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Briefing note

International Regulatory Update

12 - 16 October 2015

IN THIS WEEK'S NEWS

- AIFMD: Steven Maijoor reports to ECON Committee on passport
- Mortgage Credit Directive: EBA consults on benchmark formula
- Basel Committee publishes ninth progress report on adoption of Basel regulatory framework
- PRA consults on prudential requirements for ring-fenced bodies and ensuring operational continuity in resolution
- Bank of England and Financial Services Bill introduced to Parliament
- HMT proposes extension of senior managers and certification regime to all sectors of financial services industry
- Transparency Directive: HM Treasury publishes statutory instrument on implementation
- HMT publishes draft Order on additional disciplinary powers for FCA and PRA
- FCA and HMT call for input on financial advisory services
- Treasury Select Committee publishes FCA's response to recommendations on internal procedures
- CRD 4: CSSF issues circular regarding implementation in Luxembourg
- Amendments to Polish Act on Consumer Credit enter into force
- Polish Financial Supervision Authority publishes letter on granting of linked credit facilities by banks
- Polish Financial Supervision Authority sets out position on examination of complaints by financial market entities
- CSRC and relevant exchanges consult on draft rules for programme trading on securities and futures markets
- SFC issues circular on application lapse policy for SFC-authorised mandatory provident fund products and pooled retirement funds
- MAS consults on proposed liquidity coverage ratio disclosure requirements

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- MAS consults on proposed amendments to MAS Notice 637 to implement revisions to Basel III capital framework
- Recent Clifford Chance briefings: Derivatives regulation for corporates; the rise of structured debt in Asia-Pacific; TPP; and more. Follow this link to the briefings section.

AIFMD: Steven Maijoor reports to ECON Committee on passport

Steven Maijoor, the chair of the European Securities and Markets Authority (ESMA), has appeared before a scrutiny session of the EU Parliament Committee on Economic and Monetary Affairs (ECON) regarding ESMA's work in relation to the passport under the Alternative Investment Fund Managers Directive (AIFMD).

In July 2015, ESMA submitted advice to the ECON Committee on extending the AIFMD passport to six non-EU jurisdictions. ESMA recommended extending the passport to Guernsey and Jersey, and considered that Switzerland would remove any remaining obstacles with the enactment of pending legislation. A definitive view on Hong Kong, Singapore and the United States was not reached at the time.

Mr. Maijoor told the Committee that ESMA's planned next steps in its work on the AIFMD passport are:

- to continue its assessment of Hong Kong, Singapore and the US with a view to reaching definitive conclusions on whether to extend the passport to those countries;
- to begin to assess a second group of non-EU countries: Australia, Canada, Japan, the Cayman Islands, the Isle of Man and Bermuda; and
- to make plans to put into place the framework foreseen by the co-legislators in case the passport is extended to one or more non-EU countries, including the functioning of the passport system and strengthened supervisory cooperation.

Mortgage Credit Directive: EBA consults on benchmark formula

The European Banking Authority (EBA) has launched a consultation on its benchmark rate under the Mortgage Credit Directive (MCD – Directive 2014/17/EU). The MCD specifies that creditors must provide consumers with pre-contractual information in the form of the European standardised information sheet (ESIS), which should include two illustrative examples for variable rate mortgages that demonstrate:

- how variability could affect the actual level of annual percentage rate of charge (APRC); and
- the variability of instalments, including an illustration of the maximum possible instalment amount.

Under the MCD, these illustrations should be calculated on the basis of a benchmark rate set by the EBA for which the EBA has devised a draft formula, which is set out in the consultation paper and is intended to ensure the rate is representative of national circumstances through the use of an existing external reference rate as a key input, which will be either the European Central Bank (ECB) rate for euro area Member States or the central bank rate for non-euro area Member States. The EBA has proposed that the underlying rate should be calculated on an annual basis.

Comments on the consultation are due by 20 November 2015.

Basel Committee publishes ninth progress report on adoption of Basel regulatory framework

The Basel Committee on Banking Supervision (BCBS) has published an updated progress report on the adoption status of Basel III regulations for each BCBS member jurisdiction as of end-September 2015. The report focuses on the status of domestic rule-making processes to ensure that the Basel standards are transformed into national law or regulation according to the internationally agreed timeframes.

The BCBS reports that all 27 member jurisdictions have final risk-based capital rules in place, and all but two members have published final liquidity coverage ratio (LCR) regulations. Member jurisdictions are now working on the implementation of the leverage ratio, the systemically important banks (SIBs) framework and the net stable funding ratio (NSFR).

PRA consults on prudential requirements for ring-fenced bodies and ensuring operational continuity in resolution

The Prudential Regulation Authority (PRA) has published two consultation papers on structural reform proposals to ensure that ring-fenced banks have sufficient capital resources to withstand shocks originating from other parts of their group or the wider financial system and can be separated from their groups in the event of failure. In particular, the consultation papers set out PRA proposals for prudential requirements for ring-fenced bodies (RFBs) and operational continuity of critical shared services in bank resolution.

The consultation on ring-fencing (CP37/15) is relevant to banks that will be subject to the ring-fencing requirement under the Financial Services and Markets Act 2000, as amended by the Financial Services (Banking Reform) Act 2013, and sets out policy proposals in relation to:

- capital and liquidity requirements applicable to RFBs and the PRA's proposals for determining the adequacy of an RFB's financial resources;
- the management of intragroup exposures and arrangements; and
- the use of financial market infrastructures.

The paper also sets out a preliminary discussion on potential reporting requirements, but does not include policy proposals. The PRA intends to consult by mid-2016 on proposals in relation to the data it intends to collect to support its supervisory function.

The consultation paper is intended to complement the PRA's previous policy statement on ring-fencing (PS10/15), which discusses the legal structure, governance and continuity of services and facilities. Comments on the consultation are due by 15 January 2015.

Alongside CP37/15, the PRA is also consulting on its proposed framework for ensuring operational continuity of firms' critical shared services to facilitate recovery action, resolution or post-resolution restructuring. The consultation paper (CP38/15) discusses the PRA's proposals for ensuring critical shared service providers are capable of continuing or replacing services in resolution and have sufficient financial resources to ensure firms operate in resolution. The proposals specify that for groups, shared service providers should have clearly defined reporting lines that are capable of continuing in resolution and, in a failure scenario, the structure of services should not be preferential to any particular group entity. The PRA intends that the scope of the rules will be limited to those firms that receive critical shared services supporting functions that are critical to the economy, which will include RFBs and global systemically important banks (G-SIBs) but may not be limited to these entities.

The PRA and Bank of England (BoE) are jointly considering the scope of application of the operational continuity rules. The PRA has announced that it intends to publish an addendum to the consultation, which will define the scope of application, alongside the BoE's forthcoming consultation on the calibration of the minimum requirement for own funds and eligible liabilities (MREL). As such, the PRA has delayed specifying the closing date for the consultation, which will be included in the addendum.

Bank of England and Financial Services Bill introduced to Parliament

The UK Government has introduced the Bank of England and Financial Services Bill into the House of Lords. Introduction of the Bill follows a technical consultation on Bank of England (BoE) reform published in July 2015. HM Treasury (HMT) has published a feedback statement to accompany the introduction of the Bill.

The Bill makes provision to make certain changes to the governance, transparency and accountability structures at the BoE and includes measures on the arrangements between HMT and the BoE relating to resolution. Among other things, the Bill also includes provision for the extension of the Senior Managers and Certification Regime (SM&CR) to all sectors of the financial services industry. An explanatory memorandum has been prepared by HMT and published alongside the Bill.

Proposals in the Bill on amendments to the governance and accountability arrangements at the BoE include:

- ending the Prudential Regulation Authority's (PRA's) status as a subsidiary of the BoE and fully integrating the PRA into the Bank through a transfer of its functions to a new statutory Prudential Regulation Committee (PRC) to be established within the Bank. The Bill includes safeguards to ensure that the Bank's functions as Prudential Regulation Authority are operated independently from the Bank's resolution functions in order to comply with EU legislation and the Basel Core Principles on Supervision;
- moving the Monetary Policy Committee (MPC) to a schedule of a minimum eight meetings per year;
- reducing the size of the BoE's Court of Directors to make it a more focused unitary board, placing the new position of Deputy Governor for Banking and Markets in legislation and adding that role to the Court of Directors and Financial Policy Committee (FPC);
- adjusting the statutory basis of the FPC from a Committee of the Court to a Committee of the Bank, in line with the MPC and new PRC; and
- bringing the BoE under the remit of the National Audit Office.

The Bill also includes measures intended to enhance HMT's powers to ensure that public funds are applied appropriately in a financial crisis by setting obligations on the BoE to provide HMT with information on proposed resolution options being considered by the BoE. Moreover, the Bill specifies powers for HMT to obtain additional information in relation to the implications for public funds of the failure of a bank or other financial institution. A draft Memorandum of Understanding (MoU) between HMT and the BoE on resolution planning and financial crisis management has also been published.

The Bill's Second Reading in the House of Lords is scheduled to take place on 26 October 2015.

HMT proposes extension of senior managers and certification regime to all sectors of financial services industry

HMT has published a policy paper announcing the Government's intention to extend the senior managers and certification regime (SM&CR) to all sectors of the financial services industry, including insurers, investment firms, asset managers, insurance and mortgage brokers and consumer credit firms. The proposals for the extended SM&CR include:

- an approval regime focused on senior management, requiring firms to provide documentation setting out the scope of senior manager's responsibilities;
- a requirement on firms to certify that individuals performing a function that could cause significant harm to a firm or its customers are fit and proper;
- a power for regulators to apply enforceable Rules of Conduct to any individual who can impact their respective statutory objectives; and
- a statutory duty on senior managers to take reasonable steps to prevent regulatory breaches in their areas of responsibility and, in the event of misconduct, the possibility that managers may be found guilty of misconduct if they failed to take necessary steps.

The policy paper discusses the burden of proof for misconduct, which will fall on the regulators and will supersede the 'reverse burden of proof' in the existing SM&CR for the banking sector.

The SM&CR will come into operation for banks, building societies, credit unions and PRA-regulated investment services on 7 March 2016, with the exception of the rules on the presumption of responsibility and requirement to notify breaches of conduct rules announced in the policy paper. Banking sector firms must complete certification of existing staff by 7 March 2017.

The Government intends that the extended regime will be applicable to all sectors of the financial services industry during 2018.

The proposals form one element of the Bank of England and Financial Services Bill, which was introduced at First Reading into the House of Lords on 14 October 2015.

Transparency Directive: HM Treasury publishes statutory instrument on implementation

HMT has published the Transparency Regulations 2015 (SI 2015/1755), which implement in part the EU Transparency Directive Amending Directive (Directive 2013/50), the transposition deadline for which is 26 November 2015.

The Regulations make amendments to Part 6 of the Financial Services and Markets Act 2000 (FSMA). They also amend FSMA provisions concerning disregarded holdings in the definition of 'controller' and for the purposes of acquisitions and disposals of major shareholdings in authorised persons (in Part 12 of FSMA), and in recognised investment exchanges (in Chapter 1A of Part 18 of FSMA). The Financial Conduct Authority (FCA) intends to make amendments to transparency rules under the provisions of FSMA amended by regulations 2 and 5, and for that reason those regulations are brought into force on 1 November 2015 rather than on the transposition date of 26 November 2015. Regulation 3 which transposes Article 21(2) of the Transparency Directive is also brought into force on 1 November 2015. HMT has also published an explanatory memorandum to the Regulations.

HMT publishes draft Order on additional disciplinary powers for FCA and PRA

HMT has published the draft Financial Services and Markets Act 2000 (Misconduct and Appropriate Regulator) Order 2015, which confers additional disciplinary powers on the FCA and PRA under FSMA.

The draft Order makes two amendments to FSMA in order to:

- implement Articles 46(2)(i) and 48(1) of the AIFMD and confer disciplinary powers on the FCA in circumstances where individuals working in a financial services firm are knowingly concerned in a breach by that firm of requirements imposed by the Alternative Investment Fund Managers Regulations 2013; and
- make either the FCA or the PRA the 'appropriate regulator' under Part 5 of FSMA in order that, amongst other things, the PRA may enforce certain

requirements against a financial services firm where approval for an individual to perform functions in that firm was given by the PRA, an individual is performing functions specified by the PRA or where the requirement to perform functions arises in connection with rules of conduct made the PRA.

HMT has published an explanatory memorandum alongside the draft Order.

FCA and HMT call for input on financial advisory services

The FCA and HMT have published a joint call for input to the first stage of their joint Financial Advice Market Review (FAMR), which was announced on 3 August 2015. The call for input seeks views and evidence from stakeholders on how financial advice could work better for consumers.

The FCA and HMT are seeking views on:

- advice gaps for consumers without significant wealth or income;
- barriers to people seeking advice;
- barriers to firms providing advice;
- opportunities for online services in offering advice; and
- how to encourage demand for financial advice.

Alongside the call for input for FAMR, HMT have also published a consultation paper on publicly-funded guidance services, in particular the Money Advice Service (MAS), Pension Wise and the Pensions Advisory Service (TPAS). HMT is seeking views on:

- levels of demand for these services;
- how such services should be structured and funded; and
- how to increase the effectiveness of these services.

Moreover, the PRA has set out proposals for all KFHs at insurers to have an up-to-date and agreed document setting out their scope of responsibilities (SoR) and for these insurers to retain SoR documentation along with associated governance maps for ten years for all Solvency II insurers and six years for all NDFs.

The two consultations are intended to complement one another and provide the FCA and HMT with a comprehensive view of the advisory landscape. Final recommendations from FAMR are expected ahead of the Government's Budget in 2016. Comments on both consultation are due by 22 December 2015.

Treasury Select Committee publishes FCA's response to recommendations on internal procedures

The House of Commons' Treasury Select Committee has published the FCA's response, dated June 2015, to the recommendations contained in the Committee's report investigating the FCA's press briefing of its business plan for 2014/15.

The Committee's investigation followed a trailed pre-briefing to a national newspaper of the business plan in March 2014, which led to an article being published ahead of an official announcement by the FCA about a thematic review of the life insurance market.

The FCA document sets out the regulator's response to each recommendation made by the Committee and the next steps that the FCA intends to take towards implementing the recommendations. The Committee's recommendations relate to:

- working relationships and information sharing;
- crisis management;
- board effectiveness;
- accountability;
- structure and strategy; and
- implementing the recommendations in a timely manner.

Where the FCA has already taken steps in relation to a Committee recommendation through its ongoing work to implement the 22 recommendations of the Davis Report, a report on the incident by Clifford Chance Partner Simon Davis commissioned by the FCA and published in December 2014, the response indicates this.

In a press release, the Select Committee has indicated that it intends to examine issues around standards and culture at the FCA further with the regulator.

CRD 4: CSSF issues circular regarding implementation in Luxembourg

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued circular 15/620 dated 6 October 2015 regarding the implementation of the Capital Requirements Directive (CRD 4) into Luxembourg law.

The circular is addressed to all persons subject to supervision by the CSSF in accordance with the law of 5 April 1993 on the financial sector (as amended) (the FSL), and essentially to institutions (i.e. credit institutions and investment firms) within the meaning of the Capital

Requirements Regulation (CRR). The circular draws their attention to:

- the law of 23 July 2015 implementing, amongst others, CRD 4 into Luxembourg law with effect from 4 August 2015;
- CSSF Regulation N° 15-01 on the calculation of institution-specific countercyclical capital buffer rates, transposing Article 140 of CRD 4; and
- CSSF Regulation N° 15-02 relating to the supervisory review and evaluation process that applies to CRR institutions.

The circular further summarises the main innovations introduced by CRD 4 and modifications of the FSL, namely:

- the requirement to hold additionally to own funds capital buffers (cousins de fonds propres) (new chapter 5 of part III of the FSL supplemented by CSSF Regulation N° 15-01);
- governance and remuneration policy requirements in the financial sector (new chapter 4bis of part II of the FSL and CSSF Regulation N° 15-02); and
- specifications as to the scope of the CSSF's supervisory powers, strengthening of the CSSF's administrative sanction powers and rules on publication of sanctions.

Finally, the CSSF notes that it is currently in the process of modifying CSSF circular 06/273 and 07/290 regarding the definition of capital ratios pursuant to Article 56 of the FSL, CSSF Regulation 14-01 on the implementation of certain discretions under the CRR as well as CSSF circular 12/552 regarding central administration, internal governance and risk management.

Amendments to Polish Act on Consumer Credit enter into force

The Act amending the Act on Oversight over the Financial Market and Certain Other Acts dated 5 August 2015 has entered into force. The Act introduces amendments to the Act on Consumer Credit.

The amendment introduces, among other things, statutory requirements the fulfilment of which is a condition for the conduct by loan institutions of activity consisting in the granting of consumer credits (this concerns, among other things, the provisions of law according to which such institutions will be able to conduct activity only in the form of a limited liability company or a joint stock company, and their minimum share capital is PLN 200,000. The funds to cover the share capital cannot come from credit facilities, loans, the issue of bonds or from undocumented sources).

Moreover, the amendment introduces the maximum amount of non-interest consumer credit costs. The non-interest credit costs resulting from a consumer credit agreement will not be due in the part exceeding the maximum non-interest credit costs calculated in the manner specified in the Act or the entire amount of the credit facility. Pursuant to the Act, non-interest credit costs are all the costs which a consumer incurs in connection with the consumer credit agreement, excluding interest. The Act also introduces amendments to the Civil Code with regard to default interest. The maximum amount of default interest and the interest on interest may not exceed six times the lombard loan rate of the National Bank of Poland.

The provisions concerning the non-interest costs and default interest will enter into force on 11 March 2016.

Polish Financial Supervision Authority publishes letter on granting of linked credit facilities by banks

The Polish Financial Supervision Authority (PFSA) has set out its position concerning the conclusion of linked credit facility agreements within the meaning of the Act on Consumer Credit, highlighting the necessity of:

- the verification by banks of the fulfilment by intermediaries of the disclosure requirements resulting from the Act on Consumer Credit;
- the introduction of stricter control procedures preventing situations in which the provisions of agency agreements are violated by intermediaries; and
- the departure from the practice of joining the form of the credit application with the credit facility agreement and their separation into two separate forms delivered to consumers.

Moreover, the PFSA recommends that banks consider the following issues:

- the inclusion in credit facility agreements of information on the possibility of the postponement in time of the delivery of goods or the provision of services in relation to the date of conclusion of a sale agreement;
- the obliging of intermediaries in cooperation agreements to inform consumers about the obligation to cover the costs of the goods or services purchased from sources other than the credit facility applied for, in the event of the bank's refusal to grant it;
- the adoption of a uniform standard in which the moment when the consumer is informed by the bank

that the credit agreement has been concluded (assuming that the consumer had the possibility of reviewing all of the terms and conditions of the credit facility agreement earlier) shall be regarded as the moment starting the 14-day period during which the consumer can rescind the linked credit facility agreement; and

- the preparation of ethical standards for credit intermediaries.

Polish Financial Supervision Authority sets out position on examination of complaints by financial market entities

The Act on the Examination of Complaints by Financial Market Entities and on the Financial Ombudsman of 5 August 2015 has come into force. The Act introduces, among other things, new rules on the handling of complaints pursuant to which financial market entities are obliged to inform their clients at the conclusion of an agreement on the procedure for the submission and handling of complaints. Moreover, in the case of a complaint being submitted, a financial market entity is obliged to examine it without undue delay, no later than within 30 days from the moment of its receipt, and in justified cases within 60 days. Failure to comply with the above time limits will mean that the complaint has been resolved in the client's favour.

The PFSA has set out its position on the need for all financial market entities to adapt their activity to the new provisions of law so that the process of handling complaints is compliant with the requirements set therein.

CSRC and relevant exchanges consult on draft rules for programme trading on securities and futures markets

The China Securities Regulatory Commission (CSRC) has published a consultation draft of administrative measures for programme trading on securities and futures markets, which are intended to regulate programme trading on securities and futures markets. Among other things, draft measures specify that:

- programme trading is broadly defined as trading on orders automatically generated or executed through a designated procedure or particular software;
- to the extent clients of securities/futures companies intend to conduct programme trading, they shall report the relevant information (as well as any change to such information) beforehand, including their identity, strategy, technical configuration parameters of the programme trading systems, location of server and contact person, to the securities/futures companies which accept their programme trading entrustment;
- domestic programme traders engaging in securities and futures trading shall not make trading orders through trading systems installed offshore, or connect onshore trading systems with offshore computers and subject onshore trading systems to the remote control of offshore computers;
- unless otherwise provided by the CSRC, a programme trader shall only use one account for programme trading; and
- the CSRC may, based on the needs for regulation and enforcement, require programme traders to provide the source code of their trading programme, detailed explanations of their trading strategy and other relevant materials.

The consultation period ends on 8 November 2015. The SSE, SZSE, CFFEX, SHFE, ZCE and DCE have published draft exchange rules for programme trading to coincide with the same consultation period.

SFC issues circular on application lapse policy for SFC-authorised mandatory provident fund products and pooled retirement funds

The Hong Kong Securities and Futures Commission (SFC) has issued a circular to applicants for SFC-authorised mandatory provident fund (MPF) products and pooled retirement funds (PRFs) on its application lapse policy.

The circular is intended to inform applicants seeking the SFC's authorisation of new MPF products (including MPF schemes, constituent funds and pooled investment funds) pursuant to the SFC Code on MPF Products and Code on Unit Trusts and Mutual Funds where applicable, and PRFs pursuant to the Code on Pooled Retirement Funds, of the application lapse policy to be adopted under a pilot arrangement with effect from 9 November 2015. The pilot arrangement is intended to enhance the authorisation process for new fund applications, and for MPF and PRF products.

The application lapse policy will apply for a six-month pilot period until 8 May 2016. The SFC may extend the pilot period and/or make changes to the application lapse policy where appropriate at the end of the pilot period. All applications for authorisation of new MPF and PRF products received by the SFC on or after the effective date will be processed as follows:

- if, for any reason, six months have elapsed from the date of take-up of an authorisation application by the SFC and no authorisation has been granted by the SFC, the application will lapse subject to the SFC's right to grant an extension at its sole discretion in limited circumstances – the application fee in respect of the application will not be refunded to the applicant; and
- once an application has lapsed, if the applicant wishes to seek the SFC's authorisation of the same product again, it must make a new application, whereupon it should pay the application fee for the new application and repeat the SFC's application procedures.

As new MPF products also require the approval of the Mandatory Provident Fund Schemes Authority (MPFA), applications for any new MPF products must first be submitted to the MPFA for its review. The approval-in-principle letter issued by the MPFA will be a prerequisite for making the application to the SFC and must be submitted to the SFC at the time of application. The six-month application period during which the SFC will process and review the application will commence from the take-up date.

In light of the introduction of the six-month application lapse policy, the application form and compliance checklist for MPF products or pooled retirement funds have been revised. The SFC has also published a set of frequently asked questions (FAQs) in respect of the six-month application lapse policy for both MPF and PRF products.

MAS consults on proposed liquidity coverage ratio disclosure requirements

The Monetary Authority of Singapore (MAS) has launched a consultation on proposed disclosure requirements to complement the liquidity coverage ratio (LCR) requirement applicable to domestic systemically important banks in Singapore (D-SIBs).

The proposed disclosure requirements comprise a common LCR disclosure template to promote consistency and comparability of liquidity disclosures by banks, and accompanying qualitative disclosures to help users understand the information published by banks. The proposed LCR disclosure requirements would take effect from 1 January 2016 and banks would be required to comply with the disclosure requirements from the date of their first reporting period after 1 January 2016.

The MAS has also proposed the following:

- LCR disclosure requirements to apply to all locally incorporated D-SIBs and for foreign bank branches to be exempted;
- a retention period of five years for the banks' publicly available archive of LCR disclosures, in line with the record retention period specified in Section 199(2) of the Companies Act and that used in MAS Notice 637; and
- alignment of the reporting currency for the all-currency LCR disclosure requirements to that of the reporting banks' financial statements.

For locally incorporated D-SIBs not headquartered in Singapore and that are approved to comply with LCR on a country level basis, the MAS is considering whether disclosures on a standalone or a country-level basis are more appropriate.

Comments on the consultation paper are due by 9 November 2015.

MAS consults on proposed amendments to MAS Notice 637 to implement revisions to Basel III capital framework

The Monetary Authority of Singapore (MAS) has published a consultation paper on proposed amendments to MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore, to implement requirements for Singapore-incorporated banks that are consistent with the following final standards issued by the Basel Committee on Banking Supervision: capital requirements for banks' equity investments in funds, the standardised approach for measuring counterparty credit risk, capital requirements for bank exposures to central counterparties and revised Pillar 3 disclosure requirements.

The proposed amendments to Part VII of the Notice are intended to enhance the risk capture of banks' equity exposures and counterparty credit risk exposures (including exposures to central counterparties). In addition, the revised Pillar 3 disclosure requirements aim to enable market participants better to compare banks' disclosures of risk-weighted assets and improve consistency of disclosures.

Technical revisions to Part VI of the Notice are proposed to clarify the regulatory capital treatment for investments in unconsolidated entities. The draft amendments to the Notice are appended in Annex 1 of the consultation paper.

The proposed amendments (save for the amendments to Part XI of the Notice) will take effect from 1 January 2017. Singapore-incorporated banks will be required to publish their first standalone Pillar 3 report compliant with the revised disclosure requirements from the date of publication of their first set of financial statements relating to a balance sheet on or after 31 December 2016.

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

RECENT CLIFFORD CHANCE BRIEFINGS

Derivatives Regulation for Corporates – A Global Review

In the aftermath of the financial crisis, governments around the world are imposing new regulations on derivatives, including derivatives used by corporates. The new regulations affect how corporates execute, settle and document derivative transactions and apply to internal processes like record retention. Corporates need to understand these rules and the impact on their derivatives activities.

This briefing discusses the critical derivative rules for corporates in the US, the EU and various other jurisdictions.

http://www.cliffordchance.com/briefings/2015/10/derivatives_regulationforcorporates-agloba.html

The Rise of Structured Debt in Asia-Pacific

The economies of the countries in Asia-Pacific are dynamic and do not stand still. Banks, investors and corporates in the region are constantly developing the way they run their businesses. They look both externally – for instance, investing in Africa and South America – and internally; for instance, investing in local infrastructure to boost their trading links and feed internal demand for energy and raw materials.

An important part of any economy, however structured, is ensuring there is a robust and stable supply of credit available for companies that need it. Banks have traditionally dominated this space in the region but there has been a recent emphasis on developing other lines of credit delivery, in particular through the capital markets. Alongside that, banks and corporates with large pools of financial assets (such as auto loans in the case of banks or trade receivables in the case of corporates) are keen to access funding backed by their financial assets in those capital markets. Legal and regulatory regimes have been adopted in some countries which assist with this and which take a sensible approach to helping these asset classes and investment products become more prevalent and transparent.

This briefing discusses the rise of structured debt in the Asia-Pacific region.

http://www.cliffordchance.com/briefings/2015/10/the_rise_of_structureddebtinasia-pacific.html

The TPP of the Iceberg – TPP signals new approach to trade liberalisationt

The conclusion of the Trans-Pacific Partnership (TPP) agreement on 4 October 2015 represents an historic moment in the history of global trade liberalisation. Whilst there has already been much commentary in the press, details of the agreement are unknown and will remain so until the text is published in about a month's time.

This briefing sets out some initial thoughts on the immediate and future implications of the TPP in advance of commenting on the substantive text once this is available.

http://www.cliffordchance.com/briefings/2015/10/the_tpp_of_the_iceberg-tppsignalsnewapproac.html

New marketing and disclosure requirements for pre-packs

From 1 November 2015, administrators wishing to effect a quick pre-packaged sale of a distressed business will have to satisfy more onerous marketing, valuation and disclosure requirements than ever before.

The insolvency regulatory authorities in England and Wales have issued a revised Statement of Insolvency Practice 16 (SIP16). The revised SIP16, which is essentially a best practice guide to be followed by insolvency practitioners, is the result of an independent review into pre-pack administrations that was first published in June 2014. The review, whilst recognising the value of pre-packs in the context of business rescues, set out six recommendations aimed at improving transparency around such sales.

This briefing discusses the revised SIP16.

http://www.cliffordchance.com/briefings/2015/10/new_marketing_anddisclosurerequirementsfo.html

Hong Kong authorities set out conclusions on resolution regime for financial institutions

Hong Kong authorities have set out conclusions from the second round of consultation on a resolution regime for financial institutions in Hong Kong. In detailing the conclusions reached by the authorities after the second stage of consultation, the Hong Kong authorities' consultation response provides further insight into what the new regime will look like. The impending FSB deadline requiring implementation of a resolution regime by member states by the end of 2015 has necessitated the move directly to legislation rather than further consultation. For some key issues the authorities have indicated they will only put in place a legislative framework, leaving the detail to be determined by subsidiary legislation at a later date when international thinking has further developed. In other aspects, the position of the authorities has been clarified following the second stage of consultation.

This briefing sets out a short overview of the key points emerging and highlights some of the more controversial changes.

http://www.cliffordchance.com/briefings/2015/10/_reform_too_big_tofailhongkongauthoritie.html