

International Regulatory Update

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EU Commission President delivers State of the Union address

The President of the EU Commission, Jean-Claude Juncker, has delivered his annual [State of the Union address](#) to the EU Parliament. The speech is intended to launch the interinstitutional process leading to the new work programme for the Commission in 2016. The Commission has written to the President of the EU Parliament and Prime Minister of Luxembourg, which holds the rotating Presidency of the EU Council, setting out intended legislative and non-legislative measures for the work programme. In his State of the Union address, Mr. Juncker discussed his views on the current challenges facing Europe, rather than details of the Commission's proposals.

Among other things, the President discussed the euro area and European economy, including measures to invest in the Single Market and complete Economic and Monetary Union (EMU). He highlighted the Digital Single Market, Capital Markets Union and Energy Union as projects intended to enhance the Single Market. He also highlighted the roadmap agreed by the presidents of the EU Commission, European Council, Eurogroup, European Central Bank and EU Parliament on measures to stabilise and consolidate the euro area by early 2017.

Mr. Juncker set out five areas where the Commission intends to present proposals this year, in order to:

- complete the Banking Union through a common deposit guarantee system, which Mr. Juncker suggests may be by means of a reinsurance system, legislative proposals for which will be presented before the end of 2015;
- enhance representation of the euro area within global institutions, such as the International Monetary Fund (IMF);
- create a more efficient and democratic system of fiscal surveillance through the EU Parliament, national parliaments and other partners;
- reform taxation, including the Action Plan on tax published in June 2015, Common Consolidated Corporate Tax Base (CCCTB) and adoption of the modalities of the Financial Transaction Tax (FTT); and
- work towards a more integrated EU labour market.

He also indicated that the Commission intends to present a White Paper in 2017 on more fundamental steps to reforming the euro area.

Mr. Juncker discussed the forthcoming UK referendum on membership of the EU, his views on strengthening the role of national parliaments within the EU and the Commission's actions in the Greek crisis. The other challenges discussed in his address were the refugee crisis, the situation in Ukraine and climate change.

Capital Markets Union: Commissioner Hill discusses next steps

The European Commissioner for Financial Stability, Financial Services and Capital Markets Union, Jonathan Hill, [has delivered a speech](#) at the Eurofi Financial Forum 2015.

Commissioner Hill indicated that in addition to publishing its detailed action plan on Capital Markets Union, which is expected at the end of September 2015, the Commission intends to:

- review the cumulative impact of different pieces of EU financial services legislation to explore whether they are having any unintended consequences – further details on this are expected in the coming weeks;
- carry out further work to investigate and, where necessary, remove obstacles to the cross-border marketing of investment funds;
- publish a Green Paper by the end of 2015 on how to boost choice and competition in cross-border financial services for retail consumers; and
- issue proposals on revised calibrations for Solvency II.

Commissioner Hill also stressed the need for early legislation on securitisation, infrastructure investment and on the prospectus, and called on the EU Parliament and the Council to work with the Commission to move these initiatives forward quickly.

On securitisation, the Commission intends to introduce a set of criteria that instruments will have to comply with to be counted as simple, transparent and standardised securitisations, and thus to qualify for different capital treatment. Commissioner Hill indicated that:

- one of the basic criteria for this will be that assets packaged in securitisation instruments should be simple, e.g. that the assets included in a securitisation should be sufficiently similar to each other;
- no securitisation of securitisations (for example CDOs 'squared') would qualify as simple, transparent and standardised; and

synthetic securitisations will not be included in the initial proposals.

European Supervisory Authorities report on risks and vulnerabilities in EU financial system

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), has published its [August 2015 report](#) on risks and vulnerabilities in the EU's financial system.

The report finds that risks resulting from low interest rates and search for yield remain unchanged from the March 2015 report, and that the profitability and asset quality of the EU's financial sector continues to be adversely affected by the fragile recovery of European economies.

The report identifies the following as main risks challenging financial stability:

- the low interest rate environment and its impact on the profitability and business model sustainability of financial institutions;
- the continued search for yield by financial institutions and the associated mispricing of assets;
- political and economic risks due to residual uncertainty around Greece's financial situation;
- financial market volatility and structural concerns about economic prospects of emerging market economies, particularly in China; and
- reductions in market liquidity.

The report highlights the need for further efforts by financial entities to clean up balance sheets, address legacy assets and non-performing loans. The report also calls for further appropriate and harmonised regulation promoting the adequate marketing of investment products and complementing recent plans to support market-based funding.

Remuneration: EBA reports on trends and 2013 high earner data

The EBA [has published a report](#) on remuneration trends across the EU and aggregated data on earners in credit institutions and investment firms earning EUR 1 million or more per year, for the year 2013.

The report is the first of an annual update on remuneration practices and high earners data. The EBA reports:

- a decrease in high earners from 2012 but an increase in the percentage of high earners;

- insufficient harmonisation of remuneration practices within institutions operating in different Member States and between different institutions; and
- a reduction in the ratio of variable to fixed remuneration paid to identified staff.

The EBA intends to publish figures for 2014 by the end of 2015. The 2014 figures will reflect the entry into force of CRD 4 in 2014, which introduced a cap on variable remuneration, and the regulatory technical standards (RTS) on identified staff (Commission Delegated Regulation No. 604/2014).

ECB publishes opinion on draft German law on bank resolution

The European Central Bank (ECB) [has published an opinion](#) on German proposals for a draft law adapting the national bank resolution law to take into account the Single Resolution Mechanism (SRM), including the interaction between the law on recovery and resolution and the SRM Regulation. The draft law also proposes the statutory subordination in bank insolvency proceedings of certain senior unsecured debt instruments issued by credit institutions in order to facilitate the application of bail-in.

The opinion discusses:

- the potential impact on the ECB's Banking Union responsibilities arising from the German Federal Ministry of Finance issuing binding regulations;
- the proposals for the subordination of certain senior unsecured debt instruments in light of the Financial Stability Board (FSB) proposals on total loss-absorbing capacity (TLAC) for global systemically important banks (G-SIBs) and the Eurosystem's collateral eligibility requirements; and

the transfer of the contributions from the German resolution fund to the Single Resolution Fund (SRF), including the use of the contributions accumulated by means of the bank levy between 2011 and 2014.

EMIR: ECB publishes response to EU Commission review

The ECB [has published its response](#) to the EU Commission consultation on the review of the European Market Infrastructure Regulation (EMIR).

Among other things, the response sets out the ECB's views on:

- the impact of EMIR on non-financial counterparties (NFCs);

- the collegial supervisory process for central counterparties (CCPs), including the possibility of updating EMIR to reflect the specific role of the Single Supervisory Mechanism (SSM);
- margin requirements, including proposals to further enhance the requirements for mitigating procyclicality;
- margining models, in particular the resilience of portfolio margining models in times of stress;
- clarifications to the definitions and scope of EMIR;
- international convergence for standards of transaction reporting;
- cross-border activity in the OTC derivatives market; and
- requirements applicable to CCPs and additional requirements for trade repositories (TRs).

The ECB also highlights work underway by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) on the standardisation of CCP requirements and sets out its view that EMIR should be consistent with the outcome of CPMI-IOSCO's work in order to ensure international convergence.

REMIT: ACER publishes annual report on implementation progress

The Agency for the Cooperation of Energy Regulators (ACER) has published its [third annual report](#) on its activities under the EU Regulation on wholesale energy market integrity and transparency (REMIT – Regulation No. 1227/2011) for the year 2014.

Following the adoption of the Commission Implementing Regulation (EU No. 1348/2014) in 2014, the report discusses ACER's implementation activities including:

- registration of market participants;
- data collection and data sharing;
- market monitoring; and
- the coordination and cooperation framework.

The report also highlights other activities related to ACER's market monitoring strategy and coordination activities.

The obligation for trade and fundamental data reporting of wholesale energy contracts executed at organised market places will become applicable on 7 October 2015.

G20 Finance Ministers issue communiqué following Ankara meeting

G20 Finance Ministers and Central Bank Governors [have published a communiqué](#) following their meeting in Ankara on 4-5 September 2015. At the meeting the G20 Ministers and Governors discussed ongoing economic developments, G20 growth prospects and recent volatility in financial markets.

Among other things, G20 Ministers and Governors discussed the global financial reform agenda, highlighting in particular:

- their expectation that the total loss-absorbing capacity (TLAC) standard for global systemically important banks (G-SIBs) and higher loss absorbency requirements for global systemically important insurers (G-SIIs) should be finalised by the Antalya G20 Leaders summit in November 2015;
- the anticipated completion of work on the extension of the contractual recognition of temporary stays on early termination rights for OTC derivatives contracts;
- work this year on central counterparties' (CCPs') resilience, recovery planning and resolvability, misconduct risk and withdrawal from correspondent banking and remittance services;
- continued work on reporting of OTC derivative contracts to trade depositories (TRs) and cross-border access of authorities to TR data; and
- the Financial Stability Board's (FSB's) expected first annual report on the implementation and effects of all reforms, including any material unintended consequences, particularly for Emerging Market and Developing Economies (EMDEs).

The G20 Ministers and Governors also discussed possible alternative capital market instruments in recognition of major financing needs for long term investments, including measures to support small and medium-sized enterprises (SMEs).

Order extending authorised persons regime to certain non-UK firms published

The Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) (Amendment) Order 2015 ([SI 2015/1660](#)) has been published. The Order extends the authorised persons regime to relevant non-UK incorporated deposit-takers and investment firms. The authorised persons regime under Part 4 of the Financial Services (Banking Reform) Act 2013, which implements recommendations from the Parliamentary Committee on

Banking Standards, applies to UK banks, building societies and investment firms regulated by the Prudential Regulation Authority (PRA). The Order extends the scope of the instrument that made transitional and savings provisions in connection with the commencement of Part 4 of the Banking Reform Act and corresponding changes to FSMA 2000 (SI 2015/492) in order to bring non-UK firms within its scope.

The Order also brings non-Solvency II insurance and reinsurance firms within the scope of SI 2015/492, following consultation by the Financial Conduct Authority (FCA) and PRA.

The Order will come into force on 1 October 2015.

New Act on support for borrowers prepared in Poland

[A new draft Act](#) on support for borrowers in a difficult financial situation has been prepared. The objective of the Act is to support borrowers who have been affected by a change in exchange rates or interest rates, or by the loss of employment. Borrowers would be able to apply for support of up to PLN 1,500.00 per month; the financial support could be disbursed to the borrowers for no more than 18 months. Under the draft, a special Borrower Support Fund of PLN 600 million, from which the support for borrowers is to be provided, would be established within BGK. This Fund would be provisioned by banks granting mortgage loans, proportionally to their portfolios of such loans.

The bill has been referred to the Sejm (Parliament).

Polish Ministry of Finance prepares amendment to Act on Payment Services

The Polish Ministry of Finance [has prepared a draft Act](#) Amending the Act on Payment Services with the purpose of adjusting Polish regulations concerning payment transactions concluded with the use of payment cards to the provisions of Regulation 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (MIF Regulation).

The draft has been submitted for public consultation.

Polish Financial Supervision Authority sets out position on fund managers' risk management systems

The Polish Financial Supervision Authority (PFSA) [has presented its position](#) regarding the functioning of fund managers' risk management systems. The Authority noted that an effective system for managing risk by fund managers should guarantee that an appropriate level of

liquidity of the funds is maintained in all market conditions, and in particular in destabilised market conditions. Furthermore, according to the Authority, fund managers' risk management systems should ensure a proper flow of information between the various organisational units of the fund manager which are responsible for risk management and managing the investment portfolios of funds.

In its position the Authority instructed investment fund managers to verify the functioning of the internal control systems in the managers as regards the liquidity and the liquidity risk of investment funds by 30 September 2015.

SSE, SZSE and CFFEX issue circular seeking public comments on introduction of circuit breaker

The Shanghai Stock Exchange (SSE), the Shenzhen Stock Exchange (SZSE) and the China Financial Futures Exchange (CFFEX) [have issued a circular](#) seeking public comments on introducing a circuit breaker.

SSE, SZSE and CFFEX intend to introduce a circuit breaker mechanism in the Chinese securities markets. When the intraday CSI 300 index rises or falls to a certain threshold, all stocks, convertible bonds, equity warrant bonds, stock options and other equity-related varieties listed on the stock exchanges and all stock index futures (including the CSI 300, CSI 500 and SSE 50 Index Futures) on CFFEX will be suspended from trading for a certain period.

When the threshold of 5% is triggered, trading will be suspended for 30 minutes. When the 5% threshold is triggered from 14:30 onwards, and at any time throughout the day the 7% threshold is triggered, the suspension will continue to market closing. The circuit breaker may be triggered once a day at most.

If the opening index has triggered the 5% threshold, the circuit breaker will be implemented from 9:30 and trading will be suspended for 30 minutes. If the opening index has triggered the 7% threshold, the circuit breaker will be implemented from 9:30 and trading will be suspended till closing. The circuit breaker will only apply in the morning at the stock index futures delivering.

If the morning trading session is not enough for the circuit breaker duration, it will be supplemented by the afternoon trading session; the noon closing time will not be calculated into the circuit breaker duration. The circuit breaker mechanism will be effective all day.

HKMA issues circular regarding reporting of OTC derivative transactions

The Hong Kong Monetary Authority (HKMA) [has issued a circular](#) to remind authorised institutions to prepare for complying fully with the Securities and Futures (OTC Derivative Transaction – Reporting and Record Keeping Obligations) Rules, including putting in place adequate internal policies, systems and control procedures and staff training.

To facilitate the implementation of the mandatory reporting requirements, the HKMA has developed the Hong Kong Trade Repository (HKTR) for prescribed persons to report their over-the-counter (OTC) derivatives transactions. The circular emphasises that, as the information in the HKTR will be used by the regulators to perform market surveillance, the information provided by reporting entities to the HKTR should be accurate and complete. It further reminds authorised institutions that it is their responsibility to submit reportable transactions within the prescribed timeline and ensure that the transaction information provided to the HKTR is accurate and complete. Failure to do so will be regarded as a breach of the reporting requirements.

The HKMA expects authorised institutions to attend briefing sessions organised by the HKTR on procedures to submit transactions, amend information errors, or suppress uncertain transactions if it is ascertained that they do not have a reporting obligation.

HKMA issues circular regarding intraday and overnight repo under Renminbi liquidity facility

The HKMA [has announced](#) that it will further enhance the RMB Liquidity Facility by introducing a bilateral arrangement in respect of the provision of intraday and overnight repo to replace the existing tripartite arrangement with effect from 23 November 2015.

Under the existing arrangement, authorised institutions participating in Renminbi (RMB) business (participating authorised institutions) are required to sign a tripartite Master Sale and Repurchase Agreement (tripartite repo agreement) with the HKMA and the RMB Clearing Bank, in order to obtain intraday and overnight liquidity under the RMB Liquidity Facility. Starting from 23 November 2015, the tripartite arrangement will be replaced by a bilateral arrangement, and participating authorised institutions are required to sign a bilateral Master Sale and Repurchase Agreement (bilateral repo agreement) with the HKMA.

According to the HKMA, the new bilateral arrangement will not affect how participating authorised institutions may tap intraday and overnight liquidity under the RMB Liquidity Facility. The only substantive change is on interest payment, where the HKMA will collect interest from participating authorised institutions directly instead of going through the RMB Clearing Bank. Participating authorised institutions are advised to refer to the revised Central Moneymarkets Unit (CMU) operating procedures to be issued for more details.

Mandatory central clearing and single sided reporting rules finalised and published

[Regulations](#) to provide single sided reporting relief for entities with lower levels of over-the-counter derivatives have been finalised and published. The regulations also implement central clearing of prescribed classes of over-the-counter interest rate derivatives in Australia.

The final regulations implementing central clearing are almost identical to the draft regulations, whilst more substantial amendments were made to the draft regulations dealing with single sided reporting. Safe harbour provisions have been included for phase 3 entities in certain instances.

CFTC requires more market participants to become members of a registered futures association

The Commodity Futures Trading Commission (CFTC) [has adopted a rule](#) that requires each person registered with the CFTC as:

- an introducing broker;
- a commodity pool operator; or
- a commodity trading advisor (CTA)

to become and remain a member of at least one registered futures association. The National Futures Association (NFA) is currently the only registered futures association and serves a self-regulatory role. This new membership requirement has the effect of subjecting these CFTC-registered entities to the NFA's rules and oversight capabilities. CFTC-registered futures commission merchants, swap dealers, and major swap participants are already required to be NFA members.

An exemption from this membership requirement is available to the limited category of registered CTAs who qualify for an exemption from registration pursuant to CFTC regulation 4.14(a)(9) (generally, people providing advice to the general public, not to specific clients).

All persons subject to this membership requirement must comply by no later than 31 December 2015.

RECENT CLIFFORD CHANCE BRIEFINGS

Recent Amendments to China's Bribery Laws Further Strengthen its Enforcement Powers

On 29 August 2015, the National People's Congress of China promulgated the 9th Amendment to the Criminal Law. Included in the amendment are changes to the bribery-related provisions to expand the criminal fines applicable to individuals, to criminalize the act of giving bribes to 'influential persons', and to restrict the availability of penalty exemption as leniency for bribe-givers. The changes are consistent with China's anti-corruption crackdown and bring China's statutory enforcement authority amongst the world's strictest.

This briefing paper discusses these changes.

http://www.cliffordchance.com/briefings/2015/09/recent_amendmentstochinasbriberylawsfurthe.html

Foreign manufacturers may soon be allowed to distribute their products in Saudi Arabia through wholly-owned subsidiaries

On 5 September 2015, pursuant to a Royal Order, the government of Saudi Arabia announced that it would allow foreign investors to fully own wholesale and retail companies in Saudi Arabia. This is a major policy shift for the government, which until now has required wholesale and retail companies in Saudi Arabia to have at least 25% of their shares owned by Saudi companies or nationals.

This briefing paper discusses the new policy.

http://www.cliffordchance.com/briefings/2015/09/foreign_manufacturersmaysoonbeallowedt.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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