

International Regulatory Update

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BRRD: EBA issues opinion on partial property transfers

The European Banking Authority (EBA) has published its [opinion](#) on how to define arrangements that should be protected in a partial property transfer in resolution. The opinion has been issued in response to a request for technical advice from the EU Commission in order to inform the drafting of delegated acts on the classes of arrangements to be protected in a partial transfer of the property of a bank under Article 76 of the Bank Recovery and Resolution Directive (BRRD).

Rather than providing an exhaustive list of arrangements falling under Article 76, the EBA's opinion seeks to specify these arrangements through rules and definitions that are more specific than those set out in the BRRD. The underlying principles of the opinion are intended to ensure

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effective separation and transfer of critical functions of the failing bank to another entity under a framework of safeguards.

EBA to conduct further work on net stable funding requirements and leverage ratio for EU Commission

The EBA will incorporate additional analysis into its calibration reports on net stable funding requirements (NSFR) and the leverage ratio (LR) [following a request from the EU Commission](#) for further advice.

The Commission is required to submit by the end of 2016, if appropriate, a legislative proposal on how to ensure that institutions use NSFR, and a report to the EU Parliament and EU Council on the impact and effectiveness of the LR by October 2016, and if appropriate a legislative proposal on the introduction of a binding LR. The EBA's technical advice will focus on proportionality, the scope of application and impact on markets of the calibration of NSFR and the LR.

The EBA is mandated to submit a calibration report on NSFR by the end of 2015 and has informed the EU Commission that it expects to deliver its report on the LR by October 2016.

EMIR Review: Industry associations respond to consultation

The following trade associations have published their responses to the EU Commission's consultation on the EMIR Review:

- the [Association of Corporate Treasurers \(ACT\)](#);
- the [Alternative Investment Management Association \(AIMA\)](#);
- the [Council of European Energy Regulators \(CEER\)](#);
- the [European Association of Co-operative Banks \(EACB\)](#);
- the [European Association of Corporate Treasurers \(EACT\)](#);
- [FIA Europe](#);
- the [International Capital Market Association's Asset Management and Investors Council \(ICMA AMIC\)](#);
- the [International Swaps and Derivatives Association \(ISDA\)](#); and
- the [Investment Association \(IA\)](#).

Basel Committee on Banking Supervision publishes FAQs on standardised approach to counterparty credit risk

The Basel Committee on Banking Supervision (BCBS) has issued the [first in a series of FAQs](#) it intends to publish relating to the standardised approach for measuring counterparty credit risk (SA-CCR), which replaces the current non-internal model approaches, the current exposure method (CEM) and the standardised method (SM).

CPMI and IOSCO report on application of principles for financial market infrastructures and harmonisation of unique transaction identifier

The Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) have published a [report](#) on the application of the principles for financial market infrastructures (PFMI). The report provides guidance on how the PFMI apply to central bank financial market infrastructures (FMI) and clarifies the interaction between the PFMI and central bank policies.

The CPMI and IOSCO have also published a report entitled '[Harmonisation of the Unique Transaction Identifier](#)' (UTI). The report focuses on the harmonised global UTI, whose purpose is to uniquely identify each over-the-counter (OTC) derivative transaction required by authorities to be reported to trade repositories. It also aims to produce clear guidance on UTI definition, format and usage that meets the needs of UTI users globally.

Comments on the UTI report are due by 30 September 2015.

FINMA launches collection of observation ratio data from certain banks

The Swiss Financial Market Supervisory Authority (FINMA) has [announced](#) the implementation of a 15-month observation period as part of the Swiss Basel III reform package, which requires certain FINMA-supervised banks to submit test reports of observation ratios for FINMA to monitor and capture information of a bank's cash flows, balance sheet structure and available unencumbered collateral.

The observation ratio is a set of metrics complementary to minimum liquidity standards under the Basel III reform which the banks must meet, namely the short-term liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR). Unlike the LCR and NSFR, no minimum

requirements apply to the various observation ratios. In addition to collecting data from the FINMA-supervised banks, the test reports will assist the competent authorities to evaluate the impact of the introduction of the observation ratios, and the data collected will be taken into account by the Swiss national working group on liquidity regulation for discussion.

All banks assigned to FINMA supervision categories 1 to 3 and selected institutions from category 4 are required to submit six test reports of observation ratios in a prescribed Excel data collection form, with the first test report to be submitted within 3 months of 30 September 2015 (i.e. by 31 December 2015) and within two months for each report afterwards. General reporting for all banks using forms provided by the Swiss National Bank will begin in the first quarter of 2017.

To assist the banks in preparing the data collection test reports, FINMA has posted explanatory and guidance information on the observation ratio and the prescribed data collection form on its website.

FSC announces designation of KRX as trade repository

The Financial Services Commission (FSC) has [announced](#) the designation of the Korea Exchange (KRX) as trade repository after going through a screening process on two bidders for trade repository – the KRX and Korea Securities Depository.

The plan to introduce a trade repository in Korea was announced by the FSC and Financial Supervisory Service (FSS) in June 2014. The FSC, FSS and financial experts formed a task force and conducted a study on the trade repository from July to December 2014. A special committee was formed in July 2015 to devise detailed qualification standards to be designated as trade repository based on the study results.

The FSC expects the introduction of the trade repository to improve the credibility and global competitiveness of Korea's financial market infrastructure. It is also intended to enhance financial transaction transparency and strengthen market monitoring capability by enabling more efficient management and analysis of data related to OTC derivatives transactions.

SGX consults on proposed rule amendments for introduction of affiliate segregation

The Singapore Exchange Limited (SGX) has launched a [consultation](#) on the proposed introduction of 'Affiliate Segregation'. The arrangement will protect the collateral of

an affiliate of a Singapore Exchange Derivatives Clearing Limited (SGX-DC) member if the member defaults on its own contracts. The arrangement also enables the affiliate's positions to be transferred to another (non-defaulting) SGX-DC member. The proposed arrangement is optional for SGX-DC members. If a SGX-DC member opts for the arrangement, its affiliates will benefit from a higher level of protection in the event the member defaults. The SGX is also consulting on the proposed amendments to the SGX-DC Clearing Rules and Futures Trading Rules.

The SGX has indicated that Affiliate Segregation will complement any arrangement a member may have in place to help its bank affiliates achieve greater capital efficiency under Basel III. Under Basel III, a bank must maintain adequate capital for its exposure to a central counterparty. The amount of capital required depends on the level of protection the bank has from a default or insolvency of its clearing member and the clearing member's other clients.

Comments on the consultation paper are due by 4 September 2015.

CFTC staff issues extension to time-limited no-action letter on applicability of transaction-level requirements in certain cross-border situations

The Commodity Futures Trading Commission's (CFTC's) Divisions of Swap Dealer and Intermediary Oversight (DSIO), Clearing and Risk, and Market Oversight [have extended](#) their no-action relief for swap dealers registered with the Commission that are established outside the United States from certain transaction-level requirements under the Commodity Exchange Act.

The relief is until the earlier of 30 September 2016 or the effective date of any Commission action related to matters addressed by a DSIO Advisory issued on 14 November 2013, conditional to the restrictions in the letter.

RECENT CLIFFORD CHANCE BRIEFINGS

Limits on mutual recognition under the EU Bank Recovery and Resolution Directive

The recent High Court decision in *Goldman Sachs International v Novo Banco SA* [2015] EWHC 2371 (Comm) sheds light on provisions of the EU Bank Recovery and Resolution Directive (BRRD) that divide responsibility between home and host jurisdictions in the resolution of a European bank. The High Court has taken a strict line as

to which resolution measures will take effect in English law under the mutual recognition requirements of the BRRD.

This briefing paper summarises the decision and explains its relevance in the context of the UK's implementation of the BRRD.

http://www.cliffordchance.com/briefings/2015/08/limits_on_mutualrecognitionundertheeban.html

SEC adopts pay ratio disclosure rules

On 5 August 2015, the SEC adopted a final pay ratio disclosure rule that requires a public company to disclose the median of the annual total compensation of all employees (excluding the CEO), the annual total compensation of its CEO, and the ratio of those two amounts.

Companies must comply with the pay ratio disclosure rule for the first fiscal year beginning on or after 1 January 2017. In practice, companies do not need to disclose this pay ratio until early 2018 in the later of its annual report on Form 10-K for the 2017 fiscal year or the related definitive proxy or information statement that incorporates executive pay disclosure into the Form 10-K.

This briefing paper discusses the SEC's new pay ratio disclosure rules.

http://www.cliffordchance.com/briefings/2015/08/sec_adopt_s_pay_ratio_disclosure_rules.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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