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Briefing note

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- FSC proposes amendments to regulation on supervision of mutual savings bank business
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- Recent Clifford Chance briefings: David Cameron's European Union deal; and more. Follow this link to the briefings section.

EU Commission presents action plan on terrorist financing

The EU Commission has presented its action plan to combat the financing of terrorism. The action plan focuses on two strands of action:

- tracing terrorists through financial movements and preventing them from moving funds or other assets; and
- disrupting the sources of revenue used by terrorist organisations by targeting their capacity to raise funds.

On its first objective, the Commission plans to make amendments to the fourth Anti-Money Laundering Directive (AMLD4), which include:

- listing all due diligence measures that financial institutions should carry out on financial flows from countries having strategic deficiencies in their national anti-money laundering and terrorist financing regimes;
- broadening the scope of information accessible by EU Financial Intelligence Units, including easier and faster access to bank and payment account holder information;
- bringing virtual currency exchange platforms under the scope of AMLD4 so that customer due diligence controls must be used when exchanging virtual for real currencies; and
- lowering thresholds for identification and widening customer verification requirements.

In its work on disrupting sources of revenue, the Commission plans to table legislative proposals in 2017 to reinforce powers of customs authorities to address terrorism financing through trade in goods and address the illicit trade in cultural goods.

In its action plan, the Commission calls upon Member States to agree to bring forward the date for effective transposition to end 2016 at the latest, and expects the remaining actions to be completed by the end of 2017.

BRRD: EU Commission adopts Delegated Regulations on exclusion from bail-in and on ex-post contributions and definition of critical functions

The EU Commission has adopted a Delegated Regulation specifying further the circumstances where exclusion from the application of write-down or conversion powers is necessary under Article 44(3) of the Bank Recovery and Resolution Directive (BRRD). The Commission Delegated Regulation is intended to provide clarification on when it is possible to exclude liabilities from bail-in for resolution authorities in Member States, the Single Resolution Board as resolution authority in the Banking Union or the EU Commission when prohibiting or requesting amendments to proposed exclusions by a national resolution authority, which must notify the EU Commission before exercising the discretion.

In particular, the Commission Delegated Regulation includes provisions that specify:

- common rules to be applied whenever a resolution authority considers excluding a liability from the application of the bail-in tool, under any of the circumstances provided for under Article 44(3) BRRD;
- clarification as to when a liability can be excluded from bail-in based on the impossibility to bail-in that liability within a reasonable timeframe;
- elements to determine the reasonable time after which a liability can be excluded from bail-in; and
- clarification as to when a liability can be excluded from bail-in based on the need to preserve critical functions and core business lines, widespread contagion, or the need to avoid value destruction.

The EU Commission has also adopted a Delegated Regulation relating to deferrals from paying extraordinary

ex-post contributions and criteria for determining critical functions and core business lines.

The Delegated Regulation is intended to specify the circumstances and conditions under which a payment of extraordinary ex-post contributions may be deferred if it would jeopardise solvency or liquidity of an institution under Article 104(4) BRRD and defines 'critical functions' and 'core business lines' under Article 2(2) BRRD.

ESMA Chair calls for ESAs to be given enhanced role in EU legislative process

The Chair of the European Securities and Markets Authority (ESMA), Steven Maijoor, has delivered a statement on the role of the European Supervisory Authorities (ESAs) to the EU Parliament Committee on Economic and Monetary Affairs (ECON).

Amongst other things, Mr. Maijoor set out the ESA's preliminary views on further enhancing cooperation with the ECON Committee. Noting that the ESAs have, on occasion, found it more challenging fully to understand the intentions of the co-legislators at Level 1 because they are not represented at trilogue sessions, Mr. Maijoor stated that the ESAs would welcome measures allowing them to obtain better insight into the co-legislators' intentions.

Mr. Maijoor also provided an update on the ESAs' pilot project on early legal review of draft technical standards, launched jointly with DG FISMA in Q2 2015. He discussed the intention of the project, to enhance the speed of endorsement of draft technical standards while maintaining the ESAs' independence and the Commission's right to amend the received final proposals, and set out a possible timeframe on assessing the pilot to ascertain whether the early legal review should be introduced in the ESAs' standard processes, which may take place in summer 2016.

CSDR: ESMA publishes draft RTS on settlement discipline

ESMA has published its final report on draft regulatory technical standards (RTS) on settlement discipline under the Central Securities Depository Regulation (CSDR). The RTS cover measures for preventing settlement fails, through processes and functionalities including automated matching, partial settlement and a hold and release mechanism. The RTS also set out measures for monitoring and addressing settlement fails, in particular, the cash penalties mechanism and the buy-in process.

The final report includes an impact assessment, drawn up from ESMA research, contact with stakeholders and input from an external consultant.

The final report has been submitted to the EU Commission, which now has three months to endorse the RTS, followed by a non-objection period of the EU Parliament and Council. The rules will then enter into force two years after their publication in the Official Journal.

CRR: ESMA issues opinion on proposed changes to main indices and recognised exchanges

ESMA has published its opinion on the draft implementing technical standards (ITS) on main indices and recognised exchanges under the Capital Requirements Regulation (CRR).

In December 2014, ESMA submitted draft ITS to specify main indices and recognised exchanges to the EU Commission. In December 2015, the EU Commission informed ESMA of its intention to amend the draft ITS by including two additional equity indices, triggering a six week period during which ESMA may amend its draft ITS based on the Commission's proposed amendments and resubmit them in the form of a formal opinion. ESMA does not support the addition of the Hang Seng Composite Index and the Russell 3000 Index to the main list of equity indices. ESMA suggests adding the Russell 100 Index, the Shanghai Shenzen CSI 300, the S&P BSE 100 Index, and the FTSE Nasdaq Dubai UAE 20 Index to the list of main indices, and replacing the Nikkei 225 with the Nikkei 300 and the NZSE 10 with the S&P NZX 15 Index.

ESMA has also assessed the complete lists of main indices and recognised exchanges submitted in the January 2015 draft and provided the Commission with a number of updates.

UCITS: ESMA publishes consolidated Q&As

ESMA has published a consolidated version of its questions and answers (Q&A) on the application of the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive.

The new Q&A consolidates four existing ESMA Q&As on:

- the key investor information document (KIID) for UCITS;
- ESMA Guidelines on ETFs and other UCITS issues;
- notification of UCITS and exchange of information between competent authorities; and

- risk measurement and calculation of global exposure and counterparty risk for UCITS.

The consolidated Q&A also include new questions on additional documents funds need to provide for UCITS V.

ESMA issues statement on supervisory work on closet index trackers

ESMA has published a statement on its supervisory work on closet index trackers. Closet index tracking refers to the practice of an asset manager claiming to manage a fund in an active manner while the fund in fact stays very close to a benchmark and implementing a strategy which requires less input from the investment manager. ESMA is concerned that the practice may harm investors as they are not receiving the service or risk/return profile they expect based on the fund's disclosure documents, while potentially paying higher fees compared to those typically charged for passive management.

ESMA sampled a set of EU-domiciled UCITS equity funds that were not categorised as index-tracking and found that between 5 and 15% could potentially be closet indexers.

ESMA intends to carry out further analysis at a national level, while fund-by-fund investigations will be taken on by national competent authorities as part of their regular supervisory work. ESMA also plans to work with national competent authorities to assess the need for further steps to ensure that all market participants comply with disclosure obligations. Where ESMA has identified potential shortcomings in the UCITS framework that could create a potential for closet indexing, it plans to analyse the need for further clarification.

EMIR: ESMA publishes opinions on exemption from clearing obligation for pension schemes

ESMA has issued a set of opinions regarding the exemption of 16 UK pension schemes from the obligation to centrally clear over-the-counter (OTC) derivative contracts under the European Market Infrastructure Regulation (EMIR).

Certain pension schemes were granted a transitional exemption from the clearing obligation under EMIR and now have to request an extension from their national competent authority. Before granting an exemption, the relevant competent authority needs the opinion of ESMA, drafted following consultation with the European Insurance and Occupational Pensions Authority (EIOPA).

This set of opinions covers 16 UK-based pension schemes where the UK Financial Conduct Authority (FCA) is the competent authority for securities markets.

EMIR: ESMA publishes updated Q&As

ESMA has published updated questions and answers on the implementation of EMIR. The update provides guidance on central counterparties' (CCPs') default management, competent authorities' access to trade repository data and reporting of notional in position reports.

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

ESMA has published its 2015 annual report and 2016 work programme on its direct supervisory activities regarding credit rating agencies (CRAs) and trade repositories (TRs). The report summarises the key actions taken during 2015 and outlines ESMA's supervisory work plans for both sectors for 2016.

With regard to supervisory work on CRAs, ESMA plans in 2016 to focus on CRA governance and strategy and the quality of CRAs' credit ratings and credit rating activities, and to concentrate on the application of credit rating methodologies, the validation of models and methodologies, and on IT issues specific to individual CRAs. Main priorities for TR supervision in 2016 will include data quality, data access and information security risks. ESMA also plans to focus on financial risk for TRs, including costs and fee structures.

European Court of Auditors reports on EU supervision of credit rating agencies

The European Court of Auditors (ECA) has published a report on ESMA's supervision of CRAs in the EU. ESMA has exclusive powers to register CRAs, monitor their performance, and to take supervisory decisions.

The report concludes that ESMA has laid down good foundations for supervision of CRAs in the EU, but notes that its rules and guidelines are still incomplete and the scope of its supervisory activities is not yet comprehensive. It also identifies some areas for improvement, such as:

- the registration process for CRAs;
- the two-tier market structure for CRAs as external credit assessment institutions (ECAIs), which the ECA believes puts smaller CRAs at a disadvantage; and
- risk identification.

EBA sets out conclusions on regulatory review of IRB approach

The European Banking Authority (EBA) has published an opinion and report setting out conclusions from its regulatory review of the internal ratings-based (IRB) approach, which follows publication of a discussion paper on the future of the IRB approach published on 4 March 2015.

The EBA report sets out a summary of the responses received from the industry and outlines the EBA's intentions and timelines relating to the regulatory review of the IRB approach and implementation of changes in IRB models. Both the opinion and conclusions identify the main regulatory actions necessary to address the key drivers of variability in the implementation of IRB models.

In its opinion, the EBA sets out proposed changes to the regulatory framework, which are intended to address current concern about the lack of comparability of capital requirements determined under the IRB approach across institutions and include harmonising definitions and supervisory practices in the definition of default, the estimation of risk parameters and treatment of defaulted assets and credit risk mitigation techniques. The EBA has proposed that these changes should be supplemented by amendments to the underlying framework in order to reduce undue variability in the implementation of IRB models, which would go beyond what is currently allowed under EU legislation. The opinion also sets out the EBA's expected timeline for the implementation, which is intended to take into account concerns regarding the operational burden from the wide range of changes in the rating systems and supervisory approval processes, and would require all changes related to the regulatory review to be finalised by the end of 2020 at the latest.

UCITS V: FCA sets out proposed Handbook changes for UK implementation

The Financial Conduct Authority (FCA) has published a policy statement (PS16/2) setting out proposed Handbook changes affecting managers and depositaries of UCITS and alternative investment funds (AIFs) mainly relating to final rules and guidance for implementing the UCITS V Directive in the UK.

The rules and guidance implementing the UCITS V requirements will come into force on 18 March 2016, although transitional provisions will apply to some requirements. ESMA is expected to finalise its UCITS V remunerations guidelines in Q1 2016. Once published, the FCA will consider whether any further guidance on applying its UCITS Remuneration Code principles is required.

FCA consults on Handbook changes related to Innovative Finance ISA and advising on P2P agreements

The FCA has published a consultation paper (CP16/5) on proposed changes to the FCA Handbook that reflect the introduction of the Innovative Finance ISA and the regulated activity of advising on peer-to-peer (P2P) agreements.

In November 2015, the FCA published a discussion paper setting out its initial thinking on Handbook changes to take account of two proposed legislative developments that would impact the regulated loan-based crowdfunding sector, namely:

- amending the Individual Savings Account Regulations 1998 (ISA Regulations) to allow P2P agreements (also known as 36H agreements) to be held in an ISA wrapper, in a new component to be known as an Innovative Finance ISA (IFISA); and
- amending the Regulated Activities Order (RAO) to make advising on P2P agreements a regulated activity.

CP16/5 now sets out the detailed changes the FCA is planning to make to its rules and guidance on disclosure and advice relating to P2P agreements. Comments are due by 15 February 2016, and the FCA aims to publish a policy statement with final rules in March 2016, in time for the introduction of the new IFISA and regulated activity on 6 April 2016.

FCA publishes final rules on accountability regime for wholesale market activities and interim regulatory references rules

The FCA has published a policy statement (PS16/3) on the new accountability regime for individuals performing certain wholesale market activities working in banks, building societies and credit unions (collectively known as Relevant Authorised Persons (RAPs)) and interim rules on regulatory references. The policy statement follows a consultation on extending the Accountability Regime to wholesale market activities (CP15/22), which was launched in July 2015. The policy statement sets out responses to consultation feedback and the FCA's initial feedback on its consultation on regulatory references (CP15/31), which was launched in October 2015.

The policy statement outlines the FCA's final rules for the extension of the certification regime (CR) to wholesale activities for both UK RAPs and foreign branches including

algorithmic and high-frequency trading in banks, building societies and Prudential Regulation Authority (PRA) designated investment firms. The policy statement also provides final rules on the territorial scope of the CR and conduct rules for material risk takers (MRTS). The rules on regulatory references have been made as an interim measure and continue the current referencing requirements under the Approved Persons Regime for pre-approved roles due to the complexity of the issues that arose from CP15/31, which the FCA views as requiring further deliberation before the final rules are made. The FCA intends to publish permanent rules and transitional arrangements on regulatory references in summer 2016.

The rules set out in the policy statement will come into effect on 7 September 2016.

German Federal Council comments on proposed regulation establishing European Deposit Insurance Scheme

The German Federal Council (Bundesrat) has commented on the EU Commission's proposal for a Regulation establishing a European Deposit Insurance Scheme (EDIS). The Federal Council has rejected the proposal, in particular for the following reasons:

- depositor confidence would only be increased in countries which have not established strong deposit guarantee schemes, but potentially decreased in countries like Germany;
- Member States which have not yet established an effective deposit guarantee scheme would not have any incentive to establish an effective deposit guarantee scheme; and
- the European deposit insurance system would result in a transfer union between the banks within the Eurozone as strong and sufficient sectors of the banking market with respective deposit guarantee schemes would be liable for weaker deposit guarantee schemes without having any influence on the risk adjustment of the member banks of such weaker schemes.

AMF publishes guide on marketing of ELTIFs in France

The French Autorité des marchés financiers (AMF) has published a guide on European Long-Term Investment Funds (ELTIFs) to help management firms in the application in France of the ELTIF Regulation, which has been applicable since 9 December 2015, and facilitate authorisation requests, management and marketing of this new type of fund designed to procure long-term financing for infrastructure projects, unlisted companies, and listed small and mid-sized companies that issue equity or debt instruments.

The guide is presented in a question-and-answer format and addressed to European alternative investment fund managers (AIFMs) either requesting an ELTIF agreement for a French fund meeting the conditions of the ELTIF Regulation, or opting for the AIFM Directive's passport procedure for marketing a foreign ELTIF fund in France, as well as to other ELTIFs players (distributors, depositaries, investors).

The guide answers key questions notably in relation to the eligible fund types, the authorisation process and necessary documents, management requirements, and the content of marketing materials.

Once authorised in France, an ELTIF may be marketed to retail investors in other EU countries, lend directly to companies and will benefit from a specific prudential treatment for insurers. The AMF has also announced that it will soon be updating its general regulation in order to authorise certain ELTIFs to be open to retail investors, within the conditions of the EU Regulation.

AMF publishes guide on French implementation of UCITS V

The AMF has published a guide for asset management companies on certain provisions of the UCITS V Directive ahead of its implementation in France by 18 March 2016. In particular, the guide deals with the impact of UCITS V provisions on UCITS depositaries (missions and responsibilities) and management companies (remuneration policies), taking into account the purpose of UCITS V to harmonise these rules with those under the Alternative Investment Fund Managers Directive (AIFMD), which has been in force since 22 July 2013.

The guide may be updated in the future, notably in light of the final EU implementing regulations (Levels 2 and 3) for UCITS V, which will be supplemented by the directly applicable EU Commission Delegated Regulation published on 17 December 2015 and currently being examined by the Parliament and the Council, as well as by ESMA's UCITS V remunerations guidelines, which are expected in Q1 2016.

FINMA announces commencement of NSFR general reporting

The Swiss Financial Market Supervisory Authority (FINMA) has announced that, following the completion of the first stage of the net stable funding ratio (NSFR) reporting for

selected banks, the NSFR general reporting, which all supervised institutions will be subject to, will run from the second quarter of 2016 to the end of 2017.

To this end, data collection forms, which are to be used exclusively for NSFR reporting, can be downloaded from the website of the Swiss National Bank. As these forms do not contain any formulae to calculate the NSFR, FINMA has provided updated guidelines and calculation methods in Excel format to facilitate reporting.

Banking (Amendment) Bill 2016 moved for first reading in Parliament

The Banking (Amendment) Bill 2016 has been moved for its first reading in Parliament.

Following the consultations conducted by the Monetary Authority of Singapore (MAS) on the significant policy changes to the Banking Act in November 2013 and the Banking Act Amendment Bill in January 2015, the MAS has incorporated the feedback received into the Bill where appropriate.

Amongst other things, the Bill sets out the following:

- measures to strengthen prudential safeguards and enhance depositor protection;
- enhancing the corporate governance of banks (including empowering MAS to remove key appointment holders of banks if they are found to be not fit and proper, and empowering MAS to direct banks to remove their external auditors if they have not discharged their statutory duties satisfactorily);
- requiring banks to obtain MAS' approval to establish new places of business where non-banking activities (such as money-changing and remittance) are conducted;
- formalising MAS' expectation for banks to institute risk management systems and controls that are commensurate with their business profiles and operations; and
- formalising MAS' expectations for banks to inform MAS of material adverse developments.

The MAS explanatory brief on the Banking (Amendment) Bill 2016 provides more details on the key amendments in the Bill.

FSC proposes amendments to regulation on supervision of mutual savings bank business

The Korean Financial Services Commission (FSC) has proposed amendments to the Regulation on Supervision of Mutual Savings Bank Business, to fine-tune capital and investment rules and prudential standards. The key proposals include the following:

- the additional region-specific capital required for a new branch operation is to be reduced by 50% for soundly performing mutual savings with assets of less than KRW 1 trillion;
- the minimum capital requirement for large mutual savings banks with assets in excess of KRW 1 trillion is to be raised from the current 7% to 8% effective from 1 January 2018 (2-year grace period); and
- listed mutual savings banks must set aside loan loss provisions, including allowances for uncollected interest from delinquent loans, as provided by the International Financial Reporting Standards (IFRS) and the applicable supervisory regulations.

The amendments are proposed to take effect on 31 March 2016, following a public comment period and the required regulatory review.

FSC to introduce omnibus account for foreign investors

The FSC has announced plans to introduce an 'omnibus account' in an effort to make it easier for foreign investors to trade locally-listed stocks on the Korean stock market. The new system is intended to reduce transaction costs for global asset management companies and make foreign investors' trading of locally-listed stocks through global securities firms more convenient.

The omnibus account will be a single account established by a global asset management company or securities company for the purpose of consolidating trading orders and settlements from multiple clients. The account is held under the name of the global asset management company or securities company. A qualified global asset management company and securities company will have to register with the Financial Supervisory Service (FSS) in order to process trading orders and settlements on behalf of the end clients.

The FSC has indicated that the Regulation on Financial Investment Business will be amended and the electronic system of Foreign Investment Management System will be reformed by April 2016 for the introduction of the omnibus account system. The omnibus account will be fully introduced in 2017 following a test operation starting from May 2016.

Subsidiary legislation to implement phase one clearing and phase two reporting under OTC derivatives regulatory regime gazetted

The Hong Kong Government has gazetted six pieces of subsidiary legislation to implement phase one clearing and phase two reporting under the OTC derivatives regulatory regime. The six pieces of subsidiary legislation are:

- the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (Amendment Ordinance Commencement Notice), which brings into effect the provisions of the Securities and Futures (Amendment) Ordinance 2014 relating to the mandatory clearing and related record keeping obligations under the OTC derivatives regulatory regime;
- the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Clearing Rules), which specify the precise ambit of phase one clearing, setting out details such as which transactions will be subject to clearing, in what circumstances, and within what timeframe;
- the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (Commencement) Notice (Reporting Rules Commencement Notice), which brings into effect the extension of the mandatory reporting obligation to central counterparties (CCPs) that are authorised to provide automated trading services (ATS) for clearing OTC derivative products;
- the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) (Amendment) Rules 2016 (Reporting Amendment Rules), which bring into effect phase two reporting, expanding the product scope to cover all interest rate derivatives and foreign exchange derivatives not covered in phase one reporting, as well as other OTC derivative products, namely equity derivatives, credit derivatives and commodity derivatives;
- the Securities and Futures (OTC Derivative Transactions Reporting Obligation – Fees) Rules (TR Fees Rules), which require the payment of a fee to the Hong Kong Monetary Authority (HKMA) for using the Hong Kong Trade Repository for submitting reports on OTC derivative transactions under the regulatory regime; and
- the Securities and Futures (Fees) (Amendment) Rules 2016 (CCP Fees Rules), which provide for the application fee for CCP designation and annual fees in respect of designated CCPs.

The six pieces of subsidiary legislation will be tabled before Legislative Council on 17 February 2016 for negative vetting. The TR Fees Rules will come into operation on 1 May 2016. The Amendment Ordinance Commencement Notice, the Reporting Rules Commencement Notice, the Clearing Rules and the CCP Fees Rules will come into operation on 1 September 2016 when phase one clearing will commence. The Reporting Amendment Rules will come into operation on 1 July 2017 when phase two reporting will commence.

HKMA and SFC release conclusions on introducing mandatory clearing and expanding mandatory reporting for OTC derivatives market

The Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) have published the conclusions to their proposals made in the September 2015 joint consultation on introducing mandatory clearing and expanding mandatory reporting for the second stage of the OTC derivatives regulatory regime. The conclusions paper sets out revised proposals and further consults on the initial list of financial services providers.

Highlights regarding the introduction of mandatory clearing (phase 1 clearing) include:

- deferring commencement of phase 1 clearing from 1 July 2016 to 1 September 2016, subject to the legislative process;
- defining 'financial services provider' by reference to a list of entities to be published in the Government Gazette and seeking views on the initial list of financial services providers by 29 February 2016;
- having a single clearing threshold which applies to all prescribed persons, whether they are incorporated locally or overseas;
- excluding both deliverable foreign exchange (FX) forwards and deliverable FX swaps from the clearing threshold calculation;
- providing a mechanism for exiting from the clearing obligation; and
- exempting from the clearing obligation certain transactions resulting from a multilateral portfolio compression cycle.

Highlights regarding the expansion of mandatory reporting (phase 2 reporting) include:

- further deferring commencement of phase 2 reporting from 1 January 2017 to 1 July 2017, subject to the legislative process;
- narrowing the backloading requirement for transactions reported prior to phase 2 reporting so that it does not apply to transactions maturing before 1 July 2018; and
- excluding from the reporting obligation FX forwards which are entered into for the purposes of buying or selling securities in a foreign currency and which are settled within the settlement cycle for the securities.

Central counterparties who are authorised to provide automated trading services will be subject to mandatory reporting in its current form (phase 1 reporting) from 1 September 2016 to align with the commencement of phase 1 clearing.

The SFC has indicated that a separate conclusions paper on the specific data fields to be completed under phase 2 reporting will be issued shortly.

SFC issues circular on reporting of OTC derivatives transactions

The SFC has issued a circular to licensed corporations in relation to the trade reporting of OTC derivatives transactions. The circular informs licensed corporations that the Trade Repository operated by the HKMA has published a revised version of the Supplementary Reporting Instructions (SRI).

The primary purpose of the revision is to defer the commencement date of the shared and paired unique trade identifier (UTI) from 1 February 2016 to 1 February 2017. The deadline extension is intended to relieve reporting institutions from the burden of having to build different systems to achieve compliance in the interim and ultimately with the upcoming international standards on UTI, which are expected to be published in mid-2016. The SFC expects that further guidance in relation to the reporting of UTI will be provided around mid-2016 taking into account the then prevailing developments with respect to international standards.

Additional instructions have been incorporated into the SRI for reporting identifying information of an individual when the individual does not have a Hong Kong identity card or passport. In addition, various miscellaneous amendments have been made to enhance the clarity of the instructions.

The SFC has advised licensed corporations with activities that may be subject to mandatory reporting obligations to take the revised SRI into account when preparing for reporting to the trade repository.

SFC issues circular on protection of client assets against internal misconduct

The SFC has issued a circular to licensed corporations on protecting client assets against internal misconduct. The circular reminds licensed corporations licensed for dealing in securities that they should have internal control procedures and financial and operational capabilities which can be reasonably expected to protect their operations, their clients and other licensed or registered persons from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.

In the course of its supervisory work, the SFC has observed that some licensed corporations have weak internal controls and lax management supervision that render them susceptible to the threat of internal misconduct. A non-exhaustive list of potential red flags, pitfalls and vulnerabilities which a licensed corporation should be vigilant about detecting is set out in Appendix 1 of the circular. Licensed corporations are also expected to promptly deal with any threats by taking appropriate preventive measures. In particular, licensed corporations are reminded to put in place the following procedures and controls that have been found to be lacking in some firms:

- ensure that key duties and functions are appropriately segregated, particularly those duties and functions which when performed by the same individual may result in errors going undetected or may increase the risk of internal misconduct; and
- identify inconsistent, unusual or questionable transactions/ records including through the reconciliation of records process, frequent independent review of exception reports, and regular review of compliance and control related logs or records.

Whilst the SFC acknowledges that there are no perfect measures to fully eliminate the risk of internal misconduct against client assets, licensed corporations are advised to implement effective internal controls to reduce the likelihood of its occurrence. In addition, specific knowledge and diligence is required for management to fulfil their responsibilities for ensuring that effective internal controls over client assets are established and maintained, and that they are operating effectively.

Appendix 2 of the circular lists some key measures to which licensed corporations should have regard when designing and implementing their operating and internal control procedures for the purpose of protecting client assets against internal misconduct.

SFC issues circular on leveraged and inverse products

The SFC has issued a circular to licensed corporations and registered institutions which provide services to clients with respect to leveraged and inverse products. The circular sets out the requirements under which the SFC would consider authorising leveraged and inverse products structured as exchange traded funds (ETFs) for public offering in Hong Kong under the Securities and Futures Ordinance (SFO).

The circular reminds intermediaries to observe all the applicable requirements under the Code of Conduct for Persons Licensed by or Registered with the SFC, in particular paragraphs 5.1A to 5.3 when they provide services to clients with respect to derivative products. Intermediaries should also put in place appropriate measures, such as providing training to staff, to ensure that their members of staff are familiar with the risks and features of investment products and comply with the applicable requirements when serving their clients. Intermediaries are reminded to act in the best interests of their customers when conducting their business activities.

Further, the SFC has advised intermediaries to refer to the circular issued by Hong Kong Exchanges and Clearing Limited (HKEX) to exchange participants advising them not to provide margin financing to investors for trading of leveraged and inverse products in view of the leveraged and/or inverse features of leveraged and inverse products and the additional leverage impact from margin financing.

AMAC issues guidance on internal control of private fund managers

The Asset Management Association of China (AMAC) has issued its 'Guidance on the Internal Control of Private Investment Fund Managers', which took effect on 1 February 2016 and sets out private fund managers' internal control framework in the private fund industry. Among other things, the following key points are worth noting:

- the guidance covers the key aspects of a risk control system a fund manager shall establish, including risk assessment system, business operation procedure, asset segregation system, investment control system, information and accounting system, and information disclosure system. In addition, a fund manager shall establish an authorisation control system for the key fund activities from fund raising, investment, business operation to information disclosure;
- a fund manager shall establish selection systems for fund distributors and custodians – when outsourcing fund distribution to a third party, a fund manager shall engage a distributor which has been licensed by the China Securities Regulatory Commission and registered as a member of AMAC;
- compared with the consultation draft released in December 2015, the guidance adds that a fund manager shall have a clear core business and shall not conduct business that is irrelevant to private fund management or where there is a conflict of interests;
- compared with the consultation draft, the guidance adds that the highest authorities of a fund manager shall assume ultimate responsibility for establishing an internal control system and maintaining its effectiveness, while its management level assumes the responsibility of effectively implementing the internal control system; and
- the guidance requires private fund managers to file their internal control systems with AMAC.

Japanese Financial Services Agency sets out details of amended Article 63 Exemption of FIEA

The Japanese Financial Services Agency (JFSA) has published the details of the amended 'Article 63 Exemption' of the Financial Instruments and Exchange Act (FIEA) and also published answers to comments submitted by the public through the public consultation process.

The requirements to fall within the Article 63 Exemption will become stricter and more complex under the new regime to be implemented from 1 March 2016.

Some points to note after implementation (i.e., from 1 March 2016) are:

- fund operators who have already filed notifications with the JFSA will be required to file additional documents and appoint a representative in Japan by 1 September 2016;
- fund operators who will file entirely new notifications with the JFSA will be required to use the new forms to file documents as designated by the amended regulations; and
- all fund operators who have filed notifications with the JFSA will be subject to new obligations, including the submission of annual business reports and the appointment of a representative in Japan.

CLIFFORD CHANCE BRIEFINGS

Assessing the first draft of David Cameron's European Union deal

After months of negotiation, on 2 February 2016 at 11am, the President of the European Council, Donald Tusk, published draft documents setting out details of Prime Minister David Cameron's 'new settlement' for the UK within the European Union. Shortly afterwards, the Prime Minister declared it a good start, pointing towards his hope that final agreement would come in February or March. This could see a referendum in June – possibly on the 23rd – or later in September.

This briefing paper examines those draft documents and sets out the likely next steps.

http://www.cliffordchance.com/briefings/2016/02/assessing_the_firstdraftofdavidcameron.html

A New Safe Harbour? The 'EU-US Privacy Shield'

On 2 February, the European Commission's College of Commissioners approved a new political agreement in relation to the export of data to the US, the 'EU-US Privacy Shield'.

Following the decision of the European Court of Justice on the 6 October 2015 to declare the old EU/US Safe Harbor Framework invalid, representatives of the European Commission and the US Department of Commerce have been negotiating, and consulting with business and industry representatives, to reach a new agreement which would adequately address concerns in relation to the protection of data transferred from the EU to the US.

This briefing paper discusses the new data protection arrangement between the EU and the US.

http://www.cliffordchance.com/briefings/2016/02/a_new_safe_harbortheeu-usprivacyshield.html

Cape Town Treaty – Spain accedes to Aircraft Protocol – 1 March 2016 effective date

Spain has deposited its instrument of accession to the Aircraft Protocol dated 27 November 2015, as confirmed on 1 February 2016 by publication in the 'Boletín Oficial del Estado'. According to the treaty timetable, the Aircraft Protocol, together with the Cape Town Convention as it applies to aircraft objects, will come into force for Spain on 1 March 2016.

This briefing paper discusses Spain's accession to the Aircraft Protocol.

http://www.cliffordchance.com/briefings/2016/02/cape_town_treaty-spainaccedestoaircraf.html

SAFE relaxes quota control and capital mobility restrictions for QFIIs

SAFE has published the revised Foreign Exchange Administrative Rules on the Domestic Securities Investment by Qualified Foreign Institutional Investors which took effect on 3 February 2016. The revised rules have further relaxed quota administration and foreign exchange control for QFIIs in an effort to encourage more foreign investments in the PRC securities market.

This briefing paper discusses the revised rules.

http://www.cliffordchance.com/briefings/2016/02/safe_relaxes_quotacontrolandcapitalmobilit.html