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Briefing note

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BRRD: EU Commission adopts Delegated Regulation on classes of arrangements to be protected in a partial property transfer

The EU Commission has adopted a Commission Delegated Regulation on classes of arrangements to be protected in a partial property transfer under Article 76 of the Bank Recovery and Resolution Directive (BRRD). Article 76 provides safeguards for certain contracts in the event of a partial transfer of assets, rights and liabilities of an institution under resolution or in the event of forced contractual modifications. The Delegated Regulation further specifies the classes of arrangement that benefit from the safeguards following technical advice issued by the European Banking Authority (EBA).

The Delegated Regulation sets out more detailed rules and definitions than those contained in the BRRD and does not establish a list of protected arrangements. For specific classes of arrangements, the delegated regulation refers to BRRD definitions or, in their absence, other EU legislation, adding elements or setting out conditions for the application of the protection where required, and only further specifies a class of arrangements where the BRRD does not sufficiently do so. Moreover, the Delegated Regulation sets out which classes would be subject to a determination to restrictively apply the safeguards and the criteria for this determination, in particular where the classes are broadly defined in the BRRD.

The Regulation will enter into force on the twentieth day following that of its publication in the Official Journal.

MAR: Commission Implementing Regulation on submission of notifications to competent authorities published in Official Journal

A Commission Implementing Regulation (2016/378) setting out implementing technical standards (ITS) with regard to the timing, format and template of the submission of notifications to competent authorities under the Market Abuse Regulation (MAR) has been published in the Official Journal.

The ITS are intended to ensure consistency in the templates and formats used when submitting notifications of financial instruments in respect of each trading day to competent authorities.

The Regulation entered into force on 18 March 2016 and will apply from 3 July 2016.

MAR: ECON Committee writes to EU Commission on applicable scrutiny period for certain RTS

The Chair of the ECON Committee, Roberto Gualtieri, has written to the EU Commissioner for Financial Stability, Financial Services and Capital Markets Union, Lord Hill, on the applicable scrutiny period for certain regulatory technical standards (RTS) under MAR.

In particular Mr. Gualtieri notes that the EU Commission indicated that there would be a one month objection period for two Delegated Regulations adopted by the EU Commission on 9 March 2016 with regard to RTS on:

- appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions; and
- the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.

However, due to changes in the Delegated Regulations from the draft regulatory technical standards (RTS) drafted by the European Securities and Markets Authority (ESMA), Mr. Gualtieri has written to Lord Hill to inform him that a

three month objection period should apply, i.e. until 9 June 2016.

The ECON Committee has informed the EU Council of the three month objection period.

EMIR: Commission Implementing Decision on equivalence for US CCPs published in Official Journal

A Commission Implementing Decision (2016/377) determining that the US Commodity Futures Trading Commission (CFTC) has equivalent requirements to the EU in regulating central counterparties (CCPs) under the European Market Infrastructure Regulation (EMIR) has been published in the Official Journal.

The Implementing Decision will ensure that both EU and US CCPs operate to the same standards and at a comparable level of cost to their participants. It also alleviates the regulatory burden for US and EU CCPs, allowing compliance with only one set of rules.

The Implementing Decision enters into force on 5 April 2016.

EU Council adopts better law-making agreement

The EU Council has adopted the text of an agreement on better law-making between the Council, EU Parliament, and the EU Commission. The agreement is intended to:

- allow the three EU institutions to work more closely on legislative priorities;
- make impact assessments more comprehensive to ensure that laws are based on well-informed decisions;
- evaluate existing laws to avoid overregulation and administrative burdens and make sure that laws are fit for purpose; and
- create a joint database on the progress of legislative files to enhance the transparency of the work of the three institutions and make it easier to follow legislative procedures.

The agreement will enter into force on the day it is signed by the presidents of the three institutions.

ECB publishes opinion on proposed prospectus regulation

The European Central Bank (ECB) has published an opinion on a proposed regulation on prospectuses published when securities are offered to the public or admitted to trading. Overall, the ECB is supportive of the aims of the proposed regulation and views it as a positive step towards the completion of the Capital Markets Union (CMU).

The ECB welcomes the exemptions for offers of non-equity securities issued by the ECB and the European System of Central Banks (ESCB) national central banks (NCBs) and for shares in the capital of ESCB NCBs. The ECB also highlights its support for mandatory requirements regarding the use of the International Securities Identification Number (ISIN) and the global Legal Entity Identifier (LEI) and the removal of incentives for issuing debt securities in large denominations. Furthermore, the ECB has provided drafting proposals in support of the proposal to publish prospectuses in an online storage mechanism.

ECB publishes opinion on proposed securitisation regulation and CRR amendment

The ECB has published an opinion on a proposed regulation creating a European framework for simple, transparent and standardised (STS) securitisation and a proposal for a regulation to amend the Capital Requirements Regulation (CRR).

The ECB welcomes the objectives of the proposed regulations to promote further integration of financial markets and diversify funding sources. The ECB also considers the proposals as a balance between the need to revive the European securitisation market and maintaining the prudential nature of the regulatory framework. While the ECB supports the proposed STS criteria, it notes that its support for the proposed capital treatment of STS securitisations is predicated on robust STS criteria, an appropriate attestation procedure and rigorous supervision. The ECB believes the proposed regulations should be further enhanced and streamlined, and includes drafting proposals for both regulations.

Basel Committee consults on revisions to the Pillar 3 disclosure framework

The Basel Committee on Banking Supervision (BCBS) has published a consultation on revising the Pillar 3 disclosure framework. Pillar 3 of the Basel framework seeks to promote market discipline through regulatory disclosure requirements.

In January 2015 the BCBS completed the first phase of its review of Pillar 3 disclosure requirements. The second phase of the review covers three elements:

- enhancements to the revised Pillar 3 framework;

- further revisions and additions to the Pillar 3 framework arising from ongoing reforms to the regulatory policy framework; and
- consolidation of all existing and prospective BCBS disclosure requirements into the Pillar 3 framework, including the leverage ratio and liquidity ratio disclosure templates.

The Committee's proposed disclosure requirement would, together with its January 2015 reissued Pillar 3 disclosure requirements, comprise the single Pillar 3 framework.

Comments to the consultation close 20 June 2016.

Basel Committee publishes handbook on jurisdictional assessments

As part of its work to facilitate the implementation of the Basel III framework, the BCBS has published the Handbook for Jurisdictional Assessments, which updates the procedures and process for conducting assessments under the regulatory consistency assessment program (RCAP).

In 2012 the BCBS adopted the RCAP, consisting of workstreams monitoring the timely adoption of Basel III standards and assessing the consistency and completeness of the adopted standards. The RCAP currently focuses on risk-based capital standards, liquidity coverage ratio (LCR) and the systemically important banks (SIBs) framework. In 2017 the BCBS plans to expand this to cover Basel III standards on net stable funding ration (NSFR) and leverage ratio.

The handbook describes the complete assessment programme and also includes the RCAP questionnaires that member jurisdictions complete ahead of the assessment and update regularly. BCBS intends to keep the documents under review and update them as the scope of the RCAP expands to include other aspects of the Basel III framework.

FSB publishes second thematic review on resolution regimes

The Financial Stability Board (FSB) has published its second thematic review on resolution regimes, which forms part of a series of peer reviews to support the implementation of the Key Attributes of effective resolution regimes for financial institutions. The review considers the range and nature of resolution powers available to authorities for the banking sector in FSB jurisdictions and requirements relating to recovery and resolution planning and resolvability assessments for domestically incorporated banks.

The review identified that only the six FSB jurisdictions in the EU and Switzerland have implemented the full range of resolution powers, while the US has implemented all the powers apart from the continuity power. Australia, Canada, Japan, Korea, Mexico and Singapore have implemented all but two or three of the powers but the remaining ten member jurisdictions have implemented four or fewer of the resolution powers. Among other things, the FSB also found:

- slower progress in reforming the legal frameworks for bank resolution in FSB jurisdictions since the FSB's thematic review in 2013, with explicit continuity powers, bail-in powers and powers to impose a temporary stay on the exercise of early termination rights being the resolution powers most often lacking;
- resolution regimes generally apply to all types of commercial banks, but there is greater variation in the scope of application of regimes and associated resolution powers for holding companies of banks, branches of foreign banks and material non-regulated operational entities within a financial group;
- significant variation in FSB jurisdictions on the conditions of use of resolution powers and their level of detail;
- slower progress in recovery planning since the FSB's thematic review in 2013 and less progress in putting in place processes for resolution planning and resolvability assessments; and
- only nine jurisdictions currently have explicit statutory powers to require banks to adopt appropriate measures, where necessary, solely in order to improve their resolvability.

The report sets out recommendations for FSB jurisdictions in response to the findings to fully implement the Key Attributes by:

- introducing missing powers in their bank resolution regimes;
- extending the resolution regime to holding companies;
- introducing recovery and resolution planning requirements for all banks that are potentially systemic in failure; and
- adopting powers requiring banks to take measures solely to improve resolvability.

The FSB expects member jurisdictions to report on actions they have taken or plan to take in order to address these gaps by December 2016. The FSB will also provide additional clarification and guidance to assist jurisdictions in implementation.

ICE Benchmark Administration publishes roadmap on evolution of ICE LIBOR

ICE Benchmark Administration (IBA) has published a roadmap on the evolution of the London Interbank Offered Rate (LIBOR), setting out reforms aimed at reducing the risk profile of LIBOR and creating the conditions for more banks to participate, including:

- incorporating transaction data into the LIBOR methodology to the greatest extent possible;
- publishing a single, clear and comprehensive LIBOR definition;
- implementing a construct for ensuring the rate can adapt to changing market conditions with appropriate consideration for the interests of all stakeholder; and
- conducting a feasibility study on transitioning the calculation of LIBOR to IBA, using transaction data to deliver an even more robust and sustainable rate for the long term.

The roadmap outlines measures to anchor LIBOR in transactions from a broader set of market participants and to support this IBA has developed a waterfall of methodologies:

- level 1: the Volume Weighted Average Price (VWAP) of eligible transactions;
- level 2: submissions derived from transactions (including adjusted and historical transactions, interpolation and parallel shift); and
- level 3: expert judgement, appropriately framed.

Publication of the roadmap follows the publication of positions papers in October 2014 and July 2015 and associated feedback statements on proposals for the evolution of LIBOR, as well as roundtable meetings with stakeholders.

IBA intends to implement the roadmap during 2016 and complete a feasibility study on further evolving LIBOR to a centralised calculation using a robust algorithm by the end of Q2 2016.

HMT publishes financial advice market review final report

HM Treasury (HMT) has published the final report from its financial advice market review (FAMR), which was launched in August 2015 to identify ways to make the UK's financial advice market work better for consumers. FAMR has been co-chaired by Charles Roxburgh, Director General of Financial Services at HMT, and Tracey McDermott, Acting Chief Executive Officer of the Financial Conduct Authority (FCA), and looked across the entire financial services market in order to assess the availability of advice and guidance to help people with their financial decision-making. The final report sets out proposals to increase consumer engagement with financial advice, in particular relating to affordability and accessibility, as well as proposals on consumer redress.

Among other things, the report calls for changes to legislation to narrow the definition of regulated advice so that it is based on a personal recommendation and to create a single definition for regulated financial advice to remove certain barriers for firms seeking to offer guidance services.

The report also makes certain recommendations for the FCA to:

- take forward measures intended to provide firms with the confidence to deliver streamlined advisory services focusing on specific consumer needs;
- consult on measures to support firms developing guidance services that help consumers make their own investment decisions;
- extend Project Innovate and establish a unit to help firms develop automated advice models; and
- consider how to provide greater clarity for advisors regarding their future liability in its forthcoming review of funding the Financial Services Compensation Scheme (FSCS), which will begin in April 2016.

HMT publishes remit and recommendations for Financial Policy Committee

HM Treasury has published a letter from the Chancellor of the Exchequer, Rt Hon George Osborne MP, to the Governor of the Bank of England, Mark Carney, setting out the remit and recommendations for the financial policy committee (FPC) for the coming year. The letter and its annex sets out the Government's economic policy and makes recommendations on the FPC's priorities in order to contribute to the Bank of England's financial stability objective by identifying, monitoring and addressing risks to the resilience of the UK financial system as a whole.

Among other things, the letter sets out that the FPC should implement a stable regulatory environment and welcomes the FPC's intention to consider the overall impact of regulation as a result of reforms following the financial crisis. Moreover, the Chancellor welcomes the FPC's work on analysing sectors outside the core banking system to

assess their transmission channels to financial stability and ensure that systemic risks are considered regardless of source. The letter notes that HMT intends to bring forward a response to its consultation on extending the FPC's powers of direction over the leverage ratio framework and the residential mortgage market to the buy-to-let mortgage market, including final secondary legislation, in due course. HMT also recommends that the FPC:

- supports the Government's strategy for financial services, in particular covering competition, innovation and competitiveness; and
- considers the capacity of the financial sector to supply finance for productive investment when assessing significant adverse effects on the capacity of the financial sector to contribute to the growth of the UK economy.

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order published

HM Treasury has made the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (SI 2016/392). The Order makes amendments to the Mortgage Credit Directive Order 2015 and other legislation amended by that Order about the regulation of activities relating to lending, and in particular activities relating to peer-to peer (P2P) lending, mortgage lending and other credit granted to consumers.

The Order includes provisions that extend the scope of regulated activities relating to the operation of P2P lending platforms and providing advice on lending through such platforms, supplement the implementation of the EU Mortgage Credit Directive and clarify the regulatory position of credit provided to consumers before 1 April 2014. The Order also amends the Small and Medium Sized Business (Finance Platforms) Regulations 2015 so that finance applications made by brokers are out of scope of those Regulations.

Provisions of the Order made for the purposes of the FCA came into on 17 March 2016, with other provisions coming into force on 20 March 2016, 21 March 2016, and 6 April 2016.

BRRD: PRA consults on amendments to contractual recognition of bail-in rules

The Prudential Regulation Authority (PRA) has launched a consultation on amendments to the Contractual Recognition of Bail-In Part of the PRA Rulebook and a draft supervisory statement setting out the PRA's expectations.

The PRA proposes to amend its rules to the same effect as the Modification by Consent published in November 2015, which disapplies the rules for Bank Recovery and Resolution Directive (BRRD) firms in cases where it would be impracticable to comply. The Modification will expire on 30 June 2016 and the PRA proposes that the amended rules will apply from 1 July 2016.

The consultation paper also sets out three additional technical amendments to the PRA rules to ensure consistency with draft European Banking Authority (EBA) regulatory technical standards (RTS) on the contractual recognition of bail-in due to be adopted by the EU Commission. The amendments relate to:

- requirements to include contractual recognition wording in contracts for liabilities which are not fully secured and for secured liabilities which are not under a continuous full collateralisation requirement under EU or equivalent non-EU law;
- requirements to include contractual recognition wording in liabilities created before the date of application of the contractual recognition requirement if the agreement governing the liability is subject to a material amendment after 30 June 2016; and
- the reference to liabilities 'arising' after the relevant date in the existing rules to refer to liabilities 'created' after that date. This amendment is intended to ensure consistency with the draft RTS and to provide greater clarity over which liabilities are in scope.

Comments on the consultation are due by 16 May 2016.

FCA publishes policy statement on regulatory treatment of CCA regulated first charge mortgages

The Financial Conduct Authority (FCA) has published a policy statement (PS16/7) setting out its the final rules on the regulatory treatment of Credit Consumer Act 1974 (CCA) first charge mortgages entered in to before 31 October 2004.

The policy statement follows a consultation paper (CP15/36) published in November 2015 and summarises the feedback received. It reports that overall respondents agreed with the FCA's proposed amendments.

The final rules came into effect on 21 March 2016, but will only apply when the affected loans become regulated mortgage contracts on 21 March 2017, unless the firm in question takes steps to apply the relevant rules before that date.

BRRD: French decree implementing IGA on contributions to the Single Resolution Fund published

Under Decree no. 2016-286, the President of the French Republic has ordered the publication of the intergovernmental agreement (IGA) on the transfer and mutualisation of contributions to the Single Resolution Fund (SRF) and its implementation in the French Journal Officiel.

The IGA, signed by 26 Member States in May 2014, is part of the overall compromise reached by Member States and the EU Parliament on the Single Resolution Mechanism (SRM), implementing the BRRD in the euroarea and establishing the Single Resolution Board (SRB) and the Single Resolution Fund (SRF). It is intended to complement the first pillar of Banking Union, the Single Supervisory Mechanism (SSM), to ensure the efficient resolution of failing banks to be implemented and operational.

The signatories of the IGA issued a declaration setting out their intention to complete the ratification process in time to allow the SRM to be fully operational by 1 January 2016. Under the IGA, the contracting parties commit to:

- transfer contributions raised at national level in accordance with the BRRD and the SRM Regulation to the SRF; and
- allocate contributions raised at national level in accordance with the SRM Regulation and the BRRD to different compartments corresponding to each contracting party during a transitional period, which starts at the date of application of the IGA as determined under Article 12(2) of the IGA and elapsing at the date when the SRF reaches the target level fixed in Article 68 of the SRM Regulation but not later than 8 years after the date of application of the IGA. The use of the compartments will be subject to a progressive mutualisation in such a manner that they will cease to exist at the end of the transitional period, thereby supporting the effective operations and functioning of the SRF.

The IGA applies to contracting parties whose institutions are subject to the SSM and SRM, in accordance with the relevant provisions of the SSM Framework Regulation (1024/2013) and the SRM Regulation, designated as the 'contracting parties participating in the Single Supervisory Mechanism and in the SRM'.

AMF updates asset management policy positions and recommendations

The French Autorité des marchés financiers (AMF) has published an update to its policy on asset management by incorporating the provisions of the Alternative Investment Fund Managers Directive (AIFMD) into its positions and recommendations.

The AMF Positions set out in DOC-2012-12, DOC-2011-02 and DOC-2012-10 have been updated with respect to the implementation of the AIFMD in France, including amendments to the funds' names following the recast of the overall range of funds, as well as some legislative and regulatory references.

In the update, the AMF has also adjusted its policy regarding employee investment undertakings, set out in AMF Position-Recommendation DOC-2012-10 and AMF Instructions DOC-2011-21, which include some clarifications in relation to marketing documents for real estate investment companies (SCPIs), the so-called 'Malraux' and 'Déficit foncier' in AMF Position-Recommendation DOC-2011-24.

MiFID2: AMF publishes guide on implementation for asset management companies

The AMF has published a guide for asset management companies addressing specific questions raised by new provisions under MiFID2. The guide mainly deals with investor protection in investment services and Level 1 implementing measures under MiFID2 and the topics dealt with are not exhaustive.

Topics covered in the guide include:

- amendment of the status of management companies;
- product governance;
- independent advisory services;
- client information;
- competence and knowledge of personnel delivering advisory services or information on financial instruments and services;
- assessment of the appropriateness of products or services;
- possible complex nature of shares/units of UCITS and AIFs;
- transaction reporting requirements in respect of performed services;
- benefits and remuneration;

- best execution;
- best selection;
- reporting;
- transparency and structure of financial markets; and
- marketing of units of UCIs.

Other topics such as research will be addressed by the AMF at a later date.

The guide also outlines outstanding and unknown final implementation dates of MiFID2, notably in relation to the pending EU Commission proposal to extend the application date for the MiFID2 package by one year, which is yet to be approved by the EU Parliament and the EU Council. Therefore, the guide may be updated in the future notably in light of further supplementing MiFID 2 laws and regulations, as well as Level 2 implementing measures and Level 3 clarifications.

The impacts of the implementation of MiFID2 repealing MiFID1 will also require the AMF to adjust its published policy, positions and recommendations accordingly.

Law implementing Mortgage Credit Directive published in German Federal Gazette

The Law implementing the Mortgage Credit Directive (2014/17/EU – MCD) and to amend provisions of the commercial code has been published in the Federal Gazette. Amongst other things, the law sets out that:

- a lender will be required under German civil law to assess the consumer's creditworthiness and, in addition, under German regulatory law. For civil law, a breach leads to limitations on the interest rate and the exclusion of claims for damages;
- there will be a limitation of such business activities which aim on the conclusion of a credit agreement in a package along with other financial products while the credit agreement cannot be concluded separately;
- a consumer may require the transformation of a foreign currency credit agreement into the national currency if the exchange rate has a negative development of at least 20%;
- interest free consumer credits will mainly follow the provisions for interest bearing consumer credits and there are new provisions for loan brokering for consumers;
- a lender needs to advise the consumer accordingly in case of a serious and lasting overdraft of the consumer's bank account; and
- members of staff advising on credit agreements for consumers relating to residential real estate need to be adequately qualified (the details of which will be regulated in a separate ordinance).

The law entered into force on 21 March 2016.

German Federal Council adopts draft law implementing the Payment Account Directive

The German Federal Council (Bundesrat) has adopted a draft law on the implementation of the Payment Account Directive (2014/92/EU - PAD). The draft law includes the obligation to offer basic payment accounts by Capital Requirements Regulation (CRR) credit institutions, branches of EU credit institutions and third country branches. Only those banks are required to offer basic payment accounts that already offer payment accounts for all consumers. Basic payment accounts will be available for all persons resident in Germany, including applicants and rejected applicants for asylum and those who are homeless. The draft law is also intended to ease the process of changing provider of payment accounts for consumers.

Certain observations raised by the Federal Council in December have been implemented by the German Parliament (Bundestag) which include the termination rights for the basic payment account or the possibility to create a basic payment account as a seizure protected account.

The law will enter into force after its publication in the Federal Gazette.

Bank of Italy updates Supervisory Regulations for banks and financial intermediaries

The Bank of Italy has published updates to the Supervisory Regulations for banks (Circular no. 285/2013) and Supervisory Regulations for financial intermediaries (Circular no. 288/2015), which are intended to give full implementation to the amendments made to the Italian Banking Act (Legislative Decree no. 385/1993) and Italian Securitisation Law (to Law no. 130/1999) with respect to the possibility for Italian special purpose vehicles (SPVs) to engage in the business of financings with enterprises.

The updates came into force on 9 March 2016.

KNF publishes analysis of the Methods of Restoring Equality of the Parties to Certain Credit and Loan Agreements Bill

The Polish Financial Supervision Authority (KNF) has published information on the effects of the President's bill

on 'methods of restoring equality of the parties to certain credit and loan agreements'. The information is intended to present an analysis of the financial effects of the bill and its impact on credit institutions.

SFC updates FAQs on post authorisation compliance issues of SFC-authorised unit trusts and mutual funds

The Securities and Futures Commission (SFC) has updated its series of frequently asked questions (FAQs) on post authorisation compliance issues of SFC-authorised unit trusts and mutual funds by adding three new answers on:

- steps that a management company should take when they issue a notice that contains information affecting the disclosure in the offering documents of SFC-authorised funds (Question 2A);
- what a fund manager of an SFC-authorised fund should note if there is a suspension of trading on the securities market on which all or a substantial part of the investments of the fund are traded and such suspension continues until the close of the market (Question 3B); and
- disclosure issues that a fund manager should consider for the implementation of any policies and procedures in addressing the potential impact of market suspension on an SFC-authorised fund (Question 3C).

SFC updates FAQs on Mainland-Hong Kong Mutual Recognition of Funds

The SFC has updated its series of FAQs on Mainland-Hong Kong Mutual Recognition of Funds by adding new answers on:

- the applicability of disclosure requirements to the quarterly reports of a Recognised Mainland Fund, as set out under paragraph 30 of the Circular on Mutual Recognition of Funds between the Mainland and Hong Kong issued by the SFC on 22 May 2015 (Section C, Question 9);
- steps that management firms should take when issuing a notice that contains information affecting the disclosure in the Hong Kong offering documents of Recognised Mainland Funds (Section D, Question 5A); and
- what a management firm of a Recognised Mainland Fund should note if there is a suspension of trading on the securities market on which all or a substantial part of the investments of the fund are traded and such suspension continues until the close of such market (Section E, Question 5).

The SFC has also updated its answer to Question 3 in Section C on the risks expected to be disclosed in the product key facts statement (KFS) and/or Hong Kong covering document of Recognised Mainland Fund.

SFC updates FAQs on leveraged and inverse products

The SFC has updated its series of FAQs on leveraged and inverse (L&I) products by adding three new answers on:

- the SFC's requirements regarding the inclusion of an annotation in the names of swap-based L&I products (Question 3);
- the SFC's requirement regarding the disclosure in the offering documents of information relating to how an L&I product would perform under different market conditions (Question 4); and
- information that is required to be displayed in the performance simulator to be made available by the provider of an L&I product (Question 5).

MAS announces initiatives to boost fund management industry

The Monetary Authority of Singapore (MAS) has announced initiatives to develop the fund management industry in Singapore, in particular:

- the introduction of a new regulatory framework for open-ended investment companies (OEIC); and
- the development of enhancements to the external fund manager (EFM) programme.

The OEIC framework, which is intended to be rolled out within a year, will be tailored for the requirements of open-ended investment funds, including the issuance and redemption of shares on a regular basis, valuation of a fund's net assets and the appointment of fund managers and custodians. This OEIC framework will also permit the formation of an umbrella fund structure containing several operationally distinct sub-funds with segregated assets and liabilities.

Since 1999, MAS has invested with private sector fund managers through the EFM programme. This has improved the diversification of MAS' investment portfolio as well as helped to anchor global asset managers and develop Singapore's asset management industry. The new EFM programme is intended to offer stronger incentives to fund managers who are committed to increasing their presence in Singapore. In particular, greater recognition

will be given to fund managers who are committed to building their investment capabilities and strengthening their local talent pool to support the long-term development of their Singapore operations.

CFTC approves substituted compliance framework for CCP agreement between the US and the EU

The Commodity Futures Trading Commission (CFTC) has issued a comparability determination regarding EU laws and regulations that are equivalent to the following regulatory obligations applicable to CFTC-registered derivatives clearing organisations (DCOs):

- financial resources;
- risk management;
- settlement procedures; and
- default rules and procedures.

EU-based central counterparties (CCPs) authorised to operate in the EU that are also CFTC-registered may comply with these CFTC requirements by complying with the terms of corresponding EU requirements. The CFTC's comparability determination is a key step towards achieving recognition for US-based CCPs in the EU.

This determination will be effective once it is published in the Federal Register, which is expected shortly.

RECENT CLIFFORD CHANCE BRIEFINGS

The impact of recent amendments to the Article 63 exemption on partnership-type funds in Japan

Article 63 of the Financial Instruments and Exchange Act of Japan provides an exemption from the licensing requirements applicable to the marketing and investment management activities of partnership-type funds in Japan (known as 'Special Exempt Business for Qualified Institutional Investors, etc.' (tekikaku kikan toshika tou tokurei gyomu)). Many partnership-type funds operate under this exemption as an alternative to complying with the strict licensing requirements under the FIEA. In May 2015, in response to reported abuses of the Article 63 Exemption, resulting in Japanese retail investors suffering financial losses, the National Diet of Japan passed a bill amending Article 63. On 3 February 2016, the Japan Financial Services Agency published its responses to comments on the amendments received during the public consultation period (as well as the relevant Enforcement Order and Cabinet Office Ordinance finalising the amendments).

This briefing paper outlines the amendments to the Article 63 Exemption, which came into effect on 1 March 2016, and discusses their impact on partnership-type funds currently operating under the exemption.

http://www.cliffordchance.com/briefings/2016/03/the_impact_of_recentamendmentstothearticle6.html