

International Regulatory Update

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Capital Markets Union: EU Commission consults on Green Paper, securitisation and review of Prospectus Directive

The EU Commission has launched a [Green Paper](#) on its long-term project for a Capital Markets Union (CMU). The Green Paper discusses a range of steps that are intended to cumulatively help build a single market for capital across all 28 Member States in order to strengthen jobs and

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

International Regulatory Group Contacts

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

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

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

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

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

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

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

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

growth and begins a three month consultation. Feedback received from the consultation will be used by the Commission to develop an Action Plan to put in place a fully functioning CMU by 2019. The Green Paper sets out the following objectives for CMU:

- improving access to financing for all businesses, especially SMEs, and investment projects;
- increasing and diversifying the sources of funding from international investors; and
- ensuring that markets work more effectively and effectively, including reduced costs.

The Green Paper seeks views on early policy priorities, barriers to access to finance, widening sources of funding, and obstacles to cross-border capital flows, such as insolvency, corporate, taxation and securities laws. The early policy priorities set out in the paper include:

- implementation of the European Long-Term Investment Funds (ELTIF) Regulation;
- credit information on SMEs;
- private placement;
- high quality securitisation; and
- a review of the Prospectus Directive.

The Commission has also launched separate consultations on two of these early policy measures:

- [securitisation](#), as a first step towards a possible initiative on creating a more simple, transparent and standardised securitisations market through greater standardisation in securitisation instruments, transparency and simplicity; and
- the [Prospectus Directive](#), in order to gather views on ways to simplify the information in prospectuses, examine when a prospectus is necessary and how to streamline the approval process.

The Green Paper also provides a preliminary analysis of some of the barriers to greater integration in capital markets and how European capital markets are currently structured; further analysis is also provided in a [Staff Working Document](#) published alongside the Green Paper.

Comments on all three consultations are due by 13 May 2015. The Commission will organise a conference in summer to draw the consultation to a close and launch its Action Plan later in 2015.

MiFID 2/MiFIR: ESMA publishes addendum consultation on transparency issues for certain non-equity instruments

The European Securities and Markets Authority (ESMA) has published an [addendum consultation paper](#) to complement the transparency section of the consultation paper on MiFID 2/MiFIR published on 19 December 2014 (ESMA/2014/1570). That consultation paper did not cover certain non-equity instruments and ESMA has published the analysis of transparency issues for these instruments in the addendum consultation paper.

The addendum consultation covers the assessment of the liquidity and specification for large in scale (LIS) and size specific to the instrument (SSTI) thresholds for pre-trade and post-trade purposes for:

- foreign exchange derivatives;
- credit derivatives;
- other derivatives; and
- contracts for difference.

The final section of the addendum consultation paper completes draft regulatory technical standard (RTS) 9 on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives published in Annex B to the December consultation paper.

The addendum only presents additional elements to those set out in the December consultation paper and ESMA advises that both consultation papers should be read in conjunction. Comments on the consultation are due by 20 March 2015.

Social entrepreneurship and venture capital funds: ESMA publishes technical advice on implementing measures

ESMA has published its [final report](#) on technical advice on the delegated acts under the European social entrepreneurship funds (EuSEF) and European venture capital funds (EuVECA) Regulations.

The implementing measures address:

- the types of goods and services, methods of production for goods and services and financial support embodying a social objective;
- conflicts of interest of EuSEF and EuVECA managers;
- the methods for the measurement of the social impact; and
- the information that EuSEF managers should provide to investors.

ESMA will provide input to the EU Commission as necessary on the development of the delegated acts to be prepared on the basis of its technical advice.

ESMA publishes annual report on direct supervision of credit rating agencies and trade repositories

ESMA has published an [annual report](#) on its direct supervisory activities in 2014 regarding credit rating agencies (CRAs) and trade repositories (TRs). The report summarises the key actions taken during 2014 and outlines ESMA's supervisory work plans for both sectors for 2015.

With regard to CRAs, ESMA seeks to better understand CRA's processes around governance, risk management and internal decision making, and business development processes during 2015-16. Planned supervisory objectives for TRs include monitoring activities to identify promptly supervised entities that may not be compliant with the European Market Infrastructure Regulation (EMIR), monitoring action plans TRs are implementing in response to ESMA requests and thematic reviews on the inter-TR reconciliation process, business continuity planning and transparency of costs.

EBA publishes opinion on definition of eligible capital

The European Banking Authority (EBA) has published its [opinion](#) on the review of the appropriateness of the definition of 'eligible capital', in response to a call for advice received from the EU Commission.

The opinion is based on information gathered during the first year of application of the Capital Requirements Regulation (CRR) and provides comments on the definition, the relevance of the term for the large exposures framework, determining the capital requirements applicable to investment firms and the prudential treatment of qualifying holdings outside the financial sector.

CRR: ITS on currencies with extremely narrow definition of central bank eligibility published in Official Journal

Commission Implementing Regulation (EU) 2015/233 laying down implementing technical standards (ITS) with regard to currencies in which there is an extremely narrow definition of central bank eligibility under the CRR has been [published in the Official Journal](#).

The Implementing Regulation will enter into force on 6 March 2015.

FCA announces market study on competition in investment and corporate banking

The Financial Conduct Authority (FCA) has published a [feedback statement](#) following its wholesale sector competition review for 2014-15, in which it has announced its first wholesale market study to review competition in investment and corporate banking. The wholesale sector competition review was launched in July 2014 to seek views from stakeholders into possible areas that might benefit from further investigation through an in-depth market study.

The market study into investment and corporate banking will consider the impact of transparency and bundling on competition and whether customers are able to assess whether they are getting value for money. It will complement the ongoing Fair and Effective Markets Review (FEMR), currently being undertaken jointly by the FCA, Bank of England and HM Treasury into wholesale fixed-income, commodities and currency (FICC) markets. Terms of reference for the market study will be published in spring 2015 to set out the scope of the review.

The feedback statement also identifies asset management as a potential area for a market study and the FCA will consider this area later in the year.

FCA publishes feedback statement on dealing commission and related proposals under MiFID 2

The FCA has published a [feedback statement](#) following its July 2014 discussion paper on the way firms use dealing commission. Among other things, the discussion paper sought views on an FCA competition analysis of two potential options for reform following draft advice from the European Securities and Markets Authority (ESMA) to the EU Commission on the delegated acts to support MiFID 2, published in May 2014. In the feedback statement, the FCA welcomes ESMA's final advice on inducements and research published in December 2014.

The feedback statement also sets out:

- a summary of responses received;
- a summary of ESMA's final advice to the Commission and the FCA's interpretation of the likely implications of the changes if implemented;
- the next steps for the implementation of MiFID 2 and how the FCA intends to implement the final legislation in the UK; and

- the FCA's expectations of investment management firms in the intervening period before MiFID 2 applies from 3 January 2017.

The FCA will publish a consultation on its overall implementation of MiFID 2 by the end of 2015.

Deposit guarantee schemes: German Federal Council comments on draft law implementing revised Directive

The German Federal Council has [commented](#) on the draft law proposed by the German Federal Government to implement the revised Deposit Guarantee Schemes Directive (DGSD 2). According to the Federal Council, the draft law should include the possibility to exempt CRR-institutions from special contributions to the deposit protection scheme if such a contribution would threaten the existence of the institution.

CSSF issues circular on implementation of EBA guidelines on security of internet payments

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [circular 15/603](#) dated 9 February 2015 on the implementation of the European Banking Authority (EBA) guidelines of 19 December 2014 on the security of internet payments into the Luxembourg regulatory framework.

The EBA guidelines, which are appended as an annex to the circular, set out the minimum security requirements that payment services providers in the EU will be expected to implement and apply to the provision of payment services offered through the internet.

The circular implements the EBA guidelines into the Luxembourg regulatory framework in accordance with Article 16(3) of the EBA guidelines and provides that payment services providers as defined in Article 1(37) of the Law of 10 November 2009 on payment services, as amended, have to apply the EBA guidelines from 1 August 2015.

Royal Decree developing law on regulation, supervision and solvency of credit entities published

[Royal Decree 84/2015](#), of 13 February, which develops Law 10/2014, of 26 June 2014, on the regulation, supervision and solvency of credit entities in relation to access to the activity, solvency requirements and the regime of supervision of credit entities, has been published. Royal Decree 84/2015 recasts in a single text the rules relating to the regulation and discipline of credit entities contained in Royal Decree 216/2008, of 15 February, on the capital of credit entities and Royal Decree 1245/1995,

of 14 July, on the creation of banks, cross-border activity and other aspects related to the legal regime of credit entities.

Royal Decree 84/2015 includes a package of measures aimed at:

- regulating the legal regime on access to the activity of banks – saving banks (cajas de ahorro) and credit unions (cooperativas de crédito) have their own regulations on this;
- regulating the regime of significant shareholdings;
- developing the obligations regarding corporate governance and remuneration policies and specifying the information to be disclosed by credit entities;
- regulating the scheme of capital buffers and the process of self-assessment of the levels of capital; and
- adapting the role of the Bank of Spain as supervisor, regulating its scope of action and collaboration with other competent authorities.

The Royal Decree entered into force on 15 February 2015.

CBRC issues amended leverage ratio measures

The China Banking Regulatory Commission (CBRC) has promulgated the amended '[Administrative Measures for the Leverage Ratio of Commercial Banks](#)', which will take effect on 1 April 2015. The measures were amended by the CBRC to keep domestic rules in line with the leverage ratio rules under Basel III.

Amongst others, the following aspects of the amended leverage ratio measures are worth noting:

- the minimum leverage ratio of commercial banks remains at 4% for consolidated and unconsolidated balance sheets;
- the fixed credit conversion factor (CCF) of 100% is no longer applicable to off-balance-sheet items such as acceptance bills, guarantee letters, documentary letters of credit and trade financing. Instead, all off-balance-sheet items will be calculated by applying the various CCF (ranging from 10% to 100%) set out in the Capital Rules for Commercial Banks;
- commercial banks that are listed on onshore or offshore stock exchanges or, though unlisted, have consolidated total assets in excess of RMB 1,000 billion at the end of the previous year, shall report certain leverage ratio related information to the CBRC on a quarterly basis and comply with certain information disclosure requirements; and

- commercial banks that do not fall into either of the above two categories shall disclose their leverage ratio in, and at least at the same frequency as, their financial reports.

MAS consults on securities-based crowdfunding

The Monetary Authority of Singapore (MAS) has published a [consultation paper](#) setting out proposals and clarifications to facilitate access by corporates to alternative sources of funding through securities-based crowdfunding (SCF).

The MAS is proposing to facilitate SCF offers to accredited investors and institutional investors by:

- lowering the base capital requirement to SGD 50,000 for financial intermediaries that deal in securities (as long as they do not handle or hold customer monies, assets or positions and do not act as principal in transactions with customers) and removing the requirement to lodge a security deposit for such intermediaries, in order to allow potential SCF platform operators with lower financial resources to apply for a licence to offer SCF investments; and
- clarifying that the advertising restriction for restricted offers made to accredited investors (that are exempted from the prospectus requirement) does not prohibit SCF platform operators from advertising their platforms to the general public, as long as the advertisement does not include any information on specific offers that may be available on the SCF platform – this clarification is intended to provide certainty to potential SCF platform operators on the manner in which they can publicise their business.

Comments on the consultation paper are due by 18 March 2015.

RECENT CLIFFORD CHANCE BRIEFINGS

The new EU transaction reporting regimes – Comparing MiFIR, MiFID 1, EMIR, REMIT and SFTR

The EU is rolling out multiple overlapping and complex transaction reporting regimes, serving different purposes and having different structures.

The Markets in Financial Instruments Directive (MiFID1) introduced a transaction reporting regime across the EU in 2007. The scope of this regime is set to expand significantly in 2017 when the recast Markets in Financial Instruments Directive (MiFID 2) and the Markets in Financial Instruments Regulation (MiFIR) come into effect.

However, there are also other EU product-specific transaction reporting regimes in place or in development, namely:

- a reporting regime for derivative transactions under the EU regulation on OTC derivatives, CCPs and trade repositories (EMIR), which came into effect on 12 February 2014;
- a reporting regime for wholesale energy market contracts under the EU regulation on wholesale energy market integrity and transparency (REMIT), which will come into effect on 7 October 2015 for the first wave of reportable products; and
- a reporting regime for securities financing transactions (SFTs) under a proposed EU regulation on securities financing transactions (SFTR), which is currently progressing through the EU legislative process.

This briefing compares the key elements of the transaction reporting regimes under MiFIR, MiFID 1, EMIR, REMIT and SFTR. It also includes a summary of the position reporting regime for commodity derivatives under MiFID 2.

http://www.cliffordchance.com/briefings/2015/02/the_new_eu_transactionreportingregimes.html

A new regulatory focus – the PRA and FCA Senior Insurance Managers framework

On 2 February 2015, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) consultations, which together set out the framework for senior insurance managers, came to a close.

The PRA and FCA are expected to publish consultation feedback, final supervisory statements and rules in March 2015. As the rules will take effect on 1 January 2016 in line with Solvency II, firms are advised to start preparations early.

This briefing advises on key next steps, outlines the PRA and FCA features of the new framework and highlights areas for which regulatory or legal input should be sought.

http://www.cliffordchance.com/briefings/2015/02/a_new_regulatoryfocusthepraandfcasenio.html

FCA to investigate competition in investment and corporate banking services

The Financial Conduct Authority has announced plans to launch a market study into investment and corporate banking in the UK. The study, which will formally launch in Spring 2015, is expected to be followed by a separate study of asset management services later in the year.

This briefing discusses the market study.

http://www.cliffordchance.com/briefings/2015/02/fca_to_investigatecompetitionininvestmentan.html

Contentious Commentary – a review for litigators

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

http://www.cliffordchance.com/briefings/2015/02/contentious_commentary-february2015.html

Dispute resolution in Angola – arbitration in focus

Due to the cost concerns, potential delays and other practical uncertainties associated with the Angolan judicial system, arbitration has become the primary form of commercial dispute resolution in Angola.

This briefing summarises the key considerations and issues in relation to dispute resolution and the enforcement of arbitral awards in Angola.

http://www.cliffordchance.com/briefings/2015/02/dispute_resolutioninangola-arbitrationi.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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