

International Regulatory Update

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ESMA consults on remuneration guidelines under UCITS V and AIFMD

The European Securities and Markets Authority (ESMA) [has launched a consultation](#) on proposed guidelines on sound remuneration under the Undertakings for Collective Investment in Transferable Securities Directive (UCITS V) and a revision of existing remuneration guidelines under the Alternative Investment Fund Managers Directive (AIFMD).

The proposed guidelines aim to provide guidance on proportionality, governance of remuneration, requirements on risk alignment and disclosure. When finalised, the guidelines will apply to UCITS management companies and national competent authorities.

The draft guidelines are based on those already issued on remuneration under the AIFMD, as the principles under UCITS V broadly reflect those under the AIFMD.

Key elements of the guidelines include:

- management companies as part of a group;
- definition of performance fees;
- application of different sectoral rules;
- application of the rules to delegates; and
- payment in instruments.

The consultation also proposes a revision of the AIFMD remuneration guidelines by clarifying that in a group context, non-alternative investment fund manager (AIFM) sectoral prudential supervisors of group entities may deem certain staff of an AIFM in that group to be identified staff for the purposes of their sectoral remuneration rules.

Once ESMA has received and considered the feedback to this consultation, it will aim to publish a final report, including the revision of the AIFMD remuneration guidelines, by Q1 2016.

Comments are due by 23 October 2015.

CRR: EBA clarifies status of ITS on additional liquidity monitoring metrics

The European Banking Authority (EBA) [has published a statement](#) on the status of its final draft implementing technical standards (ITS) under the Capital Requirements Regulation (CRR) on additional liquidity monitoring metrics. In its statement, the EBA clarifies that the application date

for the ITS will depend on the timeline of adoption of the ITS by the Commission, which has not yet adopted final ITS following the EBA's submission of its final draft ITS in December 2013.

The EBA's final draft ITS proposed an application date of 1 July 2015, which was chosen as a deferred date in light of the later timing of the consultation than for other reporting requirements and the absence of a finalised data point model at the time of the publication of the final draft ITS.

The EBA expects a delay in application of at least three months. The final date of application will be announced when the final ITS are published in the Official Journal.

EBA proposes revised guidelines on key function holder suitability and legislative initiative

The EBA [has published a peer review report](#) discussing the application by national competent authorities (NCAs) of its guidelines on assessing the suitability of members of the management body and key function holders (EBA/GL/2012/06).

The report highlights examples of best practice and notes that NCAs either largely or fully apply the guidelines. However, the EBA also notes that the current guidelines have not led to convergent supervisory practice and that the existing capital requirements framework (CRD 4) has not prevented this divergence. As such, the EBA has announced that it intends to embed the best practice identified in a revised version of the guidelines, which it will consult on early in 2016. Moreover, the EBA intends to submit an opinion to the EU Commission to make suggestions for a legislative initiative to enhance convergence and supervisory practices in this area.

BCBS and IOSCO jointly publish final criteria for simple, transparent and comparable securitisations

The Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) have [jointly released final criteria](#) for identifying simple, transparent and comparable securitisations. IOSCO and the BCBS intend for the criteria to assist in the financial industry's development of simple, transparent and comparable securitisation structures, but have emphasised that the criteria are not intended to serve as a substitute for investors' due diligence.

The BCBS and IOSCO jointly issued a consultation paper in December 2014 proposing 14 criteria to identify certain features of simple, transparent and comparable securitisations. Based on the feedback received, the BCBS

and IOSCO have amended aspects of the criteria that were considered overly prescriptive and clarified other issues where respondents raised doubts about their interpretation or implementation.

The BCBS is exploring how the criteria could be incorporated into the securitisation framework it revised in December 2014.

HMT launches technical consultation on Bank of England Bill 2015

HM Treasury (HMT) [has launched a technical consultation](#) on Bank of England (BoE) reform proposals, which will be included in the Bank of England Bill 2015 and brought forward by the Government in the autumn. The consultation seeks input from stakeholders and interested parties on how the Government's proposals should be implemented.

The proposals relate to governance, transparency and accountability at the BoE and include proposals for structural changes and measures relating to the UK's resolution framework in order to strengthen coordination between the BoE and HMT. The proposals for reform of governance arrangements include:

- ending the Prudential Regulation Authority's (PRA's) status as a subsidiary of the BoE and fully integrating the PRA into the Bank through a transfer of its functions to a new Prudential Regulation Committee (PRC) to be established within the Bank;
- moving the Monetary Policy Committee (MPC) to a schedule of eight meetings per year;
- reducing the size of the BoE's Court of Directors to make it a more focused unitary board, placing the new position of Deputy Governor for Banking and Markets in legislation and adding that role to the Court of Directors and Financial Policy Committee (FPC);
- adjusting the statutory basis of the FPC from a Committee of the Court to a Committee of the Bank, in line with the MPC and new PRC, and transferring responsibility for setting financial stability strategy from the Court to the FPC as well as adding a new external member to the FPC; and
- bringing the bank under the remit of the National Audit Office.

The consultation paper also includes measures on resolution planning and crisis management arrangements that are intended to clearly establish how HMT and the BoE should identify and mitigate risks to public funds in financial

crisis planning. The areas of planning highlighted in the consultation paper are development of resolution strategies, active contingency planning and development of resolution policy in order help protect taxpayers and the wider economy from a possible bank failure.

Comments on the consultation are due by 11 September 2015.

Mortgage Credit Directive (Amendment) Order 2015 published

The HMT has laid the Mortgage Credit Directive (Amendment) Order 2015 ([SI 2015/1557](#)) before Parliament. The Order makes changes to the Mortgage Credit Directive Order 2015 (SI 2015/910), which transposed parts of the EU Mortgage Credit Directive (2014/17/EU – MCD) following further consultation with industry groups on their emerging plans for compliance with the new regulatory regime for mortgages under the MCD.

The amendments relate to:

- the definition of 'consumer credit back book mortgage contract';
- persons with permission to carry on regulated activity;
- the application of the Consumer Credit Act 1974 to certain credit agreements;
- a new amendment to the Consumer Credit (Agreements) Regulation 1983 (SI 1983/1553) to correct an error; and
- requirements for consumer buy-to-let mortgage contracts that fall within the definition of a 'foreign currency loan'.

The Order will come into force on 20 September 2015, except for amendments to the Consumer Credit (Agreements) Regulation 1983 which come into force on 21 March 2016.

PRA publishes supervisory statement on liquidity coverage requirement reporting

The Prudential Regulation Authority (PRA) has published a supervisory statement ([SS29/15](#)) setting out the specific liquidity coverage requirement (LCR) reporting arrangements which the PRA expects firms to follow on an interim basis in the period between 1 October 2015, the date the LCR standard applies in accordance with the EU Commission's delegated act with regard to the LCR for credit institutions, and the introduction of mandatory reporting of the new LCR return following adoption of the

amending implementing technical standard on liquidity reporting by the Commission.

PRA publishes updated supervisory statement on depositor and dormant account protection

The PRA has published an updated version of its supervisory statement on depositor and dormant account protection ([SS18/15](#)), which sets out the expectations of the PRA on deposit-takers with regards to the depositor protection rules. The only updates to the version published on 3 July 2015 are to section 12 regarding the provision of the information sheet before 1 January 2016 and the requirement to notify depositors of the limit change. The PRA has updated this section to advise that firms discuss options with their supervisor.

Ordinance on amendment of Restructuring Fund Ordinance published in German Federal Gazette

An [Ordinance](#) on the amendment of the Restructuring Fund Ordinance (Restrukturierungsfondsverordnung) has been published in the German Federal Gazette. The draft 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.

CRR: CSSF issues circular on transposition of EBA guidelines on materiality, proprietary and confidentiality and on disclosure frequency

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new circular ([15/618](#)) implementing the EBA guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of the CRR in Luxembourg. The circular is addressed to all institutions subject to the disclosure requirements of Part Eight of the CRR and entered into force with immediate effect.

Polish Financial Supervision Authority sets out position on 'prepaid' cards

The Polish Financial Supervision Authority (PFSA) [has performed an analysis](#) of operations of banks connected with the issuance of so-called 'prepaid' cards and found that although it is advertised and identified by the providing banks as an e-money service, a service of this kind does

not constitute the issuance of e-money within the meaning of currently applicable law and should not be classified as such.

Polish Financial Supervision Authority issues Recommendation W on risk management with respect to models used in banks

The PFSA [has issued a recommendation](#) addressed to banks, concerning risk management with respect to models used in banks. The objective of the recommendation is to define standards for the process of risk management, taking into account that this process requires a framework, including the rules for building models and evaluating the quality of their operation.

The PFSA expects that the recommendation will be implemented by banks on 30 June 2016 at the latest.

Chinese authorities publish guiding opinions on promoting development of internet finance

The People's Bank of China (PBoC), Ministry of Industry and Information Technology (MIIT), Ministry of Public Security (MPS), Ministry of Finance (MOF), State Administration for Industry and Commerce (SAIC), Legislative Affairs Office of the State Council (LAOSC), China Banking Regulatory Commission (CBRC), China Securities Regulatory Commission (CSRC), China Insurance Regulatory Commission (CIRC) and State Internet Information Office (SIIO) have published the '[Guiding Opinions on Promoting the Healthy Development of Internet Finance](#)', which provide a general regulatory framework for internet finance.

Amongst other things, under the Guiding Opinions:

- internet finance is referred to as a new financial business model developed by traditional financial institutions and internet companies which utilize technologies of internet and information communication to achieve accommodation of fund, payment, investment and information intermediary services;
- internet payment is a service relying on the internet with respect to initiating payment instructions and funds transferring through computers, mobile phones and other devices – internet payment shall be regulated by the PBoC;
- internet lending consists of individual internet lending (P2P internet lending) and micro internet loans. P2P internet lending is direct lending between individuals through an internet platform, which falls into the

category of private lending. P2P platforms shall not provide credit services or engage in illegal fund-raising. Internet lending shall be regulated by the CBRC;

- equity crowd-funding mainly refers to the public petty-equity financing through the internet – equity crowd-funding shall be regulated by the CSRC;
- online fund distribution shall be regulated by the CSRC, internet insurance shall be regulated by the CIRC, internet trusting and consuming finance shall be regulated by the CBRC, telecommunications services, financial information and internet information services shall be regulated by the MIIT and SIIO respectively;
- any internet finance institutions shall choose qualified banking institutions as the third-party depository institution of client funds except where otherwise provided by laws and regulations; and
- investor and consumer protection, internet and information security, anti-money laundering and other financial crimes shall be further regulated by the relevant authorities and financial industry self-regulation and data monitoring will be strengthened.

SFC proposes changes to financial resources rules

The Securities and Futures Commission (SFC) [has published a consultation paper](#) on proposed changes to the Securities and Futures (Financial Resources) Rules (FRR) relating to capital and other prudential requirements for licensed corporations engaged in over-the-counter (OTC) derivatives activity. The proposals are intended to ensure that licensed corporations maintain their capital and liquidity at levels which are commensurate with the risks they undertake pertaining to derivative businesses as well as to encourage them to adopt more advanced risk management standards. The proposed FRR treatments can be calibrated to permit different capital approaches for different levels of OTC derivatives activity.

The SFC also proposes a small number of changes to FRR treatments applicable to licensed corporations which do not engage in OTC derivatives activity. These include lowering the haircut percentages for certain types of shares and funds and introducing measures to better facilitate third-party clearing by general clearing brokers.

The proposals cover the seven following key areas:

- minimum capital requirements for licensed corporations engaging in OTC derivatives activity;
- capital treatments for market risks of OTC derivatives and other proprietary trading positions;

- capital treatments for counterparty credit risks arising from OTC derivatives transactions;
- introduction of an internal models approach to calculate the capital requirements for market risk for proprietary investments and counterparty credit risk arising from OTC derivatives transactions;
- measures to address operational risks of licensed corporations engaging in certain types of regulated OTC derivatives activities or opting into certain capital approaches;
- notification and reporting requirements related to OTC derivatives activity; and
- miscellaneous technical changes to other areas of the FRR.

Following the consultation, the SFC plans to consult the public further on subsidiary legislation setting out the proposed changes.

Comments on the consultation paper are due by 16 October 2015.

MAS consults on proposed market conduct rules for marketing and distribution arrangements of financial institutions at retailers and in public places

The Monetary Authority of Singapore (MAS) [has published a consultation paper](#) outlining measures to safeguard consumer interests when buying financial products and services at retailers and in public places.

In light of increasing interest amongst financial institutions in marketing and distributing financial products and services at retailers and in public places, the MAS is proposing measures to mitigate the potential market conduct risks posed to consumers arising from such arrangements. The proposed measures consist of a set of market conduct safeguards for financial institutions conducting marketing and distribution activities at retailers and in public places (these include ensuring that there are adequate controls for a proper sales and advisory process), and periodic submission of details of these activities to the MAS.

Comments on the consultation paper are due by 24 August 2015.

FRB requests comments on proposed rule on capital planning and stress testing regulations

The Federal Reserve Board (FRB) [has requested comments](#) on a proposed rule that would modify its capital planning and stress testing regulations.

The proposed rule, which would take effect for the 2016 capital plan and stress testing cycles, would modify the timing for several requirements that have yet to be integrated into the stress testing framework. Banking organizations subject to the supplementary leverage ratio would begin to incorporate that ratio into their stress testing in the 2017 cycle. The use of advanced approaches risk-weighted assets – which is applicable to banking organizations with more than US 250 billion in total consolidated assets or USD 10 billion in on-balance sheet foreign exposures – in stress testing would be delayed indefinitely, and all banking organizations would continue to use standardized risk-weighted assets.

Currently, banking organizations must project post-stress regulatory capital ratios in their stress tests. As the common equity tier 1 capital ratio becomes phased in under the FRB's regulatory capital rule, it would generally require more capital than the tier 1 common ratio. The proposal would remove the requirement that banking organizations calculate a tier 1 common ratio.

Comments on the proposal will be accepted until 24 September 2015.

FRB approves final rule requiring largest, most systemically important US bank holding companies to further strengthen capital positions

The FRB [has authorized a final rule](#) requiring the largest, most systemically important US bank holding companies to further strengthen their capital positions. Under the rule, a firm that is classified as a global systemically important bank holding company, or GSIB, will have to hold additional capital to expand its resiliency due to the increased threat it poses to the financial stability of the United States.

The final rule provides the foundation for determining a GSIB and the plans that those firms will use to calculate a risk-based capital surcharge, which is calibrated to each firm's overall systemic risk.

Under the final rule, GSIBs will be required to calculate their surcharges under two methods and use the higher of the two surcharges. The first method is based on the structure agreed to by the Basel Committee on Banking Supervision and considers a GSIB's size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity.

The second method uses comparable inputs, but is measured to result in higher surcharges and replaces substitutability with a measure of the firm's reliance on short-term wholesale funding.

The FRB release indicates that under the final rule and using the most recent available data, estimated surcharges for the eight US GSIBs range from 1.0 to 4.5% of each firm's total risk-weighted assets.

The surcharges will be phased in beginning on 1 January 2016, becoming fully effective on 1 January 2019.

RECENT CLIFFORD CHANCE BRIEFINGS

ISDA EMIR Classification Letter – Guide for the Buy-Side

On 13 July 2015, ISDA published the ISDA EMIR Classification Letter. The Classification Letter allows users of derivatives which are themselves subject to EMIR or which trade with entities which are, to notify their counterparties of the new layer of counterparty classifications arising out of the regulatory technical standards implementing the first clearing obligation in Europe. These classification categories are new and additional to the familiar FC/NFC classifications.

This briefing paper discusses the ISDA EMIR Classification letter.

http://www.cliffordchance.com/briefings/2015/07/isda_emir_classificationletter-guideforth.html

Payment Services Directive 2

On 2 June 2015, the Council of the EU published its final compromise text for the new Payment Services Directive. Further substantive amendment is not expected before the legislation's imminent adoption. Existing payment service providers (PSPs) – including banks – will have to change systems and processes to comply with the new rules, which are expected to apply from mid-2017. The Directive also raises a number of strategic questions on how to balance access with security.

This briefing paper discusses the Directive.

http://www.cliffordchance.com/briefings/2015/07/payment_servicesdirective2.html

Small Business, Enterprise and Employment Act 2015 now in force

As anticipated, the Small Business, Enterprise and Employment Act 2015 (SBEA) received Royal Assent on 26 March 2015 and the provisions dealing with the prohibition/abolition of bearer shares came into force two months after that date. Other provisions of the SBEA,

which are not in force, but which are of interest to corporates include the requirement for companies (other than DTR 5 issuers) to keep a register of people with significant control over the company, the ban on corporate directors and the requirement for large companies to report on their payment practices.

This briefing paper discusses these provisions.

http://www.cliffordchance.com/briefings/2015/07/small_business_enterpriseandemploymentac.html

UK Announces New Office of Financial Sanctions Implementation – Will this Mean Better Guidance, Increased Penalties and More Enforcement?

On 8 July 2015, the UK government published its Summer Budget 2015. Deep in the detail of the supporting policy decisions, at paragraph 2.185, the government announced its plans to establish a new 'Office of Financial Sanctions Implementation'. The new office, which is to be established within HM Treasury during this financial year, will be tasked with ensuring not only that businesses in the private sector are made better aware of the sanctions rules they are being asked to comply with, but also with ensuring that sanctions are 'properly enforced'.

The Budget announcement stated that the proposed new office will 'work closely with law enforcement' in this endeavour and that the government will also 'legislate early in this Parliament to increase the penalties for non-compliance with financial sanctions.'

The Budget announcement may be welcomed by British business for the prospect of greater assistance in understanding sanctions compliance expectations. Yet it may also portend efforts to emulate US-style enforcement; and that could be cause for concern.

This briefing paper discusses the implications of the announcement.

http://www.cliffordchance.com/briefings/2015/07/uk_announces_newofficeoffinancialsanction.html

Mandatory tax strategies, a code of practice and 'special measures' – a new era for corporates?

The Government has published a consultation document proposing that large businesses be required to publish a 'tax strategy', introducing a voluntary Code of Practice on taxation for corporates, and creating a 'special measures' regime for companies HMRC regards as engaging in unacceptable tax avoidance.

This briefing paper discusses how these proposals are likely to work, what they mean in practice for UK business, and whether the Code of Practice will really be 'voluntary'.

http://www.cliffordchance.com/briefings/2015/07/mandatory_tax_strategiesacodeofpracticean.html

Has the Panda Finally Come in From the Cold?

After years of a traditionally isolated approach, the indications are that the PRC is embracing international law enforcement cooperation in the anti-corruption arena. Has the Panda finally come in from the cold, and if so, why?

This briefing paper discusses the PRC's new approach.

http://www.cliffordchance.com/briefings/2015/07/has_the_panda_finallycomeinfromthecold.html

Inland Revenue (Amendment) (No. 2) Ordinance 2015 to Extend Profits Tax Exemption for Offshore Funds to Private Equity Funds Gazetted

The Inland Revenue (Amendment) (No. 2) Ordinance 2015 (Amendment Ordinance) to extend the profits tax exemption to offshore private equity (PE) funds was gazetted on 17 July 2015 and came into operation on the same day. The tax extended exemption is seen as a positive move by the Hong Kong Government to make it more attractive for PE funds to set up and expand their business operating in Hong Kong.

This briefing paper summarises the key changes brought by the Amendment Ordinance and their implications.

http://www.cliffordchance.com/briefings/2015/07/inland_revenue_amendmentno2ordinance201.html

Enforcing foreign court judgments in Dubai – one avenue less?

The Dubai International Financial Centre (DIFC) Court of First Instance has confirmed that it does not have the power to refer foreign court judgments or orders to the Dubai Courts for execution onshore in Dubai. While the ability of DIFC Courts to enforce foreign court judgments or orders within the DIFC has never been in question, the decision (subject to any appeal) confirms that the reach of foreign judgments stops at the borders of the DIFC.

This briefing paper discusses the decision.

http://www.cliffordchance.com/briefings/2015/07/enforcing_foreigncourtjudgmentsindubaion.html

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