

International Regulatory Update

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Securities financing transactions: ECON Committee publishes report

The EU Parliament Committee on Economic and Monetary Affairs (ECON) has published its [report](#) on the proposed Regulation on securities financing transactions (SFTs).

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The report sets out the draft text adopted by ECON on 24 March 2015.

The Parliament has indicated it intends to hold the plenary vote on 8 September 2015.

Prospectus Directive: EU Commission reports on power to adopt delegated acts

The EU Commission has published a [report](#) to the EU Parliament and Council on the exercise of the power to adopt delegated acts conferred on the Commission under the Prospectus Directive.

While the Commission believes that the delegation of powers to it has been crucial to further develop the single rulebook and establish more harmonised, high quality rules, the Commission has not used some of those powers yet. The provisions concerned will also form part of the Prospectus Directive review required by Article 4 of the second Prospectus Directive. The Commission therefore considers that the Parliament and the Council should not revoke those delegations of powers, as it may need to use those powers to adopt certain delegated acts in the future.

CRR: Delegated Regulation on specification of margin periods of risk published in Official Journal

[Commission Delegated Regulation \(EU\) 2015/585](#) of 18 December 2014 supplementing the Capital Requirements Regulation (CRR) with regard to regulatory technical standards for the specification of margin periods of risk has been published in the Official Journal. The Delegated Regulation sets out how the margin periods of risk of a netting set that institutions may use for the purposes of Article 304(3) and (4) of the CRR shall be determined.

The Delegated Regulation will enter into force on 5 May 2015.

EBA reviews work of EU colleges of supervisors for cross-border banking groups

The European Banking Authority (EBA) [has published](#) its annual assessment of EU colleges of supervisors responsible for the oversight of cross-border banks. Colleges bring together banking supervisors, from EU as well as non-EU areas, to jointly supervise those institutions that operate in more than one EU Member State and support consistent pan-EU application of the Single Rulebook.

The report assesses how colleges have functioned during 2014 and identifies key activities for the effective oversight of EU cross-border banking groups in 2015. The report

introduces items for supervisory attention in 2015, including conduct risk, Information Technology risks and the need for effective decisions on recovery plans.

FSB launches second peer review on resolution regimes

The Financial Stability Board (FSB) [has published](#) abbreviated terms of reference for its second thematic peer review on resolution regimes within FSB member jurisdictions and has launched a feedback initiative for stakeholders. The FSB completed a previous peer review in April 2013 and this second review will focus on resolution powers and recovery and resolution planning. Aspects of cross-border cooperation and information sharing, included in the first peer review, will not be covered but will be reviewed separately once FSB guidance on cross-border effectiveness is finalised by the end of 2015.

The FSB has distributed questionnaires to FSB members in order to collect information on the range and nature of resolution powers for the banking sector of each member jurisdiction. The FSB also invites feedback from financial institutions, consumer associations and other industry stakeholders on the implementation of reforms relating to these resolution regimes.

Comments are due by 8 May 2015. The FSB intends to publish its final peer review report on resolution regimes in early 2016.

Islamic Financial Services Board publishes core banking principles for Islamic finance regulation

The Islamic Financial Services Board (IFSB) [has published](#) its core principles for Islamic finance regulation (banking segment), which deal with the regulation and supervision of Islamic banking.

The principles are intended to be used:

- by jurisdictions as a benchmark for assessing the quality of their regulatory and supervisory systems; and
- for identifying future work to achieve a baseline level of sound regulations and practices for Islamic finance.

The IFSB is proposing to develop principles for other sectors in the future.

FCA publishes guidance and good practice observations on multilateral trading facility rules

The Financial Conduct Authority (FCA) [has published](#) a Dear CEO Letter and Good Practice Observations on multilateral trading facility (MTF) rules in MAR 5.

The finalised guidance (FG15/6) follows a guidance consultation, which closed in January 2015, and sets out a summary of feedback, changes from the original guidance it consulted on and its finalised guidance on key requirements.

German Federal Government proposes draft ordinance on amendment of Restructuring Fund Ordinance

The German Federal Government [has proposed](#) a draft ordinance on the amendment of the Restructuring Fund Ordinance (Restrukturierungsfondsverordnung). The draft ordinance is intended to implement Commission Delegated Regulation (EU) 2015/63 by providing further details on the contributions to the resolution financing arrangements for Germany. The draft includes the provision of certain fixed contributions, details on the calculation method and the data to be provided to the German Federal Agency for Financial Market Stabilisation (FMSA), which is the resolution authority for Germany.

BaFin publishes explanatory note on exemption for brokering of investment funds and investment assets

The German Federal Financial Supervisory Authority (BaFin) [has published](#) an explanatory note on the exemption for the brokering of investment funds (Investmentvermögen) and investment assets (Vermögensanlagen) pursuant to section 2 para 6 sentence 1 no. 8 of the German Banking Act (Kreditwesengesetz, KWG). The note summarises the prerequisites for the exemption. Entities falling under the exemption do not need a licence from the German Federal Financial Supervisory Authority but from the competent authorities under the German Trade Act (Gewerbeordnung).

Polish Ministry of Finance prepares Bill amending Act on mortgage bonds and banks

The Ministry of Finance has prepared a new [Bill](#) amending the Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks and some other Acts. The main purpose of the Bill is the development of the market of mortgage bonds issued by mortgage banks; the bonds are long-term debt securities, characterised by a high level of security and low investment risk.

The Government Legislation Centre is currently working on the Bill.

Polish Constitutional Tribunal finds banking executory document unconstitutional

The Polish Constitutional Tribunal has [ruled](#) that the provisions of the Act – Banking Law permitting banks to

issue banking executory documents are unconstitutional. This means that banks will be unable to initiate enforcement proceedings to recover claims until they have been examined by a court. Amongst other things, the Tribunal noted that the right to issue banking executory documents is a privilege of banks that violates the principle of equal treatment. Under the Tribunal's ruling, the provisions on banking executory documents expire on 1 August 2016.

Polish Financial Supervision Authority publishes draft recommendation on risk management models used in banks

The Polish Financial Supervision Authority has presented a draft of [Recommendation W](#) concerning risk management with respect to models used in banks. The objective of the recommendation is to highlight to all banks the expectations regarding supervision of the process of risk management with respect to models used in banks.

The recommendation has now been sent for public consultation.

SFC issues circular to securities and futures brokers on monitoring of risks and financial and operational capabilities

In view of a recent increase in market turnover and volatility, the Securities and Futures Commission (SFC) has issued a [circular](#) to remind all securities and futures brokers to closely monitor their financial and operational capabilities and maintain sufficient resources to cope with any increase in business. The circular further reminds brokers to prudently manage their market, credit and operational risks as a result of increased business activities.

General Principle 3 of the Code of Conduct for Persons Licensed by or Registered with the SFC requires licensed persons to have and employ effectively the resources and procedures which are needed for the proper performance of their business activities. The circular reminds brokers to:

- closely monitor changes in their variable required liquid capital due to an increase in their business, and maintain sufficient liquid capital to ensure compliance with the Securities and Futures (Financial Resources) Rules at all times;
- ensure that they have adequate liquidity for operating their business, meeting their obligations to clients, the clearing houses and other counterparties; and
- vigilantly manage their financial risks and prudently review the credit limits, trading limits and position limits

granted to clients to ensure that the limits are commensurate with the individual client's financial status and the firm's financial resources, and promptly collect outstanding margin calls from clients.

In addition, the circular advises brokers to diligently supervise their operations in order to mitigate operational risks and safeguard their clients' interests, warning that under changing market conditions, any failure, mistake or omission in operation may result in significant adverse financial and operational consequences. It adds that brokers should also constantly monitor and review their operating capability, both human resources and system capacity, to ensure proper performance of their business activities.

MAS issues explanatory brief on Monetary Authority of Singapore (Amendment) Bill 2015

Following a [public consultation](#) on proposed enhancements to the MAS Act in June 2014, the Monetary Authority of Singapore (MAS) [has published](#) an explanatory brief on the Monetary Authority of Singapore (Amendment) Bill 2015. The Bill has been introduced into Parliament and the proposed amendments to the Monetary Authority of Singapore (MAS) Act are intended to clarify the MAS' powers in relation to anti-money laundering/countering the financing of terrorism (AML/CFT) supervision and enhance the effectiveness of Singapore's AML/CFT regime, particularly in relation to international cooperation.

In particular, the Bill will:

- set out requirements for financial institutions to conduct customer due diligence and retain such records;
- set out the MAS' powers to conduct AML/CFT inspections on financial institutions and to approve such inspections by home AML/CFT supervisors;
- enable the MAS to provide information to foreign AML/CFT supervisors in connection with the AML/CFT supervision of foreign financial institutions carrying on financial activities in that country, subject to safeguards;
- enable the MAS to provide information to domestic authorities in connection with the investigation and enforcement action of an offence, or any supervisory action taken against a person regulated by that authority for the contravention of AML/CFT requirements, subject to safeguards; and
- clarify that the scope of the AML/CFT regime extends to designated financial holding companies and non-bank credit card or charge card issuers.

Federal Reserve Board requests comment on proposed technical changes to Regulation D

The Federal Reserve Board (FRB) [has published](#) proposed amendments to Regulation D (Reserve Requirements of Depository Institutions), which would make specialised changes to the calculation of interest payments on certain balances maintained by depository institutions at Federal Reserve Banks.

The proposed amendments would modify Regulation D so that interest payments to depository institutions with excess balances are based on the IOER rate in effect each day and the level of balances held each day, rather than the average IOER (Interest Rate on Excess Reserves) rate and average level of excess balances over the maintenance period.

Comments on the proposal are requested within 30 days of publication in the Federal Register, which is expected shortly.

RECENT CLIFFORD CHANCE BRIEFINGS

Proposed EU regulation on bank structure – impact on insurance business

The proposed EU regulation on bank structure (BSR) could have a significant impact on the insurance business of some banking groups that include an insurance company and even on some insurance groups that include an EU bank. In particular, the European Commission's proposed text for the BSR would ban any entity in a group within the scope of the regulation from own account investment in financial instruments and alternative investment funds (AIFs), subject to limited exceptions that do not recognise the special nature of the investment activities of insurance companies.

This briefing paper discusses the impact of the proposed regulation on insurance business.

http://www.cliffordchance.com/briefings/2015/04/proposed_eu_regulationonbankstructureimpac.html

Proposed EU Regulation on bank structure – Comparison of Volcker Rule and proposed EU ban on proprietary trading and investment in AIFs

The proposed BSR includes prohibitions on banking groups engaging in proprietary trading and investing in alternative investment funds (AIFs).

The European Commission's proposal for a prohibition on proprietary trading was designed to be narrower than the corresponding restriction under the US Volcker Rule and the ban on investment in AIFs was intended to prevent circumvention of that prohibition. However, the proposed EU rules would prohibit or restrict many activities in banking groups that would be permitted under the corresponding US rules, including own account and (in relation to funds) client-related activities that are consistent with the safety and soundness of a banking group and do not adversely affect its resolvability.

This briefing compares the US regulations implementing the Volcker Rule and the corresponding EU rules set out in the European Commission's proposal for the BSR.

http://www.cliffordchance.com/briefings/2015/04/proposed_eu_regulationonbankstructure.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/2015/04/contentious_commentary-april2015.html

Countdown towards full implementation – revised Hong Kong competition law guidelines published

On 30 March 2015, the Hong Kong Competition Commission published revised guidelines which assist in interpreting the Hong Kong Competition Ordinance. This follows the publication of draft guidelines on 9 October 2014. The Commission is inviting another round of comments by 20 April 2015. The Guidelines will then be presented to the Legislative Council for consultation in late April. The publication of the Guidelines is an important step towards the full implementation of the Ordinance, expected by the end of this year.

This briefing paper outlines some high-level points of interest covered in the Guidelines.

http://www.cliffordchance.com/briefings/2015/04/countdown_towardsfullimplementationrevise.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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