

# International Regulatory Update

15 - 19 August 2016

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- Recent Clifford Chance briefings: MAS consults on proposed enhancements to the customer money and assets protection regime; and more. [Follow this link to the briefings section.](#)

### PSD2: EBA consults on draft RTS

The European Banking Authority (EBA) has launched a [consultation](#) on draft regulatory technical standards (RTS) under the recast Payment Services Directive (2015/2366 – PSD2). The draft RTS have been prepared following a discussion paper published in December 2015 and relate to 11 mandates conferred on the EBA to develop technical standards in cooperation with the European Central Bank (ECB).

The draft RTS relate to requirements for:

- strong customer authentication (SCA) and applicable exemptions;
- security measures for the confidentiality and integrity of payment service users' (PSU) personalised security credentials; and
- common and secure open standards of communication between the functions of account servicing payment service provider (ASPSP), Payment Initiation Service (PIS) provider, Account Information Service (AIS) provider, payer, payee and other payment service providers (PSPs).

The draft RTS are intended to ensure appropriate levels of security while at the same time maintaining fair competition among PSPs, as well as allowing the development of user-friendly, accessible and innovation payment services.

Comments on the consultation are due by 12 October 2016.

### FSB publishes guidance and reports to G20 on resolution

The Financial Stability Board (FSB) has published two guidance papers as part of its policy agenda on ending too-big-to-fail (TBTF). The papers are intended to help firms and authorities in their resolution planning work and set out:

- [guiding principles on temporary funding](#) needed to support the orderly resolution of global systemically important banks (G-SIBs), which are intended to ensure that temporary funding is available to enable

the effective resolution of G-SIBs without a public sector bail-out; and

- [guidance](#) on arrangements to support operational continuity in resolution, which discusses shared critical services that are necessary to maintain a firm's critical functions in resolution.

The FSB has also published its fifth [report to the G20](#) on progress in its resolution work as it moves from policy design to implementation, including actions the FSB intends to take to fully implement the Key Attributes of Effective Resolution Regimes for Financial Institutions to ensure that all global systemically important financial institutions (G-SIFIs) are resolvable.

Alongside the publications, the FSB has also set out its work priorities for the remainder of 2016 and 2017 to:

- further develop its guidance on central counterparty (CCP) resolution;
- finalise the remaining elements of the Total Loss-Absorbing Capacity (TLAC) standard;
- support the resolution planning work of authorities and firms, including on maintaining access to financial market infrastructures and the operational execution of bail-in; and
- develop a Key Attributes assessment methodology for insurers.

### Resolution of CCPs: FSB reports on progress and consults on resolution planning

The FSB has published a [progress report](#) on its workplan with the Basel Committee on Banking Supervision (BCBS), Committee on Payments and Market Infrastructures (CPMI), and the International Organization of Securities Commissions (IOSCO) to address risks posed by CCPs. The workplan, agreed in April 2015, coordinates international policy work aimed at enhancing the resilience, recovery planning and resolvability of CCPs, focusing on CCPs that are systemic across multiple jurisdictions. This report updates the FSB's progress report published in September 2015.

The FSB has also published a [discussion note](#) seeking comments on aspects of CCP resolution planning, including:

- timing of entry into resolution;
- adequacy of financial resources;
- tools for returning to a matched book and allocating default and non-default losses;

- application of the No Creditor Worse Off safeguard and treatment of the CCP's equity in resolution; and
- cross-border operation and effectiveness of resolution actions.

Comments to the discussion note close on 17 October 2016.

### **Resilience of CCPs: CPMI-IOSCO publish reports on principles for financial market infrastructures**

CPMI and IOSCO have jointly published two reports that aim to enhance the resilience of CCPs.

The [first report](#) looks at the implementation of principles for financial market infrastructures (PFMIs) as they relate to financial risk management and recovery practices. The report, which reviews financial risk management and recovery practices in place at a selected set of derivatives CCPs, finds that important progress has been made in implementing arrangements consistent with the PFMIs, but identifies some shortcomings that still need to be addressed. CPMI and IOSCO plan to jointly follow up in 2017 on CCPs' progress in addressing the most important issues identified in the report.

CPMI and IOSCO have also published a [consultative report](#) seeking comment on guidance for use by CCPs on certain principles and key considerations in the CPMI-IOSCO PFMIs relating to financial risk management for CCPs. CPMI and IOSCO seek feedback on five key aspects of a CCP's financial risk framework:

- governance;
- stress testing for credit and liquidity exposures;
- coverage;
- margin; and
- a CCPs' contribution of its financial resources to losses.

Comments to the consultation close on 18 October 2016.

### **CPMI-IOSCO consult on harmonisation of unique product identifier**

CPMI and IOSCO have jointly published a second [consultative report](#) on harmonisation of the unique product identifier (UPI).

The purpose of the UPI is to uniquely identify OTC derivatives products that authorities require to be reported to trade repositories. The UPI system will assign a code to each OTC derivative product that maps to a set of data elements describing the product in a corresponding reference database.

CPMI-IOSCO consulted on this reference database in December 2015. This second consultation seeks feedback on the format of the UPI code and the content and granularity of the UPI data elements.

Comments to the consultation close on 30 September 2016. CPMI-IOSCO expect to publish final guidance on a UPI around the end of 2016.

### **IOSCO consults on good practices for termination of investment funds**

IOSCO has launched a [consultation](#) on good practices for the termination of investment funds.

Most regulatory regimes have certain criteria for the termination of investment funds, but in most jurisdictions this legislation addresses involuntary terminations. IOSCO's consultation proposes a set of good practices on the voluntary termination process for investment funds. Voluntary termination typically occurs because an investment fund, although still solvent, is no longer economically viable or can no longer serve its intended objectives.

IOSCO's proposed good practices are categorised under the following headings:

- disclosure at time of investment;
- decision to terminate;
- decision to merge;
- during the termination process; and
- specific types of investment funds.

Comments to the consultation close on 17 October 2016.

### **ISDA publishes 2016 variation margin protocol**

The International Swaps and Derivatives Association (ISDA) has [published](#) the 2016 Variation Margin (VM) Protocol. The VM Protocol is designed to help market participants comply with new rules on margin for uncleared swaps, set to come into force from March 2017, by providing a scalable solution to amend derivatives contract documentation with multiple counterparties.

The new Protocol is part of ISDA's broader work to facilitate compliance with the new rules on margin for non-cleared derivatives.

The 2016 VM Protocol is available on the ISDA Bookstore.

### **Bank of Italy amends provisions on final balance reporting relating to issue and offer of financial instruments**

The Bank of Italy has published a [provision](#) partially amending the Article 129 reporting requirement regime and provisions in the matter of final balance reporting relating to the issue and offer of financial instruments that will enter into force on 1 October 2016.

Most of the amendments, concerning the effective date of reporting obligations and the timing thereof, are limited to the entities under letter c) of paragraph 2.1 of the provisions. In particular, as regards the abovementioned entities, the deadline under letter a) of paragraph 3, for reporting data specified under Section 1, Section 2, and Section 3 shall be within the 20th day of filing with the competent authority or within the 20th day of settlement. The effective date of the reporting obligations is postponed to 1 January 2017; however, information relating to financial instruments placed or offered in the period between 1 October 2016 and 31 December 2016 shall be reported by 20 January 2017.

Information relating to early redemptions, periodic quarterly information following the close of the quarter in which placement of covered warrants, certificates, ETC and ETN commenced, is no longer required.

### **UCITS V: AMF updates its guide on French implementation**

The French Autorité des marchés financiers (AMF) has published an update of its [guide](#) on the application of Directive 2014/91/EU of 23 July 2014 on undertakings for collective investment in transferable securities (UCITS V) for investment management companies, highlighting both the harmonisation with and the main differences from certain rules of the Alternative Investment Fund Managers Directive (AIFMD).

Following the publication of the [Ordonnance no. 2016-312](#) dated 17 March 2016 transposing UCITS V in France, the key updates relate to requirements for a depositary's activities and remuneration policies applicable to investment management companies and take into account the EU Commission [Delegated Regulation \(EU\) 2016/438](#) of 17 December 2015 (which will apply from 13 October 2016), ESMA's final [guidelines](#) on sound remuneration policies under the UCITS Directive and the AIFMD, ESMA's letter to the EU Council and Parliament on the proportionality principle and remuneration rules in the

financial sector published on 31 March 2016 and ESMA's [updated Q&A](#) on the application of the UCITS Directive.

### **MAR: Decree on coordination of alternative prosecution for market abuse by criminal and administrative authorities published**

[Decree no. 2016-1121](#) dated 11 August 2016 on the coordination of the prosecution for market abuse by both the criminal and administrative authorities has been published in the French Journal Officiel.

In the context of the entry into force of the Market Abuse Regulation (MAR) on 3 July 2016, the Decree establishes the practical procedures for implementing [Article L. 465-3-6](#) of the French monetary and financial code, which specifies the prosecution measures assigned to the criminal authorities or, alternatively, to the administrative authorities, and sets out the formal means and timeframes for reciprocal consultation in order to avoid any risk of dual prosecution in compliance with the ne bis in idem principle.

In order to determine the most appropriate prosecution, the Decree provides for a prior consultation between the financial public prosecutor (procureur de la République financier) and the AMF, and in the event of disagreement between them, the designation of the public prosecutor at the Paris Court of Appeal.

The Decree entered into force on the day following that of its publication.

### **New bill on market abuse submitted to Luxembourg Parliament**

A new [bill](#) on market abuse has been submitted to the Luxembourg Parliament. The bill follows the Market Abuse Regulation (MAR) and implements the Criminal Sanctions for Market Abuse Directive 2014/57/EU (CSMAD), as well as Commission Implementing Directive (EU) 2015/2392 as regards reporting to competent authorities of actual or potential infringements. The bill repeals the Luxembourg market abuse law of 9 May 2006 that implemented the Market Abuse Directive 2003/6/EC in Luxembourg.

The publication of the bill constitutes the start of the legislative procedure.

### **New bill on mortgage credit submitted to Luxembourg Parliament**

A new [bill](#) on credit agreements for consumers relating to residential immovable property has been submitted to the Luxembourg Parliament.

The bill implements the Mortgage Credit Directive (MCD) by introducing new provisions to the Luxembourg Consumer Code. The new rules will apply to:

- credit agreements secured either by a mortgage or by another comparable security on residential immovable property, or by a right related to residential immovable property; and
- credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

The bill introduces, amongst other things, standard pre-contractual information for consumer borrowers through a European standard information sheet (ESIS), a pre-contractual obligation to assess the creditworthiness of the consumer and rules for the calculation of the annual percentage rate of charge. The bill further introduces an early repayment right for consumers, in case of which the creditor is entitled to compensation for costs incurred, limited to a certain level.

The bill also introduces the immovable property credit intermediary as a new category of financial sector professional and appoints the Luxembourg financial sector regulator, the Commission de Surveillance du Secteur Financier (CSSF), as competent authority for the purposes of supervision of immovable property credit intermediaries. Authorised immovable property credit intermediaries will benefit from the European passport under the MCD.

#### **New bill supporting MIF Regulation and modifying bank confidentiality to support outsourcing operations published**

A new [bill](#) supporting Regulation (EU) 2015/751 of 29 April 2015 on interchange fees for card-based payment transactions (MIF Regulation) and modifying various laws on financial services has been published.

The bill appoints the CSSF as competent authority for the purposes of application of the MIF Regulation and confers on the CSSF investigation and sanctioning powers in this area. The bill further caps the interchange fee announced for debit card based national payment transactions at 0.12% of the transaction value.

The bill also introduces a number of adjustments and clarifications in financial sector legislation. In particular, the bill modifies the Luxembourg statutory professional confidentiality obligation applying to banks and other professionals of the financial sector in order to support outsourcing of functions by such professionals.

#### **CSSF issues circular 16/642 implementing EBA guidelines on IRRBB**

The CSSF has issued [circular 16/642](#) dated 5 August 2016 modifying CSSF circular 08/338 on the implementation of a stress test in order to assess the interest rate risk arising from non-trading book activities and CSSF circular 12/552 on the central administration, internal governance and risk management.

The circular is addressed to all Luxembourg established credit institutions and investment firms and Luxembourg branches of third country credit institutions and investment firms.

The aim of the circular is to implement the EBA guidelines on the management of interest rate risk arising from non-trading activities, published on 22 May 2015. The EBA guidelines apply to the interest rate risk arising from non-trading activities (IRRBB), one of the Pillar 2 risks specified in the Capital Requirements Directive (CRD 4).

In particular, the circular introduces updated rules for the management of IRRBB and requires institutions to:

- measure their exposure to IRRBB, in terms of both potential changes to economic value and changes to expected net interest income or earnings; and
- document these measures in their Internal Capital Adequacy Assessment Process (ICAAP).

The circular applies from 1 December 2016. As a result, stress tests based on the situation of institutions as at 31 December 2016 will have to be performed in compliance with the new requirements.

#### **CSSF issues circular 16/641 updating circular 15/629 on supplementary supervision applicable to financial conglomerates**

The CSSF has issued [circular 16/641](#) dated 5 August 2016 providing an update of CSSF Circular 15/629 on supplementary supervision applicable to financial conglomerates and the definition of structure coefficients to be complied with by regulated entities belonging to financial conglomerates.

The circular is addressed to all Luxembourg established credit institutions, investment firms, portfolio management companies and alternative investment fund managers.

The aim of the circular is to implement the modifications made by Article 2(5) of Directive 2011/89/EU to Article 6(4), paragraph 1 of the Financial Conglomerates Directive

2002/87/EC in respect of capital adequacy for regulated entities in a financial conglomerate.

The circular clarifies the technical methods and principles for calculating the supplementary capital adequacy requirements with respect to a financial conglomerate applying the accounting consolidation method.

#### **CSSF issues circular 16/640 updating circular 14/593 on supervisory reporting requirements of credit institutions**

The CSSF has issued [circular 16/640](#) dated 29 July 2015 providing an update of CSSF circular 14/593 (as amended) on reporting requirements applicable to credit institutions.

The update reflects the latest developments and requirements for credit institutions in relation to prudential reporting and provides practical details and requirements of the CSSF in this respect. The new requirements include:

- additional monitoring metrics for liquidity (ALMM) applicable from 30 April 2016;
- the new liquidity coverage requirement (LCRDA) which will replace the current liquidity coverage requirement in respect of the reference period as from 30 September 2016; and
- new leverage ratio reporting (LEVDA) which will replace the current leverage ratio reporting in respect of the reference period as from 30 September 2016.

#### **HKEX rolls out volatility control mechanism for securities market**

Hong Kong Exchanges and Clearing Limited (HKEX) has [rolled out](#) the Volatility Control Mechanism (VCM) in its securities market. VCM is a measure designed to protect market integrity by preventing extreme price volatility arising from major trading errors and other unusual incidents.

HKEX proposed the VCM in a consultation paper after the G20 and the International Organization of Securities Commissions (IOSCO) issued guidance on implementing control mechanisms in trading venues to deal with systemic risks arising from volatile market situations. Based on the consultation feedback, HKEX decided to proceed with the implementation of the VCM following substantial market support for its proposal.

The VCM for HKEX's derivatives market is scheduled to be rolled out in the fourth quarter of 2016. It will apply only to the spot month and next calendar month contracts in the

HSI, Mini-HSI, H-shares Index (HHI) and Mini-HHI futures markets, a total of eight contracts.

#### **Regulators announce Shenzhen-Hong Kong Stock Connect**

To promote the development of capital markets in both Mainland China and Hong Kong, the China Securities Regulatory Commission (CSRC) and the Securities and Futures Commission (SFC) have [approved](#), in principle, the establishment of the mutual stock market access between Shenzhen and Hong Kong (Shenzhen-Hong Kong Stock Connect). Shenzhen-Hong Kong Stock Connect will be established by the Shenzhen Stock Exchange (SZSE), the Stock Exchange of Hong Kong Limited (SEHK), China Securities Depository and Clearing Corporation Limited (ChinaClear) and Hong Kong Securities Clearing Company Limited (HKSCC).

The SFC has [noted](#) that there will be no aggregate quota under Shenzhen-Hong Kong Stock Connect. The SFC and the CSRC have also abolished the aggregate quota under Shanghai-Hong Kong Stock Connect with immediate effect.

The launch of Shenzhen-Hong Kong Stock Connect is subject to the finalisation of all necessary regulatory approvals, market readiness and relevant operational arrangements. Hong Kong Exchanges and Clearing Limited (HKEX) [expects](#) it to take approximately four months from the announcement to complete the preparations for the launch of Shenzhen-Hong Kong Stock Connect. A separate announcement on the commencement of Shenzhen-Hong Kong Stock Connect will be made in due course.

The key features of Shenzhen-Hong Kong Stock Connect, including the shares eligible to be traded under the scheme, eligible investors and daily quotas, are set out in the joint announcement by the SFC and the CSRC.

#### **SSE publishes three sets of typical cases relating to abnormal trading**

The Shanghai Stock Exchange (SSE) has published a series of regulatory cases in relation to different types of abnormal trading in the securities market in its weekly press releases. SSE has summarised the key features of each type and the relevant regulatory basis for taking disciplinary action, in order to provide clearer guidance to market participants. In particular:

- on 22 July 2016, the [first batch](#) of typical cases was released by SSE – these cases focused on false order routing (i) during the open market collective auction

period from 9:15 to 9:25 of each trading day or (ii) towards close of market, which involves frequent order submission and cancellation not intended to conclude transactions but to gain profit by impacting the stock price;

- on 29 July 2016, the [second batch](#) of typical cases was published – these cases focused on false order routing during the trading session, which aims to create an artificial price level of particular stocks and mislead the other investors' investment; and
- on 5 August 2016, the [third batch](#) of typical cases was published – these cases related to abnormal transactions in block trading, bond trading and exchange traded funds (ETF) trading. Such abnormal trading is usually intended to conduct profit tunnelling between associated parties or make profit arbitrage by placing a large amount of orders and affecting the stock price.

#### **FSA finalises new guidelines regarding contractual stay**

The Financial Services Agency of Japan has [finalised](#) its new guidelines requiring licensed financial institutions at the group level to take necessary action to ensure that the stay order on certain termination clauses issued by the Prime Minister under the Deposit Insurance Act of Japan will extend to non-Japanese law governed agreements containing such termination clauses with any counterparty (except for central clearinghouses) in connection with certain financial transactions.

Covered transactions are OTC Derivatives Transactions as defined in the Financial Instruments and Exchanges Act of Japan, Financial Derivatives Transactions as defined in the Banking Act of Japan, sales or purchases of securities on condition of repurchase or resale, lending and borrowing of securities, trading of bonds with options, FX forward transactions and OTC Commodities Derivatives Transactions as defined in the Commodity Derivatives Act of Japan and other transactions similar to the foregoing (in each case, including transactions carried out for the purpose of securing such transactions).

Examples of the action to be taken by financial institutions are:

- adhering to international common protocol and confirming that such protocol is also adhered to by the counterparty to the relevant transaction; or
- indicating in a contract that the stay order will extend to the relevant transaction.

The above action is required (i) if the relevant agreement is newly entered into, and (ii) if a new transaction is entered into under the existing relevant agreement. Also, the guidelines state that it is desirable to take the above action even in connection with any existing transactions under existing relevant agreements, if it is deemed necessary taking into account the materiality of potential effects caused by the ineffectiveness of the stay order.

The guidelines will come into effect on 1 April 2017.

#### **FINRA requests comment on proposed amendments to its gifts, gratuities and non-cash compensation rules**

The Financial Industry Regulatory Authority (FINRA) has requested comments on existing and newly [proposed rules](#) regarding gifts, non-cash compensation for employees, and business entertainment.

The proposals would, among other things, consolidate FINRA's existing gifts, non-cash compensation, and business entertainment rules under a single FINRA rule series, increase the gift limit from USD 100 to USD 175, expand the scope of the non-cash compensation rules, incorporate existing non-rule based guidance, and maintain a principles-based approach to business entertainment subject to certain objective requirements (e.g., policies and procedures and training).

The deadline for submitting comments is 23 September 2016.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

#### **MAS consults on proposed enhancements to the customer money and assets protection regime**

The Monetary Authority of Singapore (MAS) has published the Consultation Paper on Enhancements to Regulatory Requirements on Protection of Customer's Moneys and Assets.

MAS has undertaken a review of the requirements governing the protection of customers' moneys and assets under the Securities and Futures Act (SFA) and its related subsidiary legislation, and proposes to enhance the regulatory regime governing the safeguarding, identification and use of customers' moneys and assets, and those relating to disclosures to customers. The enhancements proposed by MAS take into account the international standards promulgated by the International Organization of Securities Commissions and Financial Stability Board.

The final proposals will be effected primarily through amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations, which MAS will separately consult on after considering feedback from this consultation paper.

This briefing paper discusses the proposals.

[https://www.cliffordchance.com/briefings/2016/08/mas\\_consults\\_on\\_proposedenhancementstothe.html](https://www.cliffordchance.com/briefings/2016/08/mas_consults_on_proposedenhancementstothe.html)

### Open for business – the ADGM Courts

The Abu Dhabi Global Market (ADGM), an international financial free zone on Al Maryah Island, has recently

launched its own court system. The new courts provide a further option when considering dispute resolution mechanisms in contract negotiation, particularly when dealing with Abu Dhabi entities which might initially drive the use of the ADGM Courts. Businesses in the region should consider the pros and cons of choosing the ADGM Courts.

This briefing paper sets out the key features of the ADGM Courts.

[https://www.cliffordchance.com/briefings/2016/08/open\\_for\\_businesstheadgmcourts.html](https://www.cliffordchance.com/briefings/2016/08/open_for_businesstheadgmcourts.html)

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