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Briefing note

International Regulatory Update

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- Recent Clifford Chance briefings: New aspects in the regulation of securitisation; and more. Follow this link to the briefings section.

Luxembourg commences EU Council Presidency

Luxembourg has taken over the EU Council's six-month rotating Presidency.

The Luxembourg Presidency has published its programme setting out priorities under seven pillars:

- stimulating investment to boost growth and employment;
- deepening the EU's social dimension;
- managing migration, combining freedom, justice and security;
- revitalising the single market with a focus on its digital dimension;
- placing European competitiveness in a global and transparent framework;
- promoting sustainable development; and
- strengthening the EU's presence on a global stage.

In relation to financial services, the programme discusses the Luxembourg Presidency's priorities, which include:

- further work towards a Capital Markets Union;
- progressing proposals for transparent, simple and high-quality securitisation;
- reviewing requirements under the Prospectus Directive in order to facilitate access to capital markets for small and medium-sized enterprises (SMEs);
- advancing negotiations on bank structural reform; and
- beginning negotiations for a new legislative proposal on the resolution of market infrastructures.

The programme also sets out the Presidency's intention to conclude negotiations on transparency and exchange of information regarding tax rulings and make progress on the Common Consolidated Corporate Tax Base (CCCTB) Directive. The programme states the Presidency's aim to conclude negotiations on EU data protection reform by the end of 2015. The Luxembourg Presidency also proposes to pursue efforts to implement a European industrial policy.

On 1 July 2014, the EU Council published its Trio programme setting out its high-level work programme for the period from 1 July 2014 to 31 December 2015 and containing objectives for the Italian, Latvian and Luxembourg Presidencies. The Luxembourg Presidency's programme takes into account the Trio programme as well as the policy orientations of the EU Commission President and Commission's annual work programme.

Securities financing transactions: EU Council confirms agreement with Parliament

The Permanent Representatives Committee (COREPER) has endorsed, on behalf of the EU Council, an agreement on the proposed regulation on securities financing transactions (SFTs). The compromise text reflects the political agreement reached at the trilogue on 17 June 2015.

Once the proposal has been translated and finalised in all languages, it will be submitted to the EU Parliament for approval at first reading, and to the Council for adoption.

MiFID2/MiFIR: ESMA publishes first set of final draft technical standards

The European Securities and Markets Authority (ESMA) has published its final report on draft technical standards under MiFID2 and MiFIR. The technical standards in the final report cover the majority of the technical standards on investor protection that ESMA is mandated to develop and relate to authorisation, passporting, registration of third country firms and cooperation between competent authorities.

The final report sets out ESMA's analysis of the draft technical standards following responses received to the consultation it launched on 19 December 2014 and the final draft technical standards.

The final report has been submitted to the EU Commission, which has three months to decide whether to endorse the final draft technical standards.

ESMA intends to publish the remaining draft technical standards as required under MiFID2/MiFIR by the end of 2015.

EMIR: ESMA publishes final report on interoperability arrangements

ESMA has issued its final report on interoperability arrangements between EU-based clearing houses (CCPs) required under the European Markets Infrastructure Regulation (EMIR) and related guidelines and recommendations. The report recommends extending the EMIR provisions related to interoperability arrangements to exchange-traded derivatives (ETDs) with a further extension to OTC derivatives to be assessed at a later date.

The report describes the current interoperability arrangements between EU CCPs for different product types including EU equities, EU government bonds and EU ETDs. In addition, it examines the reasons for extending the current EMIR framework to derivatives taking into account the corresponding costs and benefits and concludes by assessing the scope of and opportunities offered by the extension.

Omnibus II: ESMA publishes draft RTS on prospectus related issues

The European Securities and Markets Authority (ESMA) has published its final report and draft regulatory technical standards (RTS) on prospectus related issues under the Omnibus II Directive. The final report contains a summary of the feedback received on the consultation paper published in September 2014, and outlines the changes to the draft RTS which ESMA has proposed based on this feedback.

The final report follows the structure of the consultation paper, with four sections covering each of the mandates given to ESMA to develop draft RTS:

- approval;
- incorporation by reference;
- publication; and
- advertisements.

The annexes to the final report consist of the questions asked in the consultation paper, the legislative mandate for ESMA to develop draft RTS, a revised cost-benefit analysis, the opinion submitted by the Securities and Markets Stakeholder Group and the revised draft RTS.

CSDR: ESMA consults on buy-in process

ESMA has published a consultation paper on draft regulatory technical standards (RTS) on the buy-in process under the Central Securities Depositories Regulation (CSDR).

This second consultation follows ESMA's consultation on all the CSDR technical standards which ran from 18 December 2014 to 19 February 2015 and is limited to the provisions of the draft RTS on the operation of the buy-in process. The consultation seeks input from stakeholders on the following three options:

- trading level execution;
- trading level with fall-back option execution; and
- CSD participant level execution.

Comments are due by 6 August 2015.

ESMA publishes opinion on equivalence of Israeli prospectus regime

ESMA has published an opinion on the equivalence of the Israeli prospectus regime.

The new assessment of the Israeli laws and regulations on prospectuses replaces the previous ESMA statement published on 23 March 2011. The changes to the original statement are minor though the new opinion includes annexes dealing with requirements for SME share prospectuses and rights issues. The opinion states that if a prospectus following the Israeli laws and regulations includes a wrap containing the information in the Annexes of the opinion it would constitute a valid prospectus under the Prospectus Directive (PD) for the purposes of its approval by the home competent authority of a Member State.

ESMA publishes guidelines on alternative performance measures for listed issuers

ESMA has published its final guidelines on alternative performance measures (APMs) for listed issuers. Examples of APMs include free cash flow, underlying profit and earnings before interest, taxes, depreciation and amortisation (EBITDA). The guidelines set out the principles issuers should follow when presenting APMs in documents which qualify as regulated information, and will apply to issuers with securities traded on regulated markets and persons responsible for drawing up a prospectus. The guidelines complement guidance issued by regulators in Australia, the United States and Canada.

To align their application with the entry into force of the new Market Abuse Regulation, the guidelines are effective from 3 July 2016.

Joint Committee of ESAs consults on updated guidelines on prudential assessment of acquisitions of qualifying holdings

The Joint Committee of the European supervisory authorities (ESAs), comprising the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and ESMA, has launched a consultation on updated guidelines for the prudential assessment of acquisitions of qualifying holdings.

The Acquisitions Directive (2007/44/EC) established a legal framework for the prudential assessment of acquisitions of a qualifying holding in a credit institution, assurance, insurance or re-insurance undertaking or an investment firm. In 2008 the former Level-3 Committees, comprising the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR), developed non-binding guidelines setting out common procedures based on the assessment criteria under the EU legislative framework. The Joint Committee have reviewed and updated the guidelines in order to reach a common understanding on assessment criteria laid down by the Acquisition Directive and established a harmonised list of information that proposed acquirers should include in their notifications to competent supervisory authorities.

Comments on the consultation are due by 2 October 2015.

Capital Markets Union: Commissioner Hill discusses themes identified from consultation

The European Commissioner for financial stability, financial services and capital markets union, Jonathan Hill, has delivered a speech on the EU Single Market, the Commission's approach to financial regulation and capital markets union (CMU) at TheCityUK Annual Conference.

Lord Hill discussed the long-term impact of the Single Market on EU Member States and businesses and the Juncker Commission's focus on growth and jobs in the context of financial stability. On CMU, the speech explored three themes that have been identified following the Commission's consultation on its CMU Green Paper launched in February 2015, in particular:

- increasing funding options for businesses, including proposals to review the European Venture Capital Funds (EuVECA) Regulation and Prospectus Directive, eliminating passporting barriers to funds raising capital across the EU, supporting development in the private placement industry and bringing forward measures to encourage securitisation;
- create more opportunities for both retail and institutional investors, in particular ensuring effective consumer and investor protection in order to increase retail investments; and
- encouraging cross border investment by removing obstacles relating to insolvency, collateral and securities law as well as infrastructure, such as lack of access to credit data and tax barriers.

Lord Hill has announced that the Commission's Action Plan on CMU will be launched in September 2015. Early actions are expected to include a comprehensive package on securitisation with updated calibrations for Solvency II and the Capital Requirements Regulation (CRR), the definition of infrastructure with revised calibrations for Solvency II, and proposals for the review of the Prospectus Directive.

Basel Committee reviews credit valuation adjustment risk framework

The Basel Committee on Banking Supervision (BCBS) is reviewing the credit valuation adjustment (CVA) risk framework. The objectives of the review are to:

- ensure that all important drivers of CVA risk and CVA hedges are covered in the Basel regulatory capital standard;
- align the capital standard with the fair value measurement of CVA employed under various accounting regimes; and
- ensure consistency with the proposed revisions to the market risk framework under the Basel Committee's fundamental review of the trading book.

Comments are due by 1 October 2016.

FSB launches peer review on other shadow banking entities

The Financial Stability Board (FSB) has launched a thematic peer review on the implementation of its policy framework for financial stability risks posed by other shadow banking entities, which are non-bank financial entities other than money market funds. In November 2014 the G20 called on the FSB to launch a peer review in 2015 in its roadmap for strengthening oversight and regulation of shadow banking. As such, the FSB has published the summarised terms of reference for the review, which will evaluate progress made by member jurisdictions to implement the FSB's high-level policy framework. Given the early stage of implementation, the peer review is intended to identify gaps and recommend improvements to the way in which the framework is applied by FSB member jurisdictions but not assess the appropriateness of policy tools to address identified financial stability risks.

The FSB is seeking feedback from stakeholders on topics including:

- possible regulatory arrangements for capturing new forms of shadow banking;
- the types of information required to asses shadow banking risks;
- possible ways to enhance public disclosure of shadow banking entities' risks; and
- the design of policy tools to mitigate financial stability risks arising from shadow banking entities.

The FSB will send a questionnaire to FSB member jurisdictions for completion and publish its final report in 2016, which is intended to illustrate progress in implementation through examples of good practice and lessons learned.

Comments on the review are due by 24 July 2015

PRA announces changes to depositor and policyholder protection

The Prudential Regulatory Authority (PRA) has announced changes to depositor and policyholder protection provided by the Financial Services Compensations Scheme (FSCS). Under the recast Deposit Guarantee Scheme Directive (DGSD 2), the PRA is required to recalculate the FSCS deposit protection limit every five years and to fix it at a sterling amount equivalent to EUR 100000. The PRA has published a policy statement (PS14/15) setting the new limit for the FSCS at GBP 75000 from 3 July 2015. However, HM Treasury has made the Deposit Guarantee Scheme (Amendment) Regulations 2015 (SI 2015/1456), which came into force on 3 July 2015, and have the effect of maintaining the existing deposit protection limit of GBP 85000 until 31 December 2015 for depositors who were previously protected by the FSCS to ensure depositors have time to plan for and adjust to the change. The FSCS has also published a Q&A on its website about the changes. The policy statement also discusses new categories of depositors introduced by DGSD 2 not previously covered, including large companies and small local authorities. The new GBP 75000 limit will apply to newly protected depositors from 3 July 2015.

The policy statement sets the protection limit for the dormant account scheme (DAS) at GBP 85000 for those claimants who would be eligible for GBP 85000 compensation if their protected dormant accounts were eligible deposits held by a DGS member, and GBP 75000 for all other eligible claimants, up to and including 31 December 2015. From 1 January 2016 the protection limit for the DAS will be GBP 75000 for all eligible claimants.

A separate policy statement on technical amendments to the PRA Rulebook (PS15/15) has also been published, which sets out amendments to depositor preference rules and is intended to clarify who the FSCS may treat as being absolutely entitled to deposits.

The PRA has also announced changes to:

- protection for temporary high balances from 3 July 2015, which will be covered up to GBP 1 million for six months from the date on which money is transferred into a depositor's account from a specified event, such as proceeds from a house sale or funds received from a life event such as an inheritance, or from the date on which the depositor becomes entitled to the amount, whichever is later; and
- the insurance limits for FSCS compensation for insurance policyholders, which has increased to 100% of cover for all long term policies, professional indemnity insurance and claims arising from death and incapacity. Limits for all other types of insurance remain the same.

Alongside the policy statements, the PRA has launched a consultation (CP23/15) on proposals to limit the impact of the change on depositors who are contractually tied into products with balances above GBP 75000. In particular, the consultation proposes rules that would ensure depositors experiencing a decrease of deposit protection from the limit change are able to withdraw affected funds without charge, penalty or loss of interest from 1 August 2015 until 31 December 2015.

Comments on this consultation are due by 24 July 2015.

PRA publishes regulated fees and levies for 2015/16

The PRA has published a policy statement (PS13/15) on regulated fees and levies for 2015/16. The policy statement summarises the feedback received on its consultation paper (CP10/15), published in March 2015, and sets out the rates. Following the consultation, the PRA has made no changes to the policy it proposed in the consultation.

The final fee rates are for:

- the PRA's 2015/16 annual funding requirement (AFR);
- the special project fee (SPF) for Solvency II;
- SPF for restructuring; and
- an amendment to the financial penalty scheme (FPS).

The policy statement also sets out how the PRA intends to refund fee payers its unspent budget totalling GBP 2.5 million from the 2014/15 AFR and GBP 2.8 million from the unspent non-IMAP Solvency II SPF, as well as retained penalties.

Financial Policy Committee publishes policy statements on its powers over housing and leverage ratio tools

The Financial Policy Committee (FPC) has published policy statements on its powers over housing and leverage ratio tools.

The policy statement on the FPC's powers over housing tools:

- describes the loan to value (LTV) and debt to income (DTI) tools, including how they would be defined, the lenders and mortgages they would apply to, how decisions would be co-ordinated with overseas regulators, how the tools fit with the rest of the regulatory framework and how decisions would be communicated and enforced;
- sets out the FPC's assessment of how these tools would affect the resilience of the financial system and growth; and
- explains the circumstances in which the FPC might expect to adjust the setting of each tool and provides a list of core indicators that the FPC will routinely review when reaching decisions.

The policy statement on the FPC's powers over leverage ratio tools:

- describes the proposed leverage ratio requirements and buffers, including their scope of application, how they fit with the existing regulatory framework, how decisions to apply them would be communicated and enforced and explains the FPC's proposed calibration of the tools;
- sets out the FPC's current assessment of how the leverage ratio framework would affect the resilience of the financial system and economic growth; and
- explains the circumstances in which the FPC might expect to adjust the setting of the countercyclical leverage ratio buffer (CCLB) and provides a list of core indicators that the FPC will routinely review when reaching decisions on the countercyclical capital buffer (CCB) and CCLB.

Polish Financial Supervision Authority issues statement on introduction of mandatory security deposit

The Polish Financial Supervision Authority (PFSA) has issued a statement on the introduction of the mandatory security deposit. Under the new law that comes into force on 16 July 2015, the execution by investment firms (including foreign investment firms carrying on business in Poland, whether through a branch or on a cross-border basis) of retail clients' orders to buy or sell derivatives which are not cleared by a CCP will require a security deposit of no less than 1% of the nominal value of the instrument.

Dutch Council of Ministers adopts proposal on more stringent requirements for custodians of UCITS

The Dutch Council of Ministers has adopted a proposal to broaden the duties and enhance the requirements applicable to Dutch custodians of instellingen voor collectieve belegging in effecten (icbe's)/ undertakings for the collective investment in transferable securities (UCITS).

Once the proposal is implemented in Dutch law, the following reforms will be introduced:

- the custodian will have the duty to supervise the manager of the fund on behalf of the participants;
- the custodian will be responsible (and cannot contractually exclude its liability) for the loss of an asset of the fund;
- only banks, investment firms (beleggingsondernemingen) and certain institutions which satisfy the prudential requirements are allowed to act as a custodian;
- the supervising authorities can temporarily disqualify employees of a financial institution (financiële onderneming) from their profession; and

- the maximum fine is raised from EUR 4 million to EUR 5 million or 10% of the firm's total annual revenue.

The proposal will be sent to the Council of State (Raad van State) before the final proposal will be discussed in Parliament.

Dutch Central Bank announces supervision seminar for payment services firms

The Dutch Central Bank (DNB) has announced that it will be hosting a supervision seminar on the afternoon of 9 September 2015 entitled 'Seven tips for ensuring that your institution is compliant'. The seminar is intended for persons determining or influencing the policy of payment services firms. According to the DNB, the purpose of the seminar is for the DNB to provide members of managing and supervisory boards with information and to engage in dialogue with them about respective roles and expectations. The focus issues will be:

- what does the DNB see as the board member's role in ensuring sound and ethical operational management?
- what form does the regular supervision of payment services firms take?
- what are the supervisory themes for 2015 and what is in store for 2016?
- what implications do developments such as the new Payment Services Directive (PSD 2) have for supervision in the next two years?

China and US announce commitments following seventh round of US-China Strategic and Economic Dialogue

The Chinese Ministry of Finance has published its Joint Economic Track Fact Sheet following the seventh round of the US-China Strategic and Economic Dialogue, which took place between the US and Chinese governments on 23-24 June in Washington, D.C. The fact sheet covers several measures committed to by both governments to promote open trade and investment and enhance financial market reform.

Among other things, the fact sheet sets out commitments by China on enhancing the participation of foreign financial services firms and investors in its capital markets, including measures for:

- gradually expanding the business scope of securities companies with foreign equity participation;
- allowing qualified foreign financial institutions to set up joint venture securities companies in the Shanghai Free Trade Zone (SFTZ) with foreign shareholding of no more than 49% but not limiting domestic shareholders to securities companies;
- allowing qualified foreign brokers to establish futures companies in SFTZ and trading specific domestic futures products for foreign traders;
- allowing qualified, locally-incorporated and wholly foreign-owned/joint venture private fund management institutions to engage in private security fund management business, including securities trading in the secondary market;
- establishing a program to allow foreign investors to participate in interbank bond markets with an aggregate investment limit but without individual institution or jurisdiction quotas;
- establishing a program to allow foreign investors to participate in the exchange-traded bond markets through free trade accounts in the SFTZ;
- allowing qualified, locally-incorporated U.S. and other foreign-invested banks to enjoy equal treatments with domestic financial institutions when applying for licenses to act as settlement agents or underwriters in the bond market; and
- allowing foreign-invested credit rating agencies to issue ratings on local government bonds.

The fact sheet also discusses continuing on work between the US and China on implementing OTC derivative reforms, which include requirements to:

- report all OTC derivatives contracts;
- trade standardised OTC derivatives contracts on exchanges or electronic platforms;
- centrally clear standardised OTC derivatives contracts;
- raise capital and margin requirements for non-centrally cleared derivatives transactions;
- commit to strengthen information sharing and regulatory cooperation of OTC derivatives market reform; and
- consider granting appropriate regulatory relieves to certain central counterparties (CCPs).

The fact sheet also highlights that both governments welcome cooperation between the China Foreign Exchange Trade System and the Chicago Mercantile Exchange on promoting the connection between their financial market infrastructure and products through cooperation programs.

CSRC publishes interim administrative measures on trading of designated domestic futures products by foreign traders and brokerage firms

The China Securities Regulatory Commission (CSRC) has published the 'Interim Measures on Trading of Designated Domestic Futures Products by Foreign Traders and Brokerage Firms', which are intended to introduce foreign traders and foreign brokerage firms to the domestic futures market in order to bring the market in line with international practice and improve its price discovery function.

The CSRC will designate the specific futures products available for foreign participants on a step-by-step basis by taking into consideration the pace of opening up RMB capital account, market participation, risk control and other factors. The CSRC designated crude oil futures as the first designated futures product under the Interim Measures in a separate announcement on 26 June 2015.

The Interim Measures provide multiple channels for foreign participants to access China's futures market:

- a foreign trader may either appoint a domestic futures company or a foreign brokerage firm to trade the designated futures products, or directly trade on a domestic futures exchange subject to qualification approval by the relevant exchange; and
- upon entrustment of foreign traders, a foreign brokerage firm may either appoint a domestic futures company to trade the designated futures products in the domestic futures company's name or, subject to qualification approval by the relevant exchange, directly trade on a domestic futures exchange in its own name.

The Interim Measures set out operational rules in relation to account opening, settlement, margin, reporting, mandatory close-outs, dispute mediation and also outline measures to deal with illegal trades and cross-border law enforcement.

The Interim Measures will be effective as of 1 August 2015.

People's Bank of China expands RQFII regime and RMB cross-border clearing arrangement to Hungary

The People's Bank of China (PBOC) has announced the extension of the pilot scheme for RMB Qualified Foreign Institutional Investors (RQFII) to Hungary with a total investment quota of RMB 50 billion.

The PBOC has so far expanded the RQFII regime to a total of 14 countries and regions, including Hong Kong, South Korea, Singapore, Taiwan, Australia, the UK, France, Germany, Luxembourg, Switzerland, Hungary, Canada, Qatar and Chile.

The PBOC has also signed a memorandum of understanding on RMB clearing and settlement with the Central Bank of Hungary (Magyar Nemzeti Bank). According to a separate announcement issued by the PBOC on 28 June 2015, the Bank of China Hungary Branch is designated as the RMB clearing bank in Hungary.

FSS announces plan to reform practices on sale and management of financial investment products

The Financial Supervisory Service (FSS) has announced a plan to uncover and rectify unfair practices with regard to the sale and management of financial investment products. The plan is a follow-up to the ‘20 Reform Tasks’ that the FSS announced on 28 May 2015.

Broadly, the FSS proposes to:

- reform business practices that are unjust and unfair with respect to financial investment, and thus enhance transparency in the bond and equity markets;
- promote efforts to ensure the complete sale of financial investment products and thus dispel investor mistrust; and
- establish a healthy business culture with regard to the offering and selling of financial investment products.

Regulations on market disturbing activities implemented in Korea

The Financial Services Commission (FSC) has announced that fines will be imposed on any activities that do not constitute 'unfair trading' but disrupt market order in light of the revision to the Financial Investment Services and Capital Markets Act (FSCMA) which took effect on 1 July 2015. Under the revised FSCMA, those who commit market disturbing activities will face a penalty of fines up to 1.5 times greater than the unfairly gained profits from such activities.

The FSC has indicated that fines may be imposed up to KRW 500 million on market disturbing activities. If profits gained from such acts exceed KRW 500 million, 1.5 times of the profit will be the maximum amount of the fine to be imposed.

Korean government announces plan to promote foreign investment

The Korean government has announced its plans to promote Korean foreign investment, including plans to promote Korean foreign portfolio investment, overseas mergers and acquisitions (M&As) and public sector participation in foreign investment. The government will reduce tax burdens, improve regulations, create investment channels and provide financial support to promote Korean foreign investment.

Regarding foreign portfolio investment, the plan provides for:

- the launch of a Foreign Portfolio Investment Fund, a 10 year tax exempt fund which is not subject to capital gains taxes on equity investment returns and foreign exchange gains, and invests more than 60% of its capital in foreign equities;
- publicising information regarding foreign exchange hedge ratios, currencies involved and hedging methods, while including the hedging performance and information on holdings and assessment of related derivatives in management performance reports;
- easing the regulations applied to insurance companies regarding foreign exchange hedging and foreign investment;
- raising the foreign investment ceilings for insurance companies over the mid- to long-run from the current 30% of total assets;
- further developing the market for domestically issued foreign currency-denominated bonds, easing filing requirements for the issuance and allowing English documentation; and
- allowing payments in foreign currencies for domestically issued foreign currency-denominated bonds and transactions made in the Korea Exchange (KRX).

Regarding overseas M&A, the plan provides for:

- changing the reporting requirements from 'before transactions' to 'after transactions' for overseas M&A investments;
- promoting private equity funds (PEFs) specialising in foreign investment by easing investment restrictions applied to financial institutions when they invest in their private equity subsidiaries; and
- providing support of up to USD 5 billion for overseas M&As by utilising the Foreign Exchange Stabilisation Fund.

Regarding public sector investment, the plan provides for streamlining fund management regulations applied to the Korea Investment Corporation (KIC) to support the management of small trust accounts, allowing the KIC to jointly invest in overseas M&As with domestic corporations, and allowing policy banks to sell their foreign project financing related loan receivables to domestic insurance and securities companies.

FSC announces plan to strengthen competitiveness of Korea's exchange markets

The FSC has outlined its plan to strengthen the global competitiveness of Korea's exchange market and boost vitality in capital markets to fund innovative businesses. The plan involves:

- establishing a holding company of the Korea Exchange (KRX) – the structure of the KRX will be converted into a holding company (tentatively named KRX Holding Company) with spin-offs of the KOSPI, KOSDAQ and derivatives markets into its subsidiaries;
- strengthening of competitiveness of the KOSDAQ – the KOSDAQ will be fostered to strengthen its competitiveness after its spin-off by boosting KOSDAQ listings of large blue-chip companies, introducing new products and services, and expanding its capital;
- pursuing an initial public offering (IPO) of the KRX Holding Company – the KRX Holding Company will pursue its IPO to seek more profit, raise funds for expansion into overseas markets and new businesses, and strengthen global cooperation with overseas exchanges;
- strengthening the global competitiveness of the KRX – the KRX Holding Company will undertake an initiative to expand to overseas market through mergers and acquisitions (M&As) or joint ventures with global exchanges; and
- fostering competition with alternative trading system (ATS) and over-the-counter (OTC) trading platforms – the FSC will ease ATS-related regulations and expand OTC trading platforms to promote competition among diverse players and enhance the quality of services.

The FSC has indicated that a revision to the Financial Investment Services and Capital Markets Act (FSCMA) to convert the KRX into a holding company will be discussed at the National Assembly's regular session in the second half of 2015.

Bank of Korea introduces Korea-China currency swap-financed Renminbi liquidity facility

The Bank of Korea has decided to introduce a Korea-China Currency Swap-Financed Renminbi (RMB) Liquidity Facility from 1 July 2015, whereby the proceeds of the RMB 360 billion/KRW 64 trillion Korea-China currency swap arrangement signed between the two countries will be used to stabilise the RMB market by addressing possible tightness in RMB liquidity conditions that may arise from time to time.

With the introduction of this facility, the Bank of Korea expects the RMB financial market to cater to the demand for RMB funds in times of tightness in the RMB market as well as to contribute indirectly to the recovery of investor sentiment and financial market stability through an announcement effect in the event of financial market tensions.

The facility is also intended to function as a major element of the financial infrastructure underpinning the development of the RMB financial market along with the Korea-China currency swap-financed trade settlement facility already in effect.

Korea signs Asia Infrastructure Investment Bank agreement

Korea has signed the Asia Infrastructure Investment Bank (AIIB) Agreement. Korea is enlisted as a founding member in the Agreement, and the ratification of the National Assembly will finalise the process.

The AIIB is a multilateral development bank, which aims to promote Asia's economic and social development and to create wealth in the region by providing infrastructure funding. The AIIB will have an authorised capital stock of USD 100 billion, 20% of which will be paid-in capital. Regional members will hold more than 75% of voting rights. Infrastructure investment will be carried out through loans, guarantees, equity investment and technical support.

Korea accounts for 3.81% of the total shares, ranking fourth among the 37 regional member states and fifth among all members. Among Korea's total contribution of USD 3.74 billion, the paid-in capital amounts to USD 750 million and will be paid over the next five years.

The AIIB is expected to be operational by the end of 2015.

MAS consults on proposed regulations for mandatory clearing of OTC derivatives

The Monetary Authority of Singapore (MAS) has launched a consultation on proposed regulations for the mandatory clearing of over-the-counter (OTC) derivatives contracts.

The draft Securities and Futures (Clearing of Derivatives Contracts) Regulations (SF(CDC)R) set out details of the types of OTC derivatives contracts and persons subject to the clearing obligations under the Securities and Futures Act and the circumstances under which clearing is mandatory.

The draft SF(CDC)R will effect Part VIB of the SFA on the mandatory clearing of OTC derivative contracts, and includes the following key proposals:

- to subject, at a minimum, Singapore dollar fixed-to-floating swaps based on the Swap Offer Rate and US dollar fixed-to-floating swaps based on the London Interbank Offered Rate to the clearing obligations;
- to subject interest rate derivatives contracts (IRS) denominated in Euro, Pound Sterling and Japanese Yen and other types of IRS (such as basis swaps, forward rate agreements and overnight index swap to clearing obligations) to the clearing obligations;
- to subject only IRS trades in which both transacting counterparties have booked in their Singapore-based operations to the clearing obligation;
- to subject only banks that exceed SGD 20 billion in gross notional outstanding derivatives contracts booked in Singapore for each of the last four calendar quarters to the MAS' clearing obligations, and to exempt banks that do not meet this threshold and non-non-bank specified persons from the clearing obligations;
- to exempt intra-group transactions from the clearing obligations; and
- to exempt public bodies, including all central banks and governments, as well as international multilateral organisations, from the clearing obligations.

The MAS intends to issue the SF(CDC)R by end 2015 and will provide a minimum of six months' notice before the clearing obligations take effect.

Comments on the consultation paper are due by 31 July 2015.

Monetary Authority of Singapore (Amendment) Act 2015 (Commencement) Notification 2015 published

The MAS has announced that provisions set out in the Monetary Authority of Singapore (Amendment) Act 2015 (No. 14 of 2015) (MAS Amendment Act) came into operation on 26 June 2015, with the exception of section 6.

The following key amendments came into operation on 26 June 2015:

- the amendment of section 27A(6) to include any designated financial holding company under the Financial Holding Companies Act 2013 and any person licensed under the Banking Act to issue credit or charge cards as financial institutions in the definition of 'financial institution' under that section;

- the amendment of section 27B to extend the MAS' powers to issue directions and make regulations to prevent money-laundering and the financing of terrorism;
- the insertion of new sections 27C to 27F to grant the MAS further powers to inspect financial institutions for compliance with sections 27A and 27B; and
- the insertion of a new Part VC to enable the MAS to assist the AML/CFT authorities of a foreign country and domestic authorities in connection with their supervisory and other actions relating to money laundering, terrorism financing and other offences.

The amendments follow the April 2015 issue of revised MAS Notices on Prevention of Money Laundering and Countering the Financing of Terrorism in Singapore and related guidelines.

BOT announces changes to foreign exchange regulations

The Bank of Thailand (BOT) has announced measures to further relax foreign exchange regulations in response to the strength of the Thai Baht. The measures are intended to facilitate offshore investments by residents and the management of their foreign assets. The regulations include rules to:

- allow Thai residents to invest in real estate, including leasehold properties and furnishing foreign properties, up to USD 50 million or its equivalent at market rates per year (formerly capped at USD 10 million or its equivalent per year and limited to just acquiring real-estate);
- allow Thai residents to purchase foreign currencies for deposit in foreign currency deposit (FCD) accounts with domestic financial institutions without requiring an underlying transaction, up to a limit of USD 5 million or its equivalent market rate deposited at any one time (formerly capped at USD 500,000);
- broaden the definition of 'institutional investors', who are permitted to purchase foreign currency for investment in offshore securities and derivatives under certain circumstances, to include derivative business operators under the Derivatives Act B.E. 2546 (2003), as amended;
- allow certain entities to act as local intermediaries in connection with investments in offshore securities and derivatives pursuant to the BOT's regulations, in particular:
  - securities brokers licensed pursuant to the Securities and Exchange Act (SEC Act), as amended, to provide services for all types of securities;
  - securities companies licensed pursuant to the SEC Act to provide private fund management services;
  - banks authorised by the BOT to carry out foreign exchange transactions; and
  - securities brokers licensed pursuant to the SEC Act only to provide services for debt instruments, sukuk, investment units and trust certificates.

The new regulations will come into force after they have been announced in the Royal Gazette, which is expected in July 2015.

CFTC proposes cross-border margin rule

The Commodity Futures Trading Commission (CFTC) has issued a proposed rule that would apply its margin requirements for uncleared swaps in the context of cross-border transactions. The proposed rule would apply to swap dealers and major swap participants that are registered with the CFTC but are not subject to the margin requirements of other prudential regulators, such as the Federal Reserve Board, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

Under the proposed rule, covered swap entities would be required to comply with CFTC margin rules for all uncleared swaps in cross-border transactions, with a limited exclusion. In addition, the proposed rule would allow covered swap entities to comply with comparable margin requirements in a foreign jurisdiction as an alternative means of complying with CFTC margin rules for uncleared swaps (substituted compliance). With regard to substituted compliance, the proposed rule sets forth proposed procedures for requests for comparability determinations, including eligibility and submission requirements, as well as the standard of review that would apply to CFTC determinations.

The comment period for the proposed rule ends 60 days after the publication in the Federal Register, which is expected shortly.

RECENT CLIFFORD CHANCE BRIEFINGS

A Never ending road – new aspects in the regulation of securitisation

A year ago, new regulations were being introduced on both sides of the Atlantic that were threatening to make securitisation a less attractive product area for originators and investors alike. The picture this year is brighter, if still mixed. The idea of 'high quality' or 'qualifying' securitisation is gaining traction, the European Commission's flagship Capital Markets Union initiative includes the promotion of simple, transparent and standardised securitisation as a main policy objective and the new Basel securitisation framework is finalised. There is still a long list of developments in progress, though, and outcomes still to come in areas such as qualifying securitisation, CRA3 and risk retention will have a significant effect on the ability of the securitisation markets to recover.

This briefing paper discusses new aspects in the regulation of securitisation as part of our New Beginnings series.

http://www.cliffordchance.com/briefings/2015/06/a_never_ending_road-newaspectsinth.html

Clifford Chance Comment: Brazil announces major infrastructure concession package worth R$198.4 billion (US$66 billion)

The Brazilian government has announced a new phase of its Logistics Investment Program (Programa de Investimento em Logictica or PIL) which aims to modernize Brazil's infrastructure and stimulate economic growth. The PIL contemplates infrastructure investment totalling R$198.4 billion (US$66 billion), including R$69.2 billion investment between 2015 and 2018.

This briefing paper discusses the new projects under the Logistics Investment Program.

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

Senator Wyden Introduces New Bill Clarifying the Insurance Exception to the PFIC Rules

On 25 June 2015, Senate Finance Committee Ranking Member Ron Wyden introduced a bill that would require insurance companies to maintain minimum levels of certain insurance liabilities in order to qualify for the exception to the passive foreign investment company rules applicable to insurance companies.

This briefing paper discusses the bill.

http://www.cliffordchance.com/briefings/2015/06/senator_wyden_introducesnewbillclarifyingth.html