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# Transaction Services Newsletter

Feature article

## What goes on in Cyberspace?

As consumers turn to the e-commerce market, so do online fraudsters – and the European Commission (the "**Commission**") is of course not about to sit and watch. Among the relevant proposals, the Commission has put forward a draft Directive concerning measures to ensure a high common level of network and information security across the Union (the "**Cyber-security Directive**"), which attempts to promote online payment security through a combination of voluntary and regulatory measures.

Accordingly, European Union market operators, including credit institutions and critical financial services infrastructure entities, have to abide by security requirements (including incident reporting obligations) and to act so as to ensure service continuity. Specifically, the Cyber-security Directive defines a "market operator" as "an operator of infrastructure that are essential for the maintenance of vital economic and societal activities in the fields of energy, transport, banking, financial market infrastructures, internet exchange points, food supply chain and health, and the disruption or destruction of which would have a significant impact in a Member State as a result of the failure to maintain those functions".

Interestingly, not all of the Cyber-security Directive provisions apply to all aspects of a "market operator's" business – some obligations for example only apply to "core services" provided by market operators, which is a term not defined. In order to add teeth to its proposals, the Cyber-security Directive contains enforcement provisions which empower competent authorities to request market operators to provide information relating to their security measures for accessing their networks.

Looking at the various proposals emanating from the European Union, one cannot help but wonder about their interaction and the tensions that arise, some of which are set out below.

### Security and competition

The draft Directive on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/100/EC and repealing Directive 2007/64/EC ("**PSD2**") envisages, among other things, the opening up of the payments market by officially recognising (and regulating) a new type of entity, third party payment service providers ("**TPPs**"). The Commission proposals enable TPPs to obtain access to the account information of the payer, subject to certain (heavily negotiated) safeguards, including confining the ability to utilise such information for limited purposes. The fact remains, however, that the PSD2 proposal essentially grants TPPs access behind the payment service providers' firewall. Although it remains to be seen where the dust will settle over the safeguards relating to these proposals (for example, the requisite level of customer authentication), access in itself does raise concerns around security. Payment service providers are worried that their obligations – ensuring that their customers' data and privacy are protected, preventing the misuse of customer information and achieving the security objectives set out in the Cyber-security Directive – do not sit well with the new provisions that have been introduced primarily to foster competition in the new online payments market. There is an expectation to comply (but not to over-comply) with new security standards and the balance is not an easy one to strike.

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### Security and technology neutrality

The Proposal for a Regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market ("**e-ID Regulation**") obliges payment service providers to recognise new forms of identification. Interestingly, all current e-ID models assume that there is no sharing of personalised security credentials. At the same time, as discussed above, PSD2 is introducing new regulatory security standards, including strong customer authentication, and various bodies (such as the European Central Bank and SecuRePay) are producing guidelines that will need to be factored into the practices of payment service providers. Another source of complexity comes from anti-terrorist measures, which require account providers to operate taking into account their obligation to prevent access to the financial system by terrorists and sanctioned persons, pushing them in a different direction from the strict liability requirement under PSD2 to ensure that payment transactions are promptly executed. The question is whether, and to what extent, all of these proposals and standards will work harmoniously together and how they will keep in sync with the plethora of technological developments. Interestingly, technology providers of services such as e-commerce platforms, payment gateways and cloud services appear to have been left out of the March 2014 Parliament text for the Cyber-security Directive, which means that the controls and consequences of filing data breach reports, with the franchise risk implications that these have and the threat of regulatory intervention, will not impact on such entities.

### Security and access

The Commission's Proposal for a Directive on the comparability of fees related to payment accounts, payment

account switching and access to payment accounts with basic features (the "**PAD**") aims to promote fee transparency and account switching, as well as to enhance access to bank accounts by reducing discrimination based on residency. It is hoped that the transparency drive will help fight illegal payments by shedding light into some dark parts of the economy. The idea of offering the right to a basic bank account to everyone is one of great equality and fairness, but sits uneasily next to some of the other obligations that account providing payment service providers are subject to, such as the duty to refuse accounts under anti-money laundering legislation and to ensure that in their capacity as entities promoting the public interest, security breaches are controlled and reported under the Cyber-security Directive. This latter duty would presumably imply an obligation to deny accounts to fraudsters and hackers. Another aspect of the interaction of access and security lies in the ability of basic account holders to keep up with the requirements of the new legislation regarding identification – it will be interesting to see where the legislators will draw the line, as one wonders whether two-factor customer authentication may just be a step too far for someone like my grandmother.

The tensions outlined above are the inevitable product of attempting to put in place various legislative proposals relating to similar areas simultaneously. As each proposal goes through the European Union legislative maze, and gets amended through the trilogue process and lobbying, the risk is that the end result will be a series of measures that when put together reveal the underlying tensions between theory and practice, as well as the uneasy compromise between the interests of the relevant actors and policymakers.

**Feature article**

## Report on Sibos 2014 by Peter Chapman

Sibos, for those of you that aren't aware, stands for the "SWIFT International Banking Operations Seminar" (incidentally, I discovered it also stands for Small Intestinal Bacterial Overgrowth Syndrome but probably the less said about that, the better!). The event takes place annually and has grown into a huge conference hosting over 10,000 financial institutions and corporates from across the globe.

Representatives from Clifford Chance have attended Sibos for a number of years and it is in many ways a perfect opportunity for us – we get to meet with a number of our clients formally and socially and we can attend many of the seminars and talks on offer (often hosted or featuring executives and business leads of many of our clients). It means we get to listen to market developments and trends and talk directly to the business teams at our clients about what legal (and non-legal) developments are keeping them awake at night, what they envisage for the year ahead, etc but also to understand perhaps where we can assist in providing guidance, interpretation and support.

During the conference, Simon Crown and I attended over a dozen sessions on a panoply of topics from T2S and settlement systems to SEPA, disruptive fin-tech developments to data standards, bitcoin and crypto-currencies to trends in transactions services. All were engaging and insightful and help us keep our finger on the pulse of transaction banking business.

The key motif of the conference held in Boston this year was "collaboration" – how can the payments industry work better and more intelligently together as a whole, how could it work towards common standards, is it possible to commoditise services so the business can focus on the value added offering. A question that came up time and again was how can businesses advocate and engage with regulators and law-makers in a more cohesive way. I was struck, in particular, by the number of panellists and attendees we spoke to who admitted that they would like to get a better understanding of what regulatory developments were coming down the pipeline, how they fitted together (or not), how they would affect their business, their clients and even their competitors and how advocacy efforts could be directed to maximum effect. Clearly everyone was focussed on some of the major developments such as the T2S project and some were well-versed in the new CSD Regulation but most hadn't heard of PSD2 or other regulatory developments on the horizon.

With this in mind, we would like to offer clients (legal and business contacts) the opportunity to discuss the transaction services landscape and what this might mean for business, clients and competition. We would be very happy to explore the risks and opportunities presented by the shifting regulatory picture. If this is of interest, please email Simon (simon.crown@cliffordchance.com) or me (peter.chapman@cliffordchance.com) to arrange.

**Feature article**

## The butterfly effect of payments regulation

Transaction banks may be forgiven for thinking that they are far removed from many of the upcoming legislative developments in the payments sphere which are principally designed to improve protections and services for retail clients but there is a theory in mathematics that a change in the conditions in one location can sometimes result in significant differences to the conditions in another – the so-called "butterfly effect". This butterfly effect is true of payments regulation – changes in retail banking will have all sorts of impacts on transaction services banks.

Can we give some tangible examples of the butterfly effect? What are the changes in the retail space that will affect transaction banks? And, what sorts of transaction banking services will be affected? Well, to answer the second question first, there are at least three areas of business that are likely to be impacted by the changes: (a) the provision of payment platforms or white-labelled services used by a retail bank's customers, (b) the provision of intermediary services or access to infrastructure for retail banks, and (c) the provision of services to corporate clients who transact with retail customers.

Below we examine what services might be impacted and how – we have not sought to be comprehensive (this would take far too long and would probably put off even the most enthusiastic reader!) but we have highlighted some of the key areas.

### Provision of a payment platform or white-labelled service used by a retail institution's customers

Under the proposed revised Payment Services Directive ("**PSD2**"), Article 78 (Article 73 in the original PSD) requires the payee's payment service provider

"These sorts of changes will mean transaction services banks will want to re-examine their relationships and look again at what they offer and whether it supports the needs of their financial institution clients."

("**PSP**") to ensure that when it receives funds it credits the payee's account no later than the day it receives those funds and must make them immediately available to the payee. The payer's PSP must likewise ensure that the debit value date for the payer's account is no earlier than the time he was debited. This will all sound familiar to those of you involved with the Payment Services Directive the first time round and so far so good. However, here's the rub: the scope of transactions subject to these requirements is expanding. It will no longer be a threshold condition that both the payer's and the payee's PSPs have to be in the EU for this to apply, it is sufficient that one PSP is within the Union's borders. So, receiving a payment which has been sent from a bank located in the U.S., means that processing rules will need to be amended to take account of this change. Clearly, where a transaction services bank is providing platform services to a retail bank, these new logics will need to be built-in to the software.

This increase in scope will also mean that a whole host of new transactions and accounts will now be subject to transparency requirements and business conduct rules regarding changes to interest rates, conversion rate disclosure, etc. To the extent that transaction banks provide white-labelled services, payment platforms and/or conversion services, the bank will at the very least need to be able to support the retail bank in its provision of this additional information to end clients.

And, by way of an additional note of caution, even transaction banks which don't provide these white-label or platform services and make full use of the so-called corporate opt-out for their wholesale client-base will still need to re-examine their infrastructure and ask themselves whether new sets of accounts (e.g. a US dollar account) now fall within scope and whether they need to update the documentation (even if you want to rely on the corporate opt-out for accounts that were previously out of scope, you will need to amend your terms to reflect this).

Other legislative developments will also impact such services. For example, under the Fourth AML Directive, lower transaction-monitoring thresholds will be introduced meaning a greater burden on AML monitoring which is conducted by the service provider (and increased reliance on the retail bank for information-gathering).

The Payment Accounts Directive introduces additional price transparency rules which augment those under the PSD2 and establishes bank account switching obligations for retail accounts, all of which will mean additional support will need to be provided by transaction services banks to their retail bank clients in terms of transparency, technology and data management.

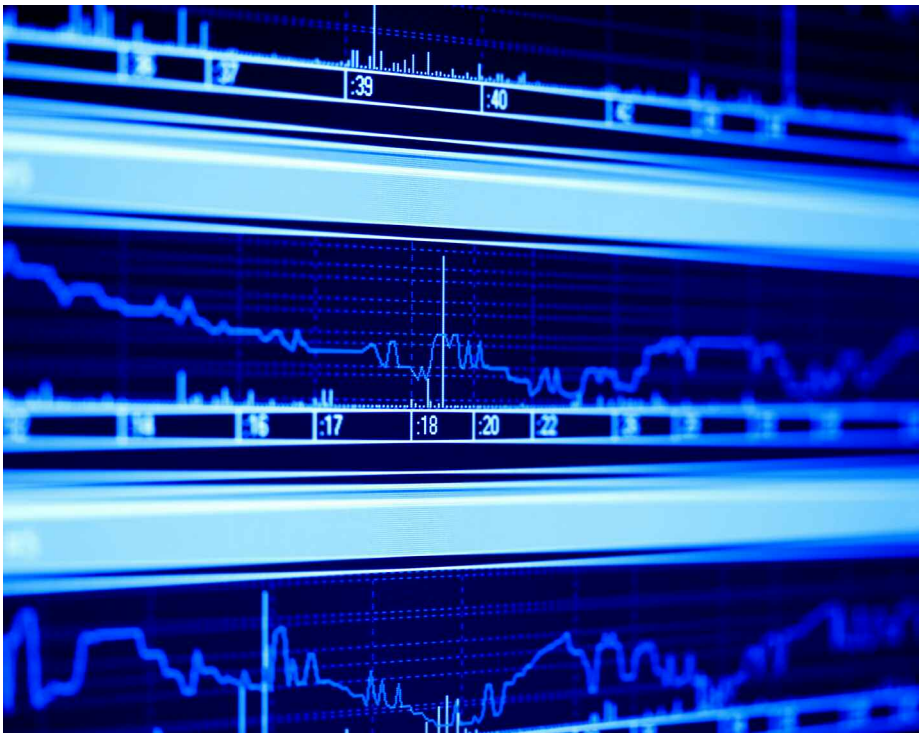
Clearly, these sorts of changes will mean transaction services banks will want to re-examine their relationships and look again at what they offer and whether it

supports the needs of their financial institution clients. Documentation will need to be re-considered – do the agreements provide adequate protection, have all the right products been appropriately documented?

### Provision of intermediary services or access to infrastructure for retail institutions

One criticism that may be levelled at PSD2 is that it still does not clarify whether intermediaries in the payment chain are to be classified as PSPs (and what obligations they have as such) where their client is not the ultimate originator or beneficiary. Reliance on the 'own account' transaction exemption has been challenged but no definitive answer given. The problem with this is that we predict the same issues that were raised under PSD1 will raise their ugly head again as the scope of PSD2 is broadened (as discussed above) to include more transactions and more account services. For example, what obligations (if any) does an intermediary have in respect of charging codes, full amount principle and deductions from principal, execution timeframes, etc.

At least the new FATF2 Regulation is a little clearer in this regard. Intermediary banks will be aware that the new FATF2 Regulation places a whole gamut of obligations on intermediaries regarding the identification of missing payer and payee information as well as obligations to reject or suspend transactions or take other action as appropriate. Payee banks are also required to request missing information and take follow-up action with intermediaries where information is regularly missing (including issuing warnings, setting deadlines and even potentially rejecting transactions in the future, etc). This increased focus on ensuring payee and payer information is included with transactions is going to increase the burden on banks throughout the payment chain, including banks that provide intermediary services.




### Provision of services to corporate clients who transact with retail customers

Article 66 of PSD2 looks set to introduce liability for payee banks where distance sales (for example, internet transactions) are unauthorised and the payee bank did not require strong customer authentication (i.e. validation based on two or more elements which are either in the payer's knowledge or possession or which are inherent to the payer and are independent of each other) and Article 67 could introduce (subject to trilogue discussions) a rather confused liability regime for direct debits whereby it would appear the payer would have an unconditional refund right except where the payee has "already fulfilled the contractual obligations and the services have already been received or the goods have already been consumed by the payer". This could potentially involve transaction service banks getting involved in determining whether or not the corporate had provided the services/goods to its client – a role not sought by or well-suited to banks.

### What does this all mean for transaction services banks?

Transaction services banks will feel the butterfly effect in the coming months. Legislative changes primarily aimed at the retail space will impact the services provided by transaction services banks both directly and indirectly and it will be important for such banks to have a good handle on what those developments are and how they will shape the transaction services landscape going forward. Should you have any questions on any of the developments mentioned or would like to discuss further, please feel free to get in touch with your usual transaction services contact at Clifford Chance (see front page).

**Feature article**

## Promotion of competition and innovation through the Payment Systems Regulator

With a vision of ensuring that the UK's payment systems are 'world class', the UK's Payment Systems Regulator ("**PSR**") will become fully operational from April 2015, regulating the UK's £75 trillion payments industry.

Incorporated in April 2014 as a subsidiary of the Financial Conduct Authority ("**FCA**"), the PSR is a competition-focussed, independent economic regulator with a focus on making markets work well. Whilst it will follow FCA procedures, policies and processes in many areas (such as data protection and corporate responsibility), the PSR has its own statutory objectives and governance, and powers to oversee domestic payment systems (including the ability to give directions on actions and standards and to impose requirements regarding system rules) stemming from the Financial Services (Banking Reform) Act 2013. The objectives of the PSR concern the promotion of competition in the market for payment systems, the promotion of innovation in payment systems, and ensuring payment systems are focussed on the interests of service-users.

The PSR will regulate 'designated' payment systems, those considered to be the *"largest and most important payment systems which, if they were to fail or to be disrupted, would cause serious consequences for their users"*[1], as stipulated by HM Treasury ("**HMT**"). In October 2014, HMT undertook a consultation in which it outlined payments it intends will be considered to be 'designated'. It proposed designating the following: Bacs, CHAPS, Faster Payments Service, LINK, Cheque and Credit Clearing, Northern Ireland Cheque Clearing, MasterCard and Visa. All participants within such systems will fall within the scope of the PSRs regulation, including the operator of the system, the payment services providers using the system, and payment system's infrastructure providers.

"All participants within such systems will fall within the scope of the PSRs regulation, including the operator of the system, the payment services providers using the system, and payment system's infrastructure providers."

In addition, a separate consultation, which began in November 2014 and closed in January 2015, sets out the PSRs vision and proposed regulatory approach. This approach includes specific proposals to address concerns surrounding ownership, governance and control of payment systems, principles to set high-level behavioural standards for participants and detailed proposals concerning monitoring, enforcement and dispute resolution.

Following these consultations, the PSR has issued a policy statement on 25 March 2015 confirming the PSR's regulatory framework. The PSR has also indicated that it is launching two market reviews - one into the ownership and competitiveness of infrastructure provision and one into the supply of indirect access to payment systems. In addition, it has established a programme of work an items such as card systems (including work on national interchange fee levels under the MIF Regulation) and has indicated that in terms of "pipeline" projects, it has in mind to look at ATM interchange fees and consumer redress in the future.

The PSR becomes fully operational on 1 April 2015 and the majority of PSR rules and requirements come into effect over the course of Summer 2015.

Links:

PSR Consultation Paper 2014
http://www.fca.org.uk/your-fca/psr/psr-cp14-1-a-new-regulatory-framework-for-payment-systems-in-the-uk

HMT Consultation Paper 2014
https://www.gov.uk/government/consultations/designation-of-payment-systems-for-regulation-by-the-payment-systems-regulator/designation-of-payment-systems-for-regulation-by-the-payment-systems-regulator

PSR Policy Statement 2015:
https://www.psr.org.uk/psr-publications/policy-statements/psr-ps-15.1

PSR Programme of Work 2015:
https://www.psr.org.uk/sites/default/files/media/PDF/Policy%20Work%20Programme%202015.pdf

[1] PSR consultation paper 14/1, page 8.

# Market developments

## Aha! It's the final countdown (PSD2)

The Council of the EU reached political agreement on the revised Payment Services Directive ("**PSD2**") in December 2014. The finalisation of the Council's position marks an important step towards finalizing legislation that will substantially overhaul the regulatory landscape for EU payment services. PSD2 will now go through the trilogue process where the final text will be hammered out between the European institutions. It is clear, however, that TPPs are here to stay, the scope of the Directive will be broadened and the new security breach reporting regime will require banks to look again at their policies on cyber-security. Banks and payment service providers across Europe will be waiting with baited breath for the outcome of the trilogues and for the final text to hit the books of the Official Journal but it is likely that the implementation date will be Q2 or Q3 2017.

*Links:*

December 2014 Council compromise text
http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2016154%202014%20INIT

Clifford Chance client briefing: A mid-summer storm: The key changes introduced by PSD2
http://www.cliffordchance.com/briefings/2013/11/a_mid-summer_stormthekeychangesintroducedb.html

Clifford Chance client briefing: Updating the Payment Services Directive – PSD2
http://www.cliffordchance.com/briefings/2013/11/updating_the_paymentservicesdirectivepsd2.html

Clifford Chance client briefing: When it rains, it pours - An overview of payments legislation proposals beyond PSD2
http://www.cliffordchance.com/briefings/2013/11/when_it_rains_itpours-anoverviewofpayment.html

## You say 'deposit', I say... positive balance on a credit card? (DGSD2)

EU Member States have until July 2015 to implement the recast Deposit Guarantee Scheme Directive ("**DGSD2**") into their national laws. The legislation dovetails with the Bank Recovery and Resolution Directive ("**BRRD**"). While the BRRD requires Member States to incorporate depositor preference into their domestic bank insolvency regimes (which the UK did in January 2015 with its BRRD implementing legislation) the DGSD2 will swell the pool of protected deposits.

In October 2014 the PRA published two consultation papers on DGSD2 implementation covering in particular revisions to the "single customer view" regime and rules on continuity of access to insured deposits. In January 2015, the PRA launched a further consultation on implementing rules on dormant accounts and transitional arrangements. It is already clear that the scope of 'deposits' subject to the rules is a puzzle and advocacy efforts continue.

On 5th March 2015 regulations implementing DGSD2 in the UK were published (Deposit Guarantee Scheme Regulations 2015 (SI 2015/486)). The Regulations implement certain requirements of the DGSD2, including laying down procedural requirements that apply to the PRA and the Financial Services Compensation Scheme (FSCS) established under Financial Services and Markets Act 2000 (FSMA) when performing their duties under the DGSD, which relate to the protection of certain deposits in UK credit institutions. They also amend FSMA to give effect to notification requirements set out in the DGSD2.

The Regulations came into force on 26th March 2015, save for Regulations 5 and 7 which will come into force on 3rd July 2015.

*Links:*

Recast Deposit Guarantee Scheme Directive
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0049&from=EN

UK consultations

CP 20/14
http://www.bankofengland.co.uk/pra/Documents/publications/cp/2014/cp2014.pdf

CP 21/14
http://www.bankofengland.co.uk/pra/Documents/publications/cp/2014/cp2114.pdf

CP 4/15
http://www.bankofengland.co.uk/pra/Documents/publications/cp/2015/cp415.pdf

## EBA Guidelines on the security of internet payments

On 19 December 2014, the European Banking Authority ("**EBA**") published its Guidelines on the security of internet payments. The Guidelines, which are intended to set minimum security requirements for PSPs in the EU, are part of a push to create a more secure framework for internet payments across the EU and should be viewed in conjunction with the broader legislative landscape including the revised Payment Services Directive ("**PSD2**").

A consultation on the implementation of the Guidelines was carried out in October/November 2014. As the majority of respondents considered a 'one-step' implementation approach to be undesirable, and the EBA considers delay in the implementation of such Guidelines until the transposition of the PSD2 to be implausible due to the high level of fraud on internet payments, the EBA issued its Guidelines (with the substance as consulted) with an implementation date of 1 August 2015, with implementation of any potentially more stringent requirements under the PSD2 at a later stage.

Requirements detailed by the final Guidelines include formal security policies for internet payment services, the carrying out of thorough risk assessments in relation to the security of internet payments and related services, strong customer identification and transaction monitoring. In addition, the Guidelines set out some 'best practice examples' which PSPs are encouraged to adopt.

Whilst the Guidelines state that competent authorities and financial institutions *"must make every effort to comply with the guidelines"*, such authorities may notify the EBA that they do not intend to comply. The issue with such an approach is that it contravenes the ideas of harmonisation under, for example, the PSD.

*Link:*

EBA Guidelines on the security of internet payments

https://www.eba.europa.eu/documents/10180/934179/EBA-GL-2014-12+%28Guidelines+on+the+security+of+internet+payments%29.pdf/f27bf266-580a-4ad0-aaec-59ce52286af0

## All (payment) systems go!

In January 2015 the UK's Payment Systems Regulator (PSR) ran a consultation on the regulation of payment systems in the UK.

The consultation outlines the PSR's views on the key challenges facing the industry and outlines the new regulator's policy proposals and regulatory approach. The PSR will operate within a framework that requires it to pursue three statutory objectives: (i) promoting competition in the market for payment systems and services they provide; (ii) promoting innovation in the development of payment systems; and (iii) ensuring that payment systems are operated and developed in a way that considers and promotes the interests of service users.

Following these consultations, the PSR has issued a policy statement on 25 March 2015 confirming the PSR's regulatory framework. The PSR has also indicated that it is launching two market reviews - one into the ownership and competitiveness of infrastructure provision and one into the supply of indirect access to payment systems. In addition, it has established a programme of work on items such as card systems (including work on national interchange fee levels under the MIF Regulation) and has indicated that in terms of "pipeline" projects, it has in mind to look at ATM interchange fees and consumer redress in the future.

The PSR becomes fully operational on 1 April 2015 and the majority of PSR rules and requirements come into effect over the course of Summer 2015.

*Links:*

PSR Consultation Paper 2014

http://www.fca.org.uk/your-fca/psr/psr-cp14-1-a-new-regulatory-framework-for-payment-systems-in-the-uk

HMT Consultation Paper 2014

https://www.gov.uk/government/consultations/designation-of-payment-systems-for-regulation-by-the-payment-systems-regulator/designation-of-payment-systems-for-regulation-by-the-payment-systems-regulator

PSR Policy Statement 2015:

https://www.psr.org.uk/psr-publications/policy-statements/psr-ps-15.1

PSR Programme of Work 2015:

https://www.psr.org.uk/sites/default/files/media/PDF/Policy%20Work%20Programme%202015.pdf

http://www.fca.org.uk/static/documents/psr/psr-cp14-1-cp-a-new-regulatory-framework-for-payment-systems-in-the-uk.pdf

## The tough new rules on settlement discipline (CSD Regulation)

ESMA has recently concluded its consultation on the Level 2 measures necessary to implement the CSD Regulation. The consultation included draft technical standards covering settlement discipline, CSD requirements and internalised settlement, draft technical advice on penalties for settlement fails and on the substantial importance of a CSD as well as draft guidelines on the access to CCPs or trading venues by CSDs. ESMA will now review the consultation responses before final rules and guidelines will be published – it is expected that this could be as early as May or June 2015.

Meanwhile, the UK has been pressing ahead with national implementation measures publishing the new Central Securities Depositories Regulations in November 2014. The new regulations appoint the Financial Conduct Authority as the responsible supervisor for trading venues (including exchanges and multilateral trading facilities). Responsibility for authorisation and supervision of CSDs is given to the Bank of England while the Prudential Regulation Authority takes charge of supervising banking type ancillary services provided by CSDs or banks designated by CSDs.

*Links:*

ESMA consultation homepage

http://www.esma.europa.eu/news/CSDR-ESMA-consults-implementing-measures-new-settlement-regime?t=326&o=home

UK CSD Regulations 2014

http://www.legislation.gov.uk/uksi/2014/2879/pdfs/uksi_20142879_en.pdf

Clifford Chance client briefing: EU adopts new rules for CSDs

http://www.cliffordchance.com/briefings/2014/09/eu_adopts_new_rulesforcsds.html

## MIF Regulation – end of the runway for Airmiles?

In December 2014, the EU Council and Parliament reached political agreement on the Regulation on interchange fees for card-based payment transactions ("**MIF Regulation**"), the aim of which is to stipulate technical and business requirements for payment card transactions within the EU. It is expected that the MIF Regulation will change the face of the European cards market as it limits interchange fees which may be levied in respect of debit and credit card transactions. Both the Permanent Representatives Committee of the EU Council and the Parliament's Committee on Economic and Monetary Affairs approved the compromise text in January 2015. The Parliament voted to adopt the MIF Regulation on 10 March 2015 and it will now go to the European Council for formal endorsement before it is published in the Official Journal of the European Union.

*Links:*

Final compromise text, published 16 January 2015

http://data.consilium.europa.eu/doc/document/ST-5119-2015-INIT/en/pdf

Text adopted by the Parliament on 10 March 2015

http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0048#top

## Cyber attacks – the FCA guide

As part of their Handbook, in April 2014 the UK FCA published 'Financial Crime: a guide for firms'. Whilst not containing binding rules, the aim of the guide is to provide information and assistance to enable firms to reduce their financial crime risk.

The guide covers a variety of issues, from financial crime systems and controls, to fraud and data security. In its attempt to help firms adopt a *"more effective, risk-based and outcomes-focussed approach to mitigating financial crime risk"*, not only does the FCA set out the basic principles it expects of firms, but further emphasises standards expected through self-assessment questions and examples of both good and poor practice. Expectations include responsibility and active engagement of senior management, policies and procedures which are understood by all, and management of the risk of staff being rewarded for taking unacceptable financial crime risk.

The previous two updates, and development of legislation such as the Cyber-Security Directive, highlight a very visible trend towards legislation-mandated increased online protection and cyber security in light of technological and online developments and the threat of cyber-crime/cyber-terrorism.

*Link:*

Financial crime: a guide for firms

https://fshandbook.info/FS/html/FCA/FC

## The New Shareholders Rights Directive – Is it on your Radar?

In April 2014 the Commission published a proposed new Shareholders Rights Directive ("**New SRD**") which is likely to have a significant impact on intermediaries that provide securities services relating to EU corporates (whether to end investors or other intermediaries) as well as end investors. The aim of the New SRD is to ensure shareholders can be identified and engaged and that intermediaries facilitate the exercise of shareholder rights.

It is expected that the New SRD will be adopted at some point in late 2015 or early 2016. However, as it is currently going through the European legislative process (the latest Council compromise text being released in January 2015 and amendments tabled in the Parliament's committee in early February 2015), we could see many changes to the text of the New SRD before it reaches this point. The question is, with EMIR, CSDR, PSD2 and all other manner of acronyms crossing the desk of a busy lawyer, is the new SRD on your radar?

*Links:*

Commission proposal

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2014:213:FIN&from=EN

Latest Council compromise text, January 2015

http://data.consilium.europa.eu/doc/document/ST-5215-2015-INIT/en/pdf

Amendments tabled in Parliament committee, February 2015

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-549.129+01+DOC+PDF+V0//EN&language=EN

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-549.159+01+DOC+PDF+V0//EN&language=EN

Clifford Chance client briefing: Shareholder Rights Directive II – is it on your radar?

http://www.cliffordchance.com/briefings/2014/10/shareholder_rightsdirectiveiiisitonyou.html

## Butch CASSidy and the client asset kid

In June 2014 the FCA announced its final policy and published rule changes following its review of the client assets regime for investment business begun a year earlier. Feedback from that 2013 consultation and final rules are set out in a policy statement (PS14/9). The new rules cover client money, custody assets, client information, mandates, multiple client money sub-pools and indirect client clearing. The rules are annexed to the policy statement as FCA Client Assets Sourcebook (Amendment No 5) Instrument 2014 (FCA 2014/36). The new rules apply as follows:

- with effect from 1 July 2014, changes to CASS clarified some existing FCA rules and guidance and introduced an option within CASS to allow firms to choose to operate multiple client money pools (which are important to enabling the porting of client positions and assets under EMIR following a clearing member default); and
- with effect from 1 December 2014, more changes to CASS took effect. These changes included arrangements for the provision of information to clients and for the documentation of relationships between firms and new counterparties with whom firms place custody assets or client money. These changes may require firms to repaper some existing arrangements.

Remaining rules made under PS 14/9 will come into force in June 2015.

*Links:*

FCA policy statement and final rules

http://www.fca.org.uk/static/documents/policy-statements/ps14-09.pdf

Deposit Guarantee Scheme Regulations 2015

http://www.legislation.gov.uk/uksi/2015/486/pdfs/uksi_20150486_en.pdf

## With great power, comes great responsibility (FCA competition market study)

In February 2015, the FCA announced that it will be launching a market study into competition in investment banking and corporate banking services, following the publication of its review into competition in the wholesale sector. With concerns over transparency, conflicts of interest and the impact of bundling services on competition, the aim of the study is to ensure effective competition in the market. According to Christopher Woolard, director of strategy and competition at the FCA, *"the benefits of effective competition in the market could be significant"*. The terms of reference will be published in Spring 2015 and views will be obtained from industry, trade bodies and end users. This will be a testing ground for the FCA's new competition powers and an opportunity perhaps for the regulator to cut its teeth.

*Links:*

FCA announcement

http://www.fca.org.uk/news/fca-to-investigate-competition-in-investment-and-corporate-banking-services-following-review-of-wholesale-markets

FCA wholesale sector competition review 2014-15

http://www.fca.org.uk/news/fs15-02-wholesale-sector-competition-review-2014-15

Clifford Chance client briefing: FCA to investigate competition in investment and corporate banking services

http://www.cliffordchance.com/briefings/2015/02/fca_to_investigatecompetitionininvestmentan.html

## Are you really who you say you are? (e-ID Regulation)

Another piece of work (in the nicest possible sense) that has come about due to the rise of technology is the EU Regulation on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market (the "**e-ID Regulation"**).

The e-ID Regulation, published in the Official Journal in August 2014, seeks to enhance trust in electronic transactions in Europe and tackle issues concerning the verification of digital identities.

Not only does the e-ID Regulation establish a legal framework for electronic signatures, electronic seals, electronic document acceptability, electronic delivery and other such matters, but it also attempts to solve issues concerning online identity verification. In addition, the establishment of the principle of mutual recognition aims to create a secure environment not only in individual Member States, but throughout the EU market, and remove barriers to cross-border use of electronic identification. The e-ID Regulation will apply from 1 July 2016.

*Link:*

Text of the e-ID Regulation

http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1424723881580&uri=CELEX:32014R0910

## Financial Markets Toolkit


The Financial Markets Toolkit is our new web based tool which contains all of our global financial markets resources in a "one-stop shop". It's simple and effective, and available 24/7.

Examples of what you will find on the Toolkit include:

- New Topic Guides – a collection of materials (including relevant legislation) on various hot topics in one location;
- Videos and podcasts;
- Online registration for our Perspectives Seminars; and
- Our briefings and other reports, articles and analysis, organised to give you easier access.

To make it even easier, the Toolkit can be used on devices such as Blackberrys, smart phones and tablets. Should you wish to register for full access to our content (certain information is restricted to clients only), please contact us at FMToolkit@cliffordchance.com.

*Link:*
http://financialmarketstoolkit.cliffordchance.com

## At a glance briefings

We have a number of "At a glance" transaction services briefings available which provide a high level overview of a range of legislation, their timing and potential impact to help legal counsel and business teams get up to date with measures relevant to transaction services.

Available briefings:


**Payment Services Directive 2**


**MIF Regulation**


**Cybersecurity Directive**


**Payment Accounts Directive**


**FATF2 Regulation**

You can find all of our "At a glance" transaction services briefings, and further briefings, topic guides and resources on our Financial Markets toolkit: http://financialmarketstoolkit.cliffordchance.com



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