

International Regulatory Update

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If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Steven Gatti](#) +1 202 912 5095

[Paul Landless](#) +65 6410 2235

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP, 10 Upper Bank Street, London, E14 5JJ, UK

PRIIPs: ECON Committee votes to reject RTS on KIDs

The EU Parliament's Economic and Monetary Affairs Committee (ECON) has [voted](#) to reject the EU Commission's proposed Delegated Regulation on regulatory technical standards (RTS) specifying the content, including on risks, rewards and product costs, of the key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs), due to enter into force on 31 December 2016. The motion for a resolution adopted by the ECON Committee also calls on the EU Commission to consider postponing the application date of the Level 1 Regulation until the RTS have been agreed.

MEPs have argued that the proposed formulas for predicting investment performance contain flaws which would overestimate the performance of a product and do not accurately reflect the risks of investing.

The EU Parliament plenary will vote on the motion later in September.

Transparency Directive: RTS on regulated information at EU level published in Official Journal

A Commission Delegated Regulation (EU) 2016/1437 with regard to regulatory technical standards (RTS) on access to regulated information at EU level under the Transparency Directive has been [published](#) in the Official Journal.

The Delegated Regulation sets out rules on:

- the communication technologies, availability and support level of the European Electronic Access Point (EEAP) and Officially Appointed Mechanisms (OAMs);
- the content of the search function offered by the EEAP;
- the details of facilitation of access through the EEAP and OAMs;
- the use of legal entity identifiers (LEI);
- the common format of data exchange between the EEAP and the OAMs; and
- the common list and classification of regulated information.

The Delegated Regulation will enter into force on 20 September 2016, although the Articles on the use of LEIs and the common list and classification of regulated information will only apply from 1 January 2017.

BRRD: Correcting Regulation on ex ante contributions to resolution financing arrangements published in Official Journal

Commission Delegated Regulation (EU) 2016/1434, which corrects Delegated Regulation (EU) 2015/63 supplementing the Bank Recovery and Resolution Directive (BRRD) on ex ante contributions to resolution financing arrangements, has been [published](#) in the Official Journal.

The Correcting Regulation makes necessary amendments with respect to errors in all language versions of Delegated Regulation (EU) 2015/63 in Articles 5, 6, 12, 14 and 20 as well as further errors in the German version.

The Correcting Regulation is intended to ensure a level playing field in the internal market and, as such, will apply retroactively as of 1 January 2015.

ESMA publishes updated risk dashboard and report on trends, risks and vulnerabilities

The European Securities and Markets Authority (ESMA) has published updated versions of its [risk dashboard](#) and [report](#) on trends, risks and vulnerabilities.

An interim version of ESMA's risk dashboard was published in July to report on the outlook for the markets in the wake of the UK's vote to leave the EU. In its third update for 2016, ESMA expects that market, liquidity and contagion risks may rise as political and event risks have intensified, and the macroeconomic environment may deteriorate.

In its report on trends, risks and vulnerabilities, which covers the first half of 2016, ESMA identifies high volatility in equity and commodity markets and investment fund outflows as key trends. As part of its analysis on vulnerabilities, the report analyses proxy advisors, circuit breakers, synthetic leverage in the asset management industry amongst other topics.

ESMA will continue to update its risk dashboard every quarter and its report on trends, risks, and vulnerabilities every six months.

FSB reports to G20 Leaders on financial regulatory reforms

The Financial Stability Board (FSB) has published a [letter](#) from its Chair Mark Carney to G20 Leaders ahead of the G20 Summit in Hangzhou on 4-5 September 2016 and the second annual [report](#) on the implementation and effects of the G20 financial regulatory reforms.

In the letter, Mr. Carney argues that:

- the G20 financial reforms are working and the financial system has continued to function effectively in the face of recent shocks, dampening aftershocks rather than amplifying them;
- the financial system is changing to rely more on markets and less on banks – according to the FSB, this is a major positive development, but one that also raises new vulnerabilities which the FSB will address with its continued work to promote resilient market-based finance;
- ongoing support of the G20 Leaders is required to implement the reforms fully, consistently and promptly, in particular to implement critical measures to end too-big-to-fail; and
- developments in recent years raise the importance of new measures to support a more resilient, inclusive globalisation built on sustainable cross-border investment.

The FSB's second annual report concludes that implementation progress remains steady but uneven, and that the strengthened resilience due to the reforms has stood the global financial system in good stead.

IMF, FSB and BIS set out elements of effective macroprudential policies

The FSB, the International Monetary Fund (IMF) and the Bank for International Settlements (BIS) have published a [joint report](#) on elements of effective macroprudential policies. The report, which has been published in response to a G20 request, takes stock of the international experience since the financial crisis in developing and implementing macroprudential policies and will be presented to the G20 Leaders' Summit in Hangzhou.

The report acknowledges that the wide range of institutional arrangements and policies being adopted across countries suggest that there is no 'one-size-fits-all', but nonetheless sets out a number of elements that have been found useful for macroprudential policy making. It also includes some data on the use of macroprudential tools, illustrative examples of institutional models for macroprudential policymaking, and a brief summary of some of the empirical literature on the effectiveness of macroprudential tools.

FSB reports to G20 on measures to reduce misconduct risk

The FSB has published its [second report](#) on progress in its workplan of measures to reduce misconduct risk, which

was agreed in May 2015. The report describes progress made since the previous progress report in November 2015 across the workstreams.

The FSB's recent work has focussed on:

- the role of incentives in reducing misconduct, on which the FSB intends to take stock of work by international bodies, national authorities, industry associations and firms relating to governance practices to address misconduct by March 2017 and then potentially develop a supervisory toolkit or guidance for strengthening governance frameworks;
- improving standards of market practice, with plans to release a complete Global Code of Conduct for Foreign Exchange Market and adherence mechanism planned in May 2017, which would include principles relating to electronic trading, trading venues, brokers and prime brokerage; and
- work on financial benchmarks to strengthen existing major interest rate benchmarks and exploring additional work on the development and introduction of alternative benchmarks.

The FSB will publish its third progress report on the measures to reduce misconduct risk in advance of the next G20 leaders meeting in July 2017.

FSB and IMF report to G20 on post-crisis data gaps

The FSB and the IMF have published their [first progress report](#) on the second phase of the G20 Data Gaps Initiative (DGI-2) on post-crisis data gaps. In September 2015, the G20 Finance Ministers and Central Bank Governors acknowledged progress made in the first phase of the G20 Data Gaps Initiative (DGI-1) and launched the second phase. The Ministers and Governors called on the IMF and FSB to report on the progress of DGI-2 in the second half of 2016.

The main objective of the second phase is to implement the regular collection and dissemination of reliable and timely statistics for policy use and sets out recommendations relating to:

- monitoring risk in the financial sector;
- vulnerabilities, interconnections and spillovers; and
- data sharing and communication of official statistics.

Basel Committee reports to G20 on Basel III implementation

The Basel Committee on Banking Supervision (BCBS) has published its [seventh report](#) to G20 leaders on progress by

the 27 Basel Committee member jurisdictions in implementing the Basel III regulatory reforms ahead of their summit in Hangzhou on 4-5 September 2016.

The report summarises the outcomes of the BCBS' Regulatory Consistency Assessment Programme (RCAP) since the last report in November 2015. The report highlights that all BCBS member jurisdictions have put in place the key components of the Basel III capital and liquidity frameworks but some challenges remain, in particular regarding the timely regulatory adoption of Basel standards in some jurisdictions. Overall the BCBS reports further progress since the 2015 report and states its intention to continue monitoring the implementation and impact of its standards and report to the G20 on progress.

Crowdfunding: AMF and ACPR update guide on applicable regulatory framework in France

The French Autorité des marchés financiers (AMF) and Autorité de contrôle prudentiel et de résolution (ACPR) have published an update of their joint [position](#) and [guide](#) contributing to the regulatory framework for crowdfunding in France, which entered into force on 1 October 2014. Presented in a Q&A format, the guide is intended for operators of lending, donation or subscription platforms, as well as project owners looking for financing and potential investors. In a simple and accessible way, it provides practical answers to the questions which crowdfunding actors may have.

Italian Parliament approves law enabling Government to transpose certain EU directives and implement other European acts

The Italian Parliament has approved [Law no. 170 of 12 August 2016](#) enabling the Government to transpose certain EU directives and implement other European acts. The law was published in the Italian Official Gazette (Gazzetta Ufficiale) on 1 September 2016 and enters into force on 16 September 2016.

The principal delegations to the Italian Government with respect to banking and financial matters are as follows:

- Article 10: delegation to transpose Recommendation ESRB/2011/1 of the European Systemic Risk Board (ESRB) on the macro-prudential mandate of national authorities;
- Article 11: delegation to adapt national legislation to the provisions of Regulation (EU) 751/2015 of the European Parliament and of the Council concerning interchange fees on credit card-based payments;
- Article 12: principles and criteria policies for the implementation of Directive 2010/75/EU of the European Parliament and of the Council on payment services in the internal market amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) 1093/2010;
- Article 13: delegation to adapt national legislation to the provisions of Regulation (EU) 2015/760 of the European Parliament and of the Council on European long-term investment funds;
- Article 14: principles and criteria for the implementation of Directive 2014/92/EU of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features; and
- Article 15: delegation to transpose Directive 2015/849/EU of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

NDRC starts to accept foreign debt registration for NPL transfer by domestic financial institutions

The National Development and Reform Commission (NDRC) has issued a [circular](#) in respect of the foreign debt management on the transfer of non-performing loans (NPLs) from domestic financial institutions to overseas investors, which took effect as of its issuance. The following key aspects are worth noting:

- where a domestic financial institution transfers an NPL which is owed by a domestic enterprise to overseas investor(s), the foreign debt thus incurred by the domestic enterprise after the transfer can now be submitted to the NDRC for registration;
- the domestic financial institution should submit the following application documents for completing the NDRC registration: (i) basic information of the NPL to be transferred; (ii) the transfer agreement; (iii) media release relating to NPL disposal; (iv) the overseas investor's certificate of incorporation, written undertakings and credit reference documents; (v) a notarisation certificate issued by a competent notary public relating to the transfer process; and (vi) a legal opinion issued by a competent law firm; and

- upon the receipt of a registration certification from the NDRC, the domestic financial institution should apply to the State Administration of Foreign Exchange for foreign debt registration and process the relevant remittance and currency conversion accordingly.

Chinese governmental authorities issue guidance opinion on green finance

The People's Bank of China, the Ministry of Finance, the National Development and Reform Commission, the Ministry of Environmental Protection, the China Banking Regulatory Commission, the China Securities Regulatory Commission and the China Insurance Regulatory Commission have jointly issued the '[Guidance Opinion on the Construction of a Green Finance System](#)'. The Guidance Opinion has been published to facilitate the construction of a green finance regime, and optimisation of resource allocation for the purpose of better serving the real economy. The following key aspects are worth noting:

- 'green finance' is defined as finance services provided for project financing, project operation and risk management in the fields of environment improvement, addressing climate change, energy saving and effective utilisation (including environment protection, energy saving, clean energy, green transportation and green architecture);
- a 'green finance regime' under the Guidance Opinion refers to systematic arrangements for reforming the current economy into a green economy through various financial instruments and the corresponding policy support;
- the Guidance Opinion sets out policy guidance in areas like green credit extension, green investment through the securities market, green investment funds, green insurance, and marketplaces for environmental interests; and
- the construction and two-way opening up of a green securities market will be encouraged. The Guidance Opinion encourages domestic financial institutions and enterprises to issue green bonds overseas as well as supporting international financial organisations and multinational corporations to issue green bonds or engage in green investment in China.

SFC designates central counterparties for OTC derivative transactions

The Securities and Futures Commission (SFC) has [designated](#) four central counterparties (CCPs) for the purposes of the mandatory clearing obligation for certain over-the-counter (OTC) derivative transactions. The

designation of one local CCP and three major overseas CCPs will provide a variety of choices for market participants who under Hong Kong law are subject to mandatory clearing, which came into effect on 1 September 2016.

The Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules stipulate the specific transactions that are subject to mandatory clearing.

Market participants may fulfil their mandatory clearing obligations by clearing their transactions through any of the designated CCPs. The initial scope of mandatory clearing in Hong Kong will cover transactions in certain standardised interest rate swaps that are denominated in HKD or one of the G4 currencies (USD, EUR, GBP and JPY).

HKMA publishes FAQs on implementation and operation of mandatory clearing regime

The Hong Kong Monetary Authority (HKMA) has published a set of frequently asked questions ([FAQs](#)) on the implementation and operation of the mandatory clearing regime which took effect on 1 September 2016. The FAQs, prepared by the SFC and the HKMA, serve to provide clarifications with regard to how the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules operate.

For the purpose of facilitating the HKMA's regulatory monitoring, authorised institutions are requested to notify the HKMA when they have reached the clearing threshold for the first time (and the first time again after an exit notice has been given). Such notification is required to be sent to the HKMA within 60 days after the end of the relevant calculation period for the clearing threshold.

MAS proposes new regulatory framework and governance model for payments

The Monetary Authority of Singapore (MAS) has published a [consultation paper](#) on the Proposed Payment Framework (PPF) and the establishment of a National Payments Council (NPC). The consultation is the first in a series of consultations on the PPF and NPC, and is focused on obtaining broad-based feedback on the proposed enhancements to the regulation and governance of the Singapore payments landscape.

The MAS is seeking feedback on, amongst other things, the scope of payment activities to be regulated under the PPF, and the broad mandate and composition of the proposed

NPC. The MAS will seek feedback on specific policies and draft legislation, which will include requirements and applicability to various payment activities, in subsequent rounds of public consultation.

The proposals in the consultation paper include the following:

- bringing the Payment Systems (Oversight) Act (PS(O)A) and the Money-changing and Remittance Businesses Act (MCRBA), which govern stored value and remittances respectively, under a single framework that will provide for the licensing, regulation and supervision of all payments services, including stored value facility holders, remittance companies, and virtual currency intermediaries. Regulation will be applied on an activity basis, and entities will only be required to apply for a single licence to undertake several payment activities. The PPF aims to strengthen standards of consumer protection, anti-money laundering, and cyber security related to payment activities, while facilitating innovation and system interoperability; and
- establishing an NPC to coordinate key initiatives, such as promoting interoperability and adopting common standards. Members will be drawn from both users and providers of payment solutions, and the NPC will foster collaboration among stakeholders to promote and drive industry payment solutions.

Comments on the consultation are due by 31 October 2016.

SEC adopts amendments to Form ADV and Investment Adviser Books and Records Rule

The US Securities and Exchange Commission (SEC) has [adopted](#) amendments to several Investment Advisers Act rules, including changes to Form ADV and Rule 204-2.

The amendments to Form ADV will, among other things, require advisers to provide additional information regarding their separately managed account business, require additional identification and affiliation information, allow for umbrella registration for certain advisers to private funds, and provide other clarifying/technical amendments to the Form.

In addition, the Books and Records Rule 204-2 is amended to require advisers to maintain records of materials that demonstrate the calculation of the performance or rate of return used in any communication to any person, as well as originals of written communications sent by the adviser

related to performance or rate of return of a managed account or securities recommendation.

The amendments become effective 60 days after publication in the Federal Register, which is expected shortly. Advisers will need to begin complying with the amendments on 1 October 2017.

RECENT CLIFFORD CHANCE BRIEFINGS

Asset segregation and use of CSDs under AIFMD and UCITS V – ESMA's call for evidence

On 15 July 2016, ESMA published a paper entitled 'Call for evidence – Asset segregation and custody services' (comments to be received by 23 September 2016). The publication of this paper was rather overshadowed by the aftermath of reactions to the UK referendum result on 24 June 2016, but the issues are significant, and this is an important opportunity for AIF and UCITS depositaries (and their delegates) to provide clarity to ESMA regarding issues which have considerable impact on the holding of assets for AIFs and UCITS.

This briefing paper summarises the main issues raised.

https://www.cliffordchance.com/briefings/2016/09/asset_segregationanduseofcsdsunderaifmdan.html

An analysis of current and future trends in the Australian informal merger review process

Over the next few months the Australian Government is understood to be releasing Exposure Draft Legislation for changes to the Australian Competition and Consumer Act (CCA), which will include proposed changes to the formal merger and merger authorisation processes.

The Government has also noted that the more commonly used 'informal' merger clearance process that is undertaken by the Australian Competition and Consumer Commission (ACCC) continues to largely operate well in the view of the business community. However, the Government noted that issues of timeliness and transparency are arising when dealing with the more complex and contentious matters. The Government, recognising that this informal merger review process is a creature of the ACCC and not statute (it is essentially a 'no action' letter from the ACCC), has recommended to the ACCC that the informal process could benefit from increased consultation and discussion with the business community to address these issues.

This briefing paper considers any current or past trends that can be identified from the relevant ACCC data, before discussing the likely changes to the ACCC's informal merger review process and what that means for businesses and their advisers in terms of the operation of the ACCC's informal clearance process and the 'pre-assessment' process.

https://www.cliffordchance.com/briefings/2016/08/an_analysis_of_currentandfuturetrendsint.html

Changes to Australia's unfair contract terms regime are fast approaching

Following a 12 month transition period, the extension of Australia's unfair contract terms regime to deal with

contracts with small businesses will take effect on 12 November 2016. The new regime will have significant implications for business-to-business transactions as certain contracts will now be subject to additional 'unfairness' protections.

This briefing paper discusses the new regime.

https://www.cliffordchance.com/briefings/2016/09/changes_to_australiasunfaircontractterm.html

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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