

# International Regulatory Update

27 – 30 May 2014

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If you would like to know more about the subjects covered in this publication or our services, please contact:

### International Regulatory Group Contacts

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Steven Gatti](#) +1 202 912 5095

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

### International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use [firstname.lastname@cliffordchance.com](mailto:firstname.lastname@cliffordchance.com)

Clifford Chance LLP, 10 Upper Bank Street,  
London, E14 5JJ, UK  
[www.cliffordchance.com](http://www.cliffordchance.com)

### ECB and Bank of England publish discussion paper on securitisation

The European Central Bank (ECB) and the Bank of England have jointly published a [discussion paper](#) on securitisation. The paper considers options that authorities could support to revitalise the securitisation market, including developing high-level principles for 'qualifying securitisations' and harmonising securitisation standards across the EU.

Comments are due by 4 July 2014.

### ECB consults on draft regulation on supervisory fees

The ECB has launched a [consultation](#) on a draft ECB regulation on supervisory fees. The consultation documents include a working draft of the regulation, explanatory note and [Q&As](#).

The ECB will take over as regulator of eurozone banks on 4 November 2014 under the single supervisory mechanism (SSM). The draft regulation sets out the arrangements under which the ECB will levy an annual supervisory fee to cover the costs incurred by its new role, including:

- methodology for determining the total annual supervisory fee;
- the total to be paid by each supervised bank or banking group; and
- method of collecting fees.

A public hearing about the proposals will be held on 24 June 2014; the consultation closes on 11 July 2014.

### EMIR: ESMA publishes opinion on voting procedures for CCP colleges

The European Securities and Markets Authority (ESMA) has published an [opinion](#) setting out the voting procedures for central counterparty (CCP) Colleges of Supervisors established under the regulation on OTC derivatives, central counterparties and trade repositories (EMIR). ESMA publishes opinions to national competent authorities for the purpose of building a common supervisory regime across the EU and as part of ESMA's function in the authorisation and supervisory process of CCPs.

### EMIR: ESMA adds CC&G and LCH.Clearnet to list of authorised CCPs

ESMA has updated its [list of CCPs](#) that have been authorised to offer services and activities in the EU in accordance with EMIR. With the authorisation of Cassa di and Compensazione e Garanzia S.p.A (CC&G) and

LCH.Clearnet SA, there are now six CCPs authorised under EMIR.

### CRD 4: EBA consults on technical standards on supervisory benchmarking

The European Banking Authority (EBA) has launched a [consultation](#) relating to draft Implementing Technical Standards (ITS) and Regulatory Technical Standards (RTS) for specifying the EU framework for the supervisory benchmarking exercise under CRD 4 that will look at the consistency and comparability in risk-weighted assets (RWAs) produced by institutions' internal modelling approaches (except for operational risk) for calculating own funds requirements for credit and market risk exposures.

The draft ITS provide:

- a set of benchmark portfolios relating to RWAs; and
- details of templates, definitions and IT systems that EU banks will be asked to use when reporting own funds data.

The draft RTS set out:

- details of the common general benchmarks to be used by competent authorities when assessing the quality of banks' internal reviews; and
- the procedures to be used by competent authorities to share assessments with the EBA and other relevant competent authorities.

The consultation closes on 19 August 2014.

### EBA publishes list of Common Equity Tier 1 instruments

The EBA has published a [list](#) of capital instruments classified as Common Equity Tier 1 (CET1) based on information provided by the twenty eight national supervisory authorities of the EU Member States.

The list provides an overview of CET1 capital instruments available across the EU and will be maintained and regularly updated. It includes information consistent with the reporting standards set out in the Implementing Technical Standards (ITS) on disclosure of own funds. The list has been produced under the EBA's obligations under the Capital Requirements Regulation (CRR) but as this first publication is based on information received as of 28 June 2013, prior to the entry into force of CRR, no monitoring or analysis of the instruments listed is provided.

**Anti-money laundering: EU Council Presidency publishes compromise texts**

The EU Council Presidency has published the latest compromise texts for the proposed new [Anti-Money Laundering Directive](#) (AMLD) and [regulation](#) on information accompanying transfers of funds, with a [note](#) summarising the state of play of the negotiations on the proposals.

**European long-term investment funds: EU Council Presidency publishes compromise text**

The EU Council Presidency has published a [compromise text](#) for the proposed regulation on European long-term investment funds.

**Principles for financial market infrastructures: CPSS and IOSCO publish update on implementation monitoring**

The Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) have published the first [update](#) to the Level 1 assessments of implementation monitoring for the principles for financial market infrastructures (PFMIs).

The Level 1 assessments are based on self-assessments by individual jurisdictions on how they have adopted the 24 PFMIs and four of the five responsibilities for authorities within the regulatory and oversight framework that applies to financial market infrastructures (FMIs).

Additional updates to the Level 1 report are planned on a periodic basis and in the initial round of the Level 2 assessments, CPSS and IOSCO will conduct a detailed evaluation and a peer-review assessment regarding whether the adopted measures are complete and consistent with the principles for CCPs and TRs in the European Union, Japan and the United States. Results from the first round of Level 2 assessments are expected to be published in the fourth quarter of 2014.

**Bank of England publishes discussion paper on credit data**

The Bank of England has published a [discussion paper](#) which considers how improving the availability of credit data might deliver benefits for the provision of credit through both direct channels, such as bank lending, and indirect channels, including securitisation. The paper notes that the availability of UK credit data could be improved by broadening access to UK credit reporting systems and enhancing available data, by making information available from publicly-owned sources.

The deadline for comments is 29 August 2014.

**Consumer credit: FCA consults on interim permission fees for local authorities**

The Financial Conduct Authority (FCA) has published a [consultation paper](#) (CP14/7) setting out an amendment to its fees rules (FEES), to facilitate the charging of interim permission (IP) fees to local authorities under proposed government legislation, extending the IP period for local authorities.

CP14/7 affects local authorities that undertook consumer credit business before 31 March 2014, and which wish to continue with this business but did not notify the FCA before 1 April 2014. The consultation ends 12 June 2014.

**Alternative Investment Fund Managers Order 2014 published**

The Alternative Investment Fund Managers Order 2014 ([SI 1292/2014](#)) has been published. The Order amends the Financial Services and Markets Act 2000 (Gibraltar) Order 2001, in order to allow Gibraltar-based entities to exercise entitlements equivalent to certain EU rights in the United Kingdom in relation to collective investment schemes.

The Order also amends the Financial Services and Markets Act 2000, the Financial Services and Markets Act 2000 (Regulated Activities) Order and the Alternative Investment Fund Managers Regulations 2013 to alter certain aspects of the implementation of Alternative Investment Fund Managers Directive (AIFMD).

As this Order was laid before Parliament less than 21 days before it was due to enter into force, an amendment order, the Alternative Investment Fund Managers (Amendment) Order 2014 ([SI 1313/2014](#)) amends the date on which the first Order comes into force, and the date by which a person must notify the Financial Conduct Authority of an intention to carry on insurance mediation activity if the person wishes article 7(5) or (6) of that Order to apply to them so that they are treated as having permission under Part 4A of the Financial Services and Markets Act 2000 to carry on insurance mediation activity, or as having applied for such permission.

The Alternative Investment Fund Managers Order 2014 will come into force on 16 June 2014, except for Article 6, which comes into force on 22 July 2014.

### **AIFMD: Treasury publishes draft second-level regulation for implementation in Italy**

The Treasury Department of the Ministry of Economy and Finance has launched a consultation on a [draft regulation](#) intended to implement Article 39 (Structure of Italian collective investment schemes) of Legislative Decree no. 58/1998 (Italian Financial Act), as amended by Legislative Decree no. 44/2014, which implemented the Alternative Investment Fund Managers Directive (AIFMD) in Italy.

Article 39 instructs the Treasury Department, together with the Bank of Italy and CONSOB, to provide for a set of second-level provisions covering, amongst other things, requirements to be complied with by Italian collective investment schemes, targeted investors, etc.

The Draft Regulation, once enacted, will replace Ministerial Decree no. 228/1999, which is currently in force. Additional second-level provisions will be published by CONSOB and the Bank of Italy.

Comments are due by 10 June 2014.

### **CONSOB consults on practices for firms selling complex products to retail investors**

The Commissione Nazionale per le Società e la Borsa (CONSOB) has published a [consultation](#) document on practices for firms selling complex products to retail investors.

The consultation document proposes the introduction of a set of provisions intended to increase the degree of protection of retail investors, in accordance with the general principles underlying MiFID 2.

Amongst other things, the consultation document is intended to:

- encourage firms to adhere to the guidelines set out in the European Securities and Markets Authority's (ESMA's) opinions on Mifid practices for firms selling complex products and on good practices for product governance arrangements published on 7 February 2014 and 27 March 2014 respectively; and
- prevent firms from selling certain complex products to retail investors.

Comments need to be submitted by 30 June 2014.

### **Government contribution to Dutch financial regulators' budgets to be abolished**

The Dutch Cabinet has [agreed](#) on abolishing the government's annual contributions to the financial

regulators' budgets. The total budget for the supervisory tasks of the Dutch Central Bank (DCB) and the Netherlands Authority for the Financial Market (AFM) is estimated at EUR 220 million (in 2014). Abolishing the state contribution would save the government about EUR 40 million each year. The measure would take effect upon adoption by the Dutch Parliament, which is expected to take place by 1 January 2015. Following that date, entities in the financial sector would have to pay for all of the AFM's and DCB's supervisory costs themselves. The Dutch Cabinet has highlighted that the advantages of a good supervisory regime also flow to the sector.

In connection with this proposed cost saving measure, the Dutch Cabinet commented that in preparation for the new supervisory tasks of the European Central Bank (ECB), the balance sheets of a number of relevant Dutch banks are currently being examined. The non-recurring supervisory costs thereof are estimated between EUR 42.5 and 61.7 million, and will, applying the new rules, be charged to the banks in question. The Dutch government does not believe that any party other than the examined banks should have to pay for this examination.

Finally, the Dutch Cabinet has announced its plan that fines and incremental penalty payments imposed on financial sector participants should no longer be fully returned to the Dutch regulators and thereby indirectly to the financial sector. Instead, the regulators' proceeds from fines and incremental penalty payments above EUR 2.5 million, per regulator and per year, would have to be paid to the National Treasury. The Dutch Cabinet believes that it would be unjust if fines paid in the financial sector would (indirectly) flow back to that same sector.

### **CBRC seeks public comments on internal control guidelines**

The China Banking Regulatory Commission (CBRC) has published a [consultation draft](#) of the revised 'Guidelines on Internal Control of Commercial Banks' to improve the internal control regime in the banking industry. The general internal control principles set out in the draft guidelines are full coverage, balancing, prudence and matching with business conditions. Detailed internal control evaluation requirements are also provided to standardise the evaluation systems. Under the draft guidelines, the CBRC will take regulatory measures against those failing to meet applicable standards or make rectifications within the required period.

The consultation period will end on 20 June 2014.

### PBOC Shanghai issues free trade account rules in Shanghai FTZ

The Shanghai Head Office of the People's Bank of China (PBOC Shanghai) has promulgated the '(Pilot) Implementing Detailed Rules for Free Trade Accounting Unit Business in the China (Shanghai) Pilot Free Trade Zone' and the '(Pilot) Detailed Rules for Risk Prudential Regulation on Free Trade Accounting Unit Business in the China (Shanghai) Pilot Free Trade Zone', which allow all financial institutions in Shanghai to separately set up free trade accounting units (FTUs) for the free trade accounts (FTAs) opened by entities and individuals in the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ). The [rules](#) took effect immediately.

Amongst other things, under the rules:

- through the FTAs, financial institutions may provide financial services to offshore institutions on the basis of pre-establishment national treatment and provide innovative investment and financing services (e.g. cross-border financing and security investment, etc.) under Section 3 of the 'Opinion on Providing Financial Support to the China (Shanghai) Pilot Free Trade Zone' issued by the PBOC on 2 December 2013 to entities and individuals in the Shanghai FTZ;
- funds will be freely transferable among FTAs, any overseas accounts and any non-resident institutional accounts that are opened outside of the Shanghai FTZ, while the funds transfer between FTAs and other domestic bank settlement accounts will be deemed as cross-border funds flow;
- outstanding funds in the FTAs will not be subject to foreign debt administration and FTAs shall not be used to conduct any cash business; and
- funds in FTAs are freely convertible for the relevant business under the current account and direct investment.

Financial institutions in Shanghai which intend to conduct FTA business shall set up relevant FTU systems according to these rules and apply to PBOC Shanghai for examination. Financial institutions will only be able to conduct FTA business after they pass the examination.

### 2014 Amendment to Financial Instruments and Exchange Act published

On 23 May 2014, the Diet passed the bill to amend the Financial Instruments and Exchange Act (FIEA), which was submitted to the Diet by the Financial Services Agency of Japan on 14 March 2014. The law passed by the Diet

([2014 FIEA Amendment](#)) has now been published in the Official Gazette. The 2014 FIEA Amendment contains a number of amendments aimed at enhancing market activity and improving confidence in the market, including the following:

- crowdfunding – relaxed regulation for broker-dealers helping venture businesses in raising funds from general investors via the internet, and a requirement for such broker-dealers of appropriate provision of information via the internet;
- business years – under the current FIEA, a business year of a securities company in Japan must start on 1 April and end on 31 March, but this restriction will be abolished to attract more foreign securities firms into Japan (i.e., by enabling their Japanese subsidiaries to adopt business years consistent with their parent companies);
- large shareholding reports – the 2014 FIEA Amendment contains provisions to streamline the large shareholding reporting system (e.g., deregulation of reporting of treasury shares);
- civil liability for false disclosure – the 2014 FIEA Amendment contains amendments to the civil liability of issuers of securities for false disclosures (e.g., limitation of liabilities of issuers and expansion of the scope of people entitled to claim damages);
- stricter regulation on broker-dealers of fund interests – currently, foreign broker-dealers registered as Type II Business Operators under the FIEA are not required to have offices in Japan, but the 2014 FIEA Amendment requires them to have offices in Japan; and
- financial benchmarks (including TIBOR) – the 2014 FIEA Amendment introduces regulations on benchmark administrators, including a requirement of code of conduct applicable to reference banks.

The 2014 FIEA Amendment will take effect from the date to be specified by a Cabinet Order, which is no later than 29 May 2015 (with some exceptions).

## RECENT CLIFFORD CHANCE BRIEFINGS

### Giving notices – High Court holds it's a must – Greenclose Ltd v National Westminster Bank plc

Notices given under the ISDA Master Agreement are ineffective unless given by one of the methods specified in Section 12(a) of the Master Agreement and in accordance with the details in the Schedule.



This briefing discusses the impact of Section 12(a) in this case

[http://www.cliffordchance.com/content/cliffordchance/briefings/2014/05/giving\\_notices\\_highcourtholdsitsamust.html](http://www.cliffordchance.com/content/cliffordchance/briefings/2014/05/giving_notices_highcourtholdsitsamust.html)

### **A Legal Overview of Foreign Investment in Russia's Strategic Sectors**

This briefing discusses Russia's regulatory regime for foreign investment in strategic sectors of Russian industry. The regime is primarily regulated by the Strategic Investment Law, which came into force on 7 May 2008, and consolidated the legal regime governing foreign investment in various Russian strategic industries and established a procedure for granting foreign investors access to such industries on a 'one stop shop' basis.

A number of amendments to the Strategic Investment Law were adopted which clarified some, though not all, of the issues that had been heavily debated in the business and legal community since the regime was first introduced. Russian case law and official regulatory guidance also emerged which helped to clarify the scope of application of the Strategic Investment Law, but also contributed to new uncertainties surrounding interpretation of the statutory requirements.

Having advised on many 'strategic transactions' across nearly all industry sectors to which the regime applies, we believe there are various legal and practical issues that investors should be aware of before structuring the acquisition of a stake in a Russian company.

[http://www.cliffordchance.com/content/cliffordchance/briefings/2014/05/a\\_legal\\_overviewofforeigninvestmenti.html](http://www.cliffordchance.com/content/cliffordchance/briefings/2014/05/a_legal_overviewofforeigninvestmenti.html)

### **New Listing Rules of the Moscow Exchange come into force**

On 9 June 2014, a new version of the listing rules of the Moscow Exchange (formerly known as MICEX) will enter into force. They introduce a number of significant changes, including with respect to corporate governance of the issuers.

This briefing discusses some of the most important amendments.

[http://www.cliffordchance.com/content/cliffordchance/briefings/2014/05/new\\_listing\\_rulesofthemoscowexchangecoming.html](http://www.cliffordchance.com/content/cliffordchance/briefings/2014/05/new_listing_rulesofthemoscowexchangecoming.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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