

Participating banks used an analytical framework that made use of a range of tools to derive final projections of bank capital ratios in the stress scenario and bank-specific results were approved by the PRA Board. The PRA Board and the Financial Policy Committee (FPC) considered individual stress test results as part of their evaluation of the capital adequacy of individual institutions and the UK banking system as a whole.

The PRA Board considered that three of the eight participating banks needed to strengthen their capital position further and the results for one of these institutions projected a CET1 capital ratio below the 4.5% threshold in the stress scenario. The FPC judged that the outcome of the stress test demonstrated improved resilience of the banking system since the capital shortfall exercise in 2013 and that no systemic macroprudential actions are required in response to the results.

The BoE has announced that the 2014 test should be viewed as a first step towards a medium-term stress testing framework and intends to publish details of a possible move towards this medium-term framework in 2015. The BoE will also consult on particular lessons learnt from conducting the 2014 exercise with a view to incorporating stakeholder opinions into the design of the 2015 stress-test.

Alongside the results of the stress-test, the BoE has also published the latest Financial Stability Report and Systemic Risk Survey.

Financial Services Act 2012 (Commencement No. 6) Order 2014 published

HM treasury (HMT) has published The Financial Services Act 2012 (Commencement No. 6) Order 2014 (SI 2014/3323). The Order brings into force on 1 January 2015 subsections (1), (2), (5) and (6) of section 96, and sections 98 and 99 of the Financial Services Act 2012, which amend the Banking Act 2009 and relate to certain aspects of the special resolution regime and bank administration.

Payments to Governments and Miscellaneous Provisions Regulations 2014 published

The Payments to Governments and Miscellaneous Provisions Regulations 2014 (SI 2014/3293) have been published. The Regulations:

- transpose the payments to Governments reporting requirements in Article 1(5) of Directive 2013/50/EU, which amends the Transparency Directive (2004/109/EC);
- substitute Article 6 of the Transparency Directive;
- give the Financial Conduct Authority (FCA) the requisite powers to enact the FCA transparency rules; and
- transpose Article 1(1) of the Omnibus II Directive (2014/51/EU) which amends Directive 2013/50/EU.

The deadline for this transposition is 31 March 2015.

The transposition deadline for Directive 2013/50/EU is 26 November 2015, but the Government is committed to legislating early on payments to Governments in respect of Directive 2013/50/EU. This new reporting requirement applies to EU listed extractive companies, aiming to raise global standards of transparency in the extractives sector by requiring companies to report publicly the payments they make to governments in all their countries of operation.

The Regulations come into force in accordance with regulation 1(2).

HMT publishes final recommendations on FCA and PRA enforcement decisions

HMT has published the findings and final recommendations from its review of Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) enforcement decisions, which was launched on 6 May 2014. The review considered how transparent, fair, effective and quick enforcement decision-making is at the financial regulators to ensure a proportionate and robust enforcement regime that delivers a credible deterrent to wrongdoing.

Amongst other things, the Government's final recommendations include measures that relate to:

- making sure that enforcement changes culture and behaviour across the industry including greater senior involvement by the regulators;
- maintaining effective co-ordination between the FCA and PRA and increased transparency on how they co-operate with each other as well as the introduction of annual reports and increased accountability to Parliament;
- improving the timeliness of the process, which is intended in part to enhance capacity for enforcement workers, and steps to encourage those being investigated to make early admissions to resolve cases more quickly as well as removal of discounted financial penalties outside the initial settlement window; and
- ensuring there are mechanisms in place for challenging findings to ensure that the system is fair for all.

PRA and FCA consult on strengthening accountability in banking

The PRA and FCA have published a joint consultation paper (PRA CP28/14 or FCA CP14/32) on 'Strengthening accountability in banking: forms, consequential and transitional aspects'.

The consultation paper follows CP14/14 'Strengthening accountability in banking: a new regulatory framework for individuals', which was published in July 2014 and proposed a new accountability framework for individuals working for UK banks, building societies, credit unions and PRA-designated investment firms.

The proposals in CP28/14, together with those set out in CP14/14, reflect the recommendations of the Parliamentary Commission on Banking Standards (PCBS) and implement changes required by the amendments which the Financial Services (Banking Reform) Act 2013 made to the Financial Services and Markets Act 2000 (FSMA).

In particular, CP28/14 sets out the PRA's and FCA's proposed transitional arrangements for relevant firms and individuals, the application and notification forms necessary for implementing the new Senior Managers and Certification regimes, and consequential changes to the PRA Rulebook/Handbook and FCA Handbook.

CRD 4: PRA issues supervisory statement on compliance with EBA guidelines on disclosure of encumbered and unencumbered assets

The PRA has issued a supervisory statement (SS11/14) setting out its expectations relating to firms' compliance with the EBA's guidelines on disclosure of encumbered and unencumbered assets published on 27 June 2014.

The EBA guidelines allow competent authorities to waive the requirement to disclose Template B (collateral received by an institution, by broad categories of product type). The PRA will waive the requirement to disclose Template B of

the EBA guidelines for firms that meet at least one of three criteria. By waiving this disclosure requirement, the PRA seeks to reduce the risk that firms' compliance with the EBA guidelines could enable the use or non-use of liquidity assistance to be deduced. Firms do not need to apply for the waiver.

SS11/14 explains the waiver and the PRA's expectations as to the:

- factors to be considered in determining the appropriate level of disclosure provided in complying with the EBA guidelines;
- basis of calculation to be applied where the EBA guidelines require median values to be disclosed; and
- frequency with which firms publish disclosures prepared to comply with the EBA guidelines.

CRR: PRA updates supervisory statement on credit risk mitigation to clarify netting of liabilities that may be subject to bail-in

The PRA has updated its supervisory statement on credit risk mitigation (SS17/13) to clarify the netting of liabilities that may be subject to bail-in.

The update follows the publication of draft Statutory Instruments (SIs) by HMT on 24 November 2014 which implement certain aspects of the BRRD in the UK, including provisions relevant to bail-in. The draft Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014 specifies restrictions on the Bank of England exercising bail-in powers as the resolution authority and sets out, amongst other things, that where liabilities are subject to set-off or netting they may only be bailed-in on a net basis. Consequently contracts would be required to be closed out to create a net liability in order for the Bank of England to bail-in these contracts. SS17/13 has been updated to reflect that the PRA does not expect that a netting agreement is an eligible form of credit risk mitigation under Part Three, Title II, Chapter 4 of the CRR, where a resolution authority has the power to bail-in the liabilities in question on a gross basis.

Legislation to implement BRRD and Banking Union published in Federal Gazette

A set of legal measures to implement the BRRD and the Banking Union in Germany has been published in the German Federal Gazette (Bundesgesetzblatt). 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 (Sanierungs- und Abwicklungsgesetz); and
- amendments to existing laws to reflect the European Central Bank's role as a supervisory authority for the Banking Union.

The core provisions of this new legislation will become effective on 1 January 2015.

BRRD: Irish Department of Finance consults on transposition

The Irish Department of Finance is consulting on the transposition of the BRRD into Irish law. The deadline for transposition is 31 December 2014 in order that the BRRD is applied from 1 January 2015.

The consultation paper seeks comments from all relevant stakeholders on the Directive and its transposition and discusses:

- how the BRRD relates to the wider Banking Union context;
- the protection for deposits in the BRRD;
- the major areas of the BRRD that provide a discretion for Member States.

Comments on the consultation are due by 16 December 2014.

FINMA issues revised circular on auditing

The Swiss Financial Market Supervisory Authority (FINMA) has issued a partially revised circular governing audit firms.

The supervision of auditing was transferred from FINMA to the Federal Audit Oversight Authority two years ago. As a result, the legal foundation for auditing was re-examined. The Federal Council has revised the Financial Market Auditing Ordinance. Certain provisions previously included in the circular were instead reflected in the Ordinance.

The revised circular takes account of these changes. The previously communicated practice in relation to risk analysis will be maintained in the revised circular. In addition, the FINMA circular 'Audit firms and lead auditors' will be repealed as of the end of 2014.

The revised circular will come into force on 1 January 2015.

CSRC consults on draft measures on stock option trading

The China Securities Regulatory Commission (CSRC) has issued the draft 'Trial Measures for the Administration of Stock Option Trading (Consultation Draft)' and 'Trial Guidelines for Participation of Securities and Futures

Business Institutions in Stock Option Trading (Consultation Draft)' for public consultation.

The draft measures, which are intended to enhance the available financial derivatives on the PRC securities market, apply to the trading of standard stock option contracts on stock exchanges in a public and centralised manner or by other means as approved by the CSRC. Such standard contracts shall be made by the stock exchanges and relate to the sale or purchase of a specific stock or ETF at a fixed time in the future.

Amongst other things, under the draft measures:

- an investor suitability system will be adopted and only eligible investors are allowed to invest in stock options;
- securities companies and futures companies are permitted to participate in stock option trading business, with different permissible business scopes;
- various risk control measures (e.g. risk reserve funds) and risk disclosure requirements are provided for the stock option trading of securities and futures companies; and
- market manipulation and insider trading will be severely punished by the CSRC.

The consultation period will end on 5 January 2015.

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

The Hong Kong Securities and Futures Commission (SFC) has issued a circular to management companies of SFC-authorised funds, supplementing its 4 July 2014 circular on disclosure of the ongoing charges figure and past performance information in product key facts statements (KFS). The supplemental circular is intended to clarify certain requirements relating to funds that invest in other funds and the basis of calculating past performance for ETFs and unlisted index funds, as set out in the July 2014 circular.

Accordingly, the SFC has also updated:

- the KFS illustrative templates for general funds, guaranteed funds/funds with structured pay-outs, ETFs, and index funds; and
- the frequently asked questions (FAQs) on the Code on Unit Trusts and Mutual Funds – two new questions 37 and 38 have been added.

SFC launches consultation on supervisory assistance to overseas regulators

The SFC has launched a consultation on proposed amendments to the Securities and Futures Ordinance (SFO) relating to supervisory assistance to overseas regulators. The consultation will last one month.

The proposed amendments would enable the SFC to provide a narrow form of supervisory assistance to overseas regulators upon request by means of making enquiries and obtaining certain records and documents from a licensed corporation or its related corporations.

The proposed changes are intended to allow more effective and comprehensive supervision of regulated corporations which operate in multiple jurisdictions. Further, the proposed amendments will enable, in some cases, Hong Kong regulated entities to have greater access to overseas markets.

Comments are due on or before 16 January 2015.

FSA publishes draft administrative notice regarding leverage ratio to implement Basel III framework

The Financial Services Agency of Japan (FSA) has published a draft administrative notice (kokuji) regarding the leverage ratio to be applied to internationally active Japanese banks and certain other Japanese financial institutions to implement the Basel III leverage ratio framework published in December 2010, as a part of the Basel III rules, and revised in January 2014.

The leverage ratio was designed to serve as a backstop to risk-based capital measures by constraining the build-up of leverage in the banking system and providing an extra layer of protection against model risk and measurement error.

The draft administrative notice was formulated based substantially on the Basel III leverage ratio framework. The leverage ratio under the draft notice is defined as Tier 1 Capital (the numerator) divided by Total Exposure (the denominator) in the same way as the Basel III leverage ratio framework. For the purpose of this formula, 'Tier 1 Capital' means Tier 1 Capital as defined in the administrative notices of the FSA regarding risk-based capital measures, in accordance with the definition of Tier 1 Capital under the relevant Basel III text. 'Total Exposure' consists of (i) on-balance sheet exposures, (ii) derivative exposures, (iii) securities financing transaction exposures and (iv) off-balance sheet items. This structure is also in line with the Basel III leverage ratio framework. However, the draft does not refer to the 3% threshold.

The FSA intends for the draft (as well as some technical amendments to other relevant administrative notices and guidelines) to take effect as of 31 March 2015 (in line with the business year in Japan, which ends in March), after having reviewed comments submitted by the public by 16 January 2015. After the notice comes into effect, banks will be required to disclose their leverage ratio at the end of every quarterly period and the FSA will monitor fluctuations in the leverage ratio.

FSS revises risk management standards for foreign exchange derivatives transactions

The Korean Financial Supervisory Service (FSS) has announced revisions to the risk management standards for foreign exchange (FX) derivatives transactions that were established in January 2010 to restrict over-hedging and encourage sound FX risk management. The revisions follow an inspection of compliance by banks and an inter-agency review.

The Detailed Regulations on the Supervision of Banking Business provide that a financial institution's risk hedge ratio may not exceed 100% when it engages in a FX derivative transaction with a corporate customer. The risk hedge ratio is currently calculated by dividing the amount of outstanding derivatives contracts at the point of a transaction by assets, liabilities and contracts to be hedged. Under the revised standards, the amount of outstanding contracts is to be replaced by the aggregate amount of new transactions during the period the transaction limits are determined.

Under the current standards, FX derivatives refer to foreign exchange forwards, currency options and foreign exchange swaps. Currency swaps are to be added to FX derivatives products under the revised standards. The revised standards are expected to contribute to more effective prevention of over-hedging by companies. In addition, the expanded scope of FX derivatives with currency swaps is expected to improve the effectiveness of banks' counterparty risk management for derivatives transactions.

The FSS expects to reflect amendments to the subsequent guidelines on risk management of FX derivatives transactions by the end of 2014 and closely monitor whether banks follow up with appropriate measures to comply with the enhanced standards.

The revised standards will take effect on 1 January 2015.

Thailand Board of Investment announces changes to eligibility criteria and incentives for investment promotion

The Thailand Board of Investment (BOI) has issued a notification changing the key eligibility criteria and the incentives for investment promotion.

The business activities which are eligible for promotion must at least:

- help enhance national competitiveness;
- be environmentally friendly;
- be part of a cluster leading to concentration of investment; and
- use modern high-technology, such as producing electricity from waste or refuse-derived fuel.

Other examples of eligible business activities include manufacturing vehicle parts using high technology, automobile engines and activities producing active pharmaceutical ingredients. The setting up of international headquarters and international trading centers would also qualify among other activities.

Under the notification, the incentives are divided into activity-based and merit-based incentives. There are 6 categories of activity-based incentives, ranging from 8 years corporate income tax exemption (with other tax and non-tax incentives), to only 1-year exemptions from import duty on raw or essential materials (with other non-tax incentives). Projects which enjoy activity-based privileges may obtain additional privileges if such projects qualify for merit-based incentives for (i) competitive enhancement (e.g. research and development or advanced technology training); (ii) decentralisation (i.e. locating projects in investment promotion zones); or (iii) industrial area development (locating projects in industrial estates or promoted industrial zones).

This extensive revision of the investment promotion scheme is intended to promote high value investment in order to enhance national competitiveness, overcome the middle income trap and achieve sustainable growth.

The notification was announced on 3 December 2014 and will take effect on 1 January 2014.

Australia issues requirements for 'simple' corporate bonds

The Australian Government has published regulations and requirements for a simplified disclosure regime for 'simple' bonds designed for retail investors.

The simplified disclosure regime means that a person issuing 'simple' bonds to retail investors need not comply with the full IPO-style prospectus requirements of Chapter 6D of the Corporations Act 2001 (Cth).

The Australian Government has issued the Corporations Amendment (Simple Corporate Bonds and Other Measures) Regulations 2014 (Cth) (Amending Regulations), which commence on 19 December 2014.

The Amending Regulations set out the content requirements for the new two-part prospectus for simple corporate bonds, which was introduced in September 2014 under the Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014 (Cth).

The new simple prospectus has a three-year life and contains an offer specific prospectus for each offer. The content requirements for simple prospectuses are highly prescriptive and seek to ensure that a recognisable market standard format is used for simple bond prospectuses, which will theoretically allow prospective investors easily to compare offers.

Issuers of simple corporate bonds now have the ability to revamp their offer documents and ensure that they are digestible to prospective investors.

DFSA makes amendments to its Rulebook

The Dubai Financial Services Authority (DFSA) has made the following Rulemaking Instruments, which will come into force on 1 January 2015:

- the Markets Rules (MKT) Instrument (No. 146) 2014, which repeals and replaces the Markets Rules (MKT) module of the DFSA Rulebook with an updated version – the updated version provides for the making of a Code of Market Conduct;
- Glossary Module (GLO) Instrument (No. 147) 2014, which repeals and replaces the Glossary (GLO) module of the DFSA Rulebook with an updated version – the amendment updates the Glossary Module to include a definition of the Code of Market Conduct; and
- Prudential – Investment, Insurance Intermediation and Banking (PIB) Instrument (No. 148) 2014, which repeals and replaces the Prudential – Investment, Insurance Intermediation and Banking (PIB) Module of the DFSA Rulebook with an updated version – the amendments implement aspects of Basel III, in particular, the Leverage Ratio and Liquidity Coverage Ratio.

Additionally, the Code of Market Conduct (CMC) Guidance Instrument (No. 9) 2014, which introduces a new module of the DFSA Sourcebook, namely the Code of Market Conduct (CMC) module, will come into effect on 1 January 2015. The purpose of the Code of Market Conduct is to provide Guidance on the Market Abuse provisions in Part 6 of the Markets Law.

US Federal Reserve Board announces additional extension of conformance period under Volcker Rule for legacy covered funds

The US Federal Reserve Board has approved an Order under section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly known as the Volcker Rule) to extend the conformance period for investments in, and relationships with, covered funds that were in place on 31 December 2013 (legacy covered funds) until 21 July 2016. The Federal Reserve has also indicated that it intends to act in 2015 to grant an additional one-year extension of the conformance period with respect to investments and relationships with legacy covered funds. No extension of the conformance period has been granted for investments in, or relationships with, covered funds established after 31 December 2013 or for proprietary trading activities.

US bank regulators preserve regulatory capital, liquidity and lending limit treatment for financial contracts subject to non-US special resolution regimes or ISDA's Resolution Stay Protocol

The Board of Governors of the US Federal Reserve System and the US Office of the Comptroller of the Currency have issued an interim final rule designed to ensure that the netting treatment of OTC derivatives, eligible margin loans, and repo-style transactions for regulatory capital, liquidity, and lending limit purposes is not affected by implementation of special resolution regimes in non-US jurisdictions or by the ISDA Resolution Stay Protocol. The interim final rule amends the definition of 'qualifying master netting agreement' to permit an otherwise qualifying agreement to qualify if:

- default rights under the agreement may be stayed under a qualifying foreign special resolution regime or
- the agreement incorporates a qualifying special resolution regime by contract.

The interim final rule also revises the definition of 'collateral agreement', 'eligible margin loan', and 'repo-style transaction' to provide that a counterparty's default rights

may be stayed under a foreign special resolution regime or under a special resolution regime incorporated by contract.

The interim final rule will be effective as of 1 January 2015. The agencies are requesting public comment by 3 March 2015.

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 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/2014/12/emir_ccps_and_traderepositories.html

Europe issues guidance on sectoral sanctions against Russia

The European Commission has issued some welcome and long-awaited guidance on certain provisions of the so-called sectoral sanctions introduced by Council Regulation (EU) No. 833/2014, as amended by Council Regulations (EU) No. 960/2014 and No. 1290/2014. The guidance is contained in a Commission Notice dated 16 December 2014. Running to seven pages, the stated purpose of the guidance, which is presented in the form of a Q&A, is 'uniform implementation by national authorities and parties concerned'.

This briefing discusses the European Commission Q&A.

http://www.cliffordchance.com/briefings/2014/12/europe_issues_guidanceonsectoralsanction.html

The art of the possible – the APCOA restructuring

The English Court has sanctioned schemes of arrangement in respect of the APCOA Group – a European car park operator headquartered in Germany. It is the second round of schemes for the Group in the year. The latest schemes facilitate a full scale restructuring, although final implementation was concluded consensually with all key lenders.

This briefing discusses the APCOA restructuring.

http://www.cliffordchance.com/briefings/2014/12/the_art_of_the_possibletheapcoarestructuring.html

Contentious Commentary – a review for litigators

Clifford Chance has prepared the latest edition of 'Contentious Commentary', a newsletter that provides a summary of recent developments in litigation. The newsletter is produced by lawyers in the litigation and dispute resolution practice at Clifford Chance. This edition covers the following key issues:

- Equity follows the law;
- Act of state does not block torture claims;
- Unsuccessful Part 36 offerer still awarded costs;
- Crown act of state blocks detention claims;
- Parties must have a chance to question arbitrators' grounds for decision;
- Disclosed documents cannot be used overseas;
- Service allowed on English branch for unrelated claims;
- Limited ability to assist foreign insolvencies;
- Anti-suit injunction protects insolvency distribution; and
- Governing law trumps insolvency law.

http://www.cliffordchance.com/briefings/2014/12/contentious_commentary-december2014.html

Polish Legislation Newsletter

Clifford Chance has produced the Polish Legislation Newsletter for October – November 2014, summarising selected recent changes to Polish law.

http://www.cliffordchance.com/briefings/2014/12/polish_legislationnewsletteroctober.html

State Council further simplifies the approval requirements for cross-border investments into and out of China

The State Council has recently updated its List of Investment Projects subject to Government Approvals, which became effective as from 18 November 2014. The 2014 List further delegates approval authority from central level agencies to their respective local counterparts that regulate foreign investment in China (FDI) and outbound investment of Chinese companies (ODI). Essentially, the threshold for FDI projects in both the encouraged and

restricted categories of foreign investment that would trigger government approval has been raised. Likewise, even ODI with an aggregate investment of USD 1 billion will not be subject to government approval unless it involves a sensitive industry or region. This showcases the commitments made by China's new leadership in streamlining the government approval procedures for, among others, FDI and ODI projects.

This briefing discusses this development.

http://www.cliffordchance.com/briefings/2014/12/state_council_furthersimplifiestheapprova.html

Changes to the CIETAC Arbitration Rules – Another step toward internationalisation

The China International Economic and Trade Arbitration Commission (CIETAC) has recently announced a revision to its arbitration rules which will come into effect on 1 January 2015.

CIETAC last updated its rules in 2012, but significant developments have occurred since then: its former Shanghai and Shenzhen Sub-commissions have declared their independence and the CIETAC Hong Kong Arbitration Centre has been established. The 2015 Rules address these developments, and are also receptive to new trends in international arbitration practice (for example, inclusion of provisions on emergency arbitrators).

This briefing discusses the new CIETAC arbitration rules.

http://www.cliffordchance.com/briefings/2014/12/changes_to_the_cietacarbitrationrulesanothe.html

Enactment of Netting Law for the Dubai International Financial Centre

14 December 2014 marked a milestone for the region with the enactment in the Dubai International Financial Centre (DIFC) of a new law recognising the effectiveness of close out netting provisions in contracts such as derivatives master agreements. The DIFC Netting Law applies where either at least one of the parties is an entity registered in the DIFC or the contract is governed by DIFC law.

The DIFC is the first Gulf legal regime to enact a netting law.

This briefing discusses the DIFC Netting Law.

http://www.cliffordchance.com/briefings/2014/12/enactment_of_nettinglawfortheduba.html

ABI Commission Declines to Recommend Any Changes to Laws Impacting Distressed Debt and Claims Trading

In the more than thirty-five years since the US Bankruptcy Code was enacted, lending practices, players in financial and credit markets, and the global economy have changed dramatically. Not surprisingly, some restructuring professionals believe that the US Bankruptcy Code, even as presently amended, is not adequately equipped to address these myriad changes nor will it be able handle future innovations and transformations.

This briefing discusses the ABI Commission's recent report on the US Bankruptcy Code.

http://www.cliffordchance.com/briefings/2014/12/abi_commission_declinestorecommendanychange.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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