CLIFFORD
CHANCE

Briefing note

# International Regulatory Update

## 05 - 09 September 2016

### IN THIS WEEK'S NEWS

- EMIR: ESAs reject Commission's proposed amendments to RTS on non-centrally cleared OTC derivatives
- BRRD: RTS on MREL published in Official Journal
- CRD 4: Delegated Regulation on methodology for identifying global systemically important institutions published in Official Journal
- ESAs report on risks and vulnerabilities in EU financial system
- EBA reports to Commission on core funding ratio
- EMIR: ESRB responds to ESMA consultation on proposed clearing delay for small financial counterparties
- G20 Leaders publish communiqué following Hangzhou summit
- FCA publishes Quarterly Consultation No. 14
- BaFin announces change in German law regarding exemption from licence requirements under German Banking Act for investment advice and investment broking
- CSSF issues regulation on voluntary reciprocity for macroprudential policy measures
- CSSF issues circular on risk weights applicable to retail exposures secured by mortgages on residential immovable property in Luxembourg
- Ordinance of the President of the Council of Ministers on contributions to cover costs of banking supervision comes into force
- China starts to reform regulatory regime for foreign direct investment
- Chinese regulators issue new rules to relax foreign exchange administration of RQFII regime
- HKMA launches Fintech Supervisory Sandbox
- HKMA issues circular on de-risking and financial inclusion
- CFTC issues comparability determination for Japanese swap margin requirements
- FRB issues final policy statement on countercyclical capital buffer

*Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.*

**If you would like to continue to receive International Regulatory Update or would like to request a subscription for a colleague, please click here.**

**To request a subscription to our Alerter: Finance Industry service, please email Online Services.**


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
www.cliffordchance.com

- Recent Clifford Chance briefings: The EU benchmarks regulation; China's foreign direct investment regulatory regime; and more. Follow this link to the briefings section.

**EMIR: ESAs reject Commission's proposed amendments to RTS on non-centrally cleared OTC derivatives**

The European Supervisory Authorities (ESAs) have published an opinion rejecting the EU Commission's proposed amendments to the final draft regulatory technical standards (RTS) on risk mitigation techniques for OTC derivatives not cleared by a central counterparty, which were originally submitted for endorsement on 8 March 2016.

In particular, the ESAs disagree with the EU Commission's proposal to remove concentration limits on initial margins for pension schemes and emphasise that these are crucial for mitigating potential risks pension funds and their counterparties might be exposed to. In addition, the ESAs' opinion states that:

- as with other thresholds in the RTS submitted to the Commission, the calculation of the threshold against non-netting jurisdictions should consider both legacy and new contracts;
- with reference to covered bonds, the additional condition included in the Commission's proposed amendments would have the effect of ranking derivatives counterparties after bond holders, which is contrary to the reasoning established in European Market Infrastructure Regulation (EMIR) to grant a preferred treatment to cover bonds;
- the ESAs recommend providing clarity that non-centrally cleared derivatives concluded by central counterparties (CCPs) are not covered by the regulation;
- more clarity should also be brought to the application of the RTS to transactions concluded with third country counterparties, in particular non-financial counterparties; and
- the delayed application to intragroup transactions should be maintained to allow national competent authorities to complete the relevant approval process before the obligation will start applying.

**BRRD: RTS on MREL published in Official Journal**

Commission Delegated Regulation 2016/1450 specifying RTS on assessment criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities (MREL) under the Bank Recovery and Resolution Directive (BRRD) has been published in the Official Journal.

The RTS are intended to provide resolution authorities with detailed guidance for setting MREL requirements for banks, while enabling authorities to exercise discretion on the minimum level and composition of MREL as appropriate for each bank. Authorities will be required to determine sufficient MREL to ensure that an institution under resolution can, through the write down or conversion into equity of capital instruments and eligible liabilities, absorb losses and be recapitalised sufficiently to restore its Common Tier 1 ratio to a level sufficient to comply with conditions for authorisation under the Capital Requirements Directive (CRD 4) and BRRD, as well as continuing business and maintaining market confidence.

The RTS will enter into force on 23 September 2016.

**CRD 4: Delegated Regulation on methodology for identifying global systemically important institutions published in Official Journal**

Commission Delegated Regulation 2016/1608 amending Delegated Regulation 1222/2014 with regard to RTS for the specification of the methodology for the identification of global systemically important institutions (G-SIIs) and for the definition of subcategories of G-SIIs has been published in the Official Journal.

Under CRD 4, the methodology to identify G-SIIs must take into account internationally agreed standards. The methodology in Delegated Regulation 1222/2014 closely follows the approach of the Basel Committee on Banking Supervision (BCBS) for identifying global systemically important banks (G-SIBs in BCBS terminology).

The amendment to Delegated Regulation 1222/2014 aims to ensure consistency between the methodology specified in CRD 4 and the BCBS framework as updated from time to time.

The Regulation entered into force on 9 September 2016.

**ESAs report on risks and vulnerabilities in EU financial system**

The Joint Committee of the ESAs has published its Autumn 2016 report on risks and vulnerabilities in the EU's financial system.

The main risks affecting the financial system are considered to be:

- the low growth and low yield environment;
- potential effects on asset quality and the profitability of financial institutions; and
- the interconnectedness in the EU financial system.

The Joint Committee reports that although many of the risks are long standing and can be related to the effects of the 2007 financial crisis, the EU financial system is also vulnerable to more immediate risks such as the result of the UK referendum on EU membership, which has added political and legal uncertainty.

**EBA reports to Commission on core funding ratio**

The European Banking Authority (EBA) has published a report providing a descriptive analysis of the core funding ratio (CFR) in the EU, in response to an April 2016 call for advice from the EU Commission, which requested that the EBA consider the possibility of the CFR being used as an alternative metric for the assessment of EU banks' funding risk.

Overall, the EBA has concluded that, unlike the net stable funding ratio (NSFR), the CFR does not look at the whole balance sheet of a bank and has taken the view that it cannot fully assess a potential funding gap. The report highlights a lack of correlation in terms of outcome and conclusions between the NSFR and CFR, which the EBA considers is due to the CFR assessing funding risk only considering the liabilities side of banks irrespective of the stable funding requirements for the various types of assets.

The report is based on data from a sample of 279 EU banks based on the same QIS data used for the NSFR published in December 2015, which has a reference date of December 2014.

The report has been submitted to the EU Commission.

**EMIR: ESRB responds to ESMA consultation on proposed clearing delay for small financial counterparties**

The European Systemic Risk Board (ESRB) has responded to the European Securities and Markets Authority's (ESMA's) consultation on proposed changes to the phase-in period for central clearing of OTC derivatives applicable to financial counterparties with a limited volume of derivatives activity under EMIR. In its consultation, ESMA proposed extending by two years the phase-in for financial counterparties with a limited volume of derivatives activity.

In its response, the ESRB notes its concerns related to long phase-in periods, and argues that a quick and comprehensive introduction of the clearing obligation is, along with margining obligations, the most effective way of tackling systemic risk in the OTC derivatives markets. The ESRB believes that extending the deadlines would provide ambiguous incentives and postponing the clearing obligation for Category 3 firms could further favour entities which were less 'counterparty risk-sensitive', which might result in incentives to not apply in a timely manner a cautious approach with respect to any future regulation.

The ESRB suggests that ESMA could modify the deadlines proposed in its consultation so that the deadlines for Category 3 counterparties in all three RTS could be in line with the new deadline of 21 June 2016 provided in the consultation for the first RTS.

**G20 Leaders publish communiqué following Hangzhou summit**

The G20 Leaders have published a communiqué following their summit in Hangzhou, China on 4-5 September 2016.

Among other things, the leaders addressed global economic and financial governance, including:

- endorsing the G20 Agenda towards a more stable and resilient international financial architecture;
- a commitment to finalising the remaining elements of the regulatory framework and to the timely, full and consistent implementation of the agreed financial sector reform agenda, including Basel III and the total-loss-absorbing-capacity (TLAC) standard as well as effective cross-border resolution regimes;
- continuing work to address systemic risk in the insurance sector, in relation to which the leaders welcomed the development of an Insurance Capital Standard (ICS) for internationally active insurers;
- committing to full and timely implementation of agreed OTC derivatives reforms;
- encouraging members to close the gap in the implementation of the Principles for Financial Market Infrastructures and welcoming reports by the Committee on Payments and Market Infrastructures (CPMI), International Organisation of Securities Commissions (IOSCO) and the Financial Stability Board (FSB) on enhancing central counterparty resilience, recovery planning and resolvability;

- endorsing work on effective macroprudential policies to limit systemic risks, including in relation to asset management activities and shadow banking;
- continuing to address the decline in correspondent banking; and
- endorsing the G20 High-Level Principles for Digital Financial Inclusion, updated G20 financial inclusion indicators and the implementation framework of the G20 Action Plan on SME financing.

The communiqué also highlights the G20's continued support for international tax cooperation, including advancing work on base erosion and profits shifting (BEPS), and calls on the Financial Action Task Force (FATF) and Global Forum to make initial proposals by October 2016 on ways to improve the implementation of international transparency standards, including on the availability of beneficial ownership information of legal persons and legal arrangements.

The G20 Leaders will meet in Germany in 2017.

**FCA publishes Quarterly Consultation No. 14**

The Financial Conduct Authority (FCA) has published its quarterly consultation paper No. 14 (CP16/21), setting out proposed miscellaneous amendments to the Handbook.

In particular, the FCA is proposing to:

- make changes to the APR assumptions for consumer credit agreements;
- update the equity release rules in MCOB to facilitate the availability of lifetime mortgages where the consumer can choose to switch to interest roll-up, and to make consequential changes to SUP for the reporting of Product Sales Data;
- make changes to Short Form A;
- make changes to IFPRU 11 to increase the clarity of requirements and ensure consistency with the Bank Recovery and Resolution Directive (BRRD); and
- make changes to include deferred shares issued by mutual society insurers and friendly societies with the 'mutual society shares' definition.

Comments are due by 3 October 2016 for Chapters 2, 4 and 5, and 2 November 2016 for Chapters 3 and 6.

**BaFin announces change in German law regarding exemption from licence requirements under German Banking Act for investment advice and investment broking**

Undertakings whose financial services for others consist only of investment advice and/or investment brokerage between customers and providers or issuers of capital investments within the meaning of section 1 para 2 of the German Capital Investment Act shall only be exempt from licence requirements under the German Banking Act if such capital investments are offered to the public for the first time.

This change in German law affects in particular intermediaries and undertakings that are involved in broking capital investments on the so called 'secondary market' which, until now, was only subject to a licence requirement pursuant to section 34f of the German Commercial Code.

**CSSF issues regulation on voluntary reciprocity for macroprudential policy measures**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a new regulation (No 16-04 of 30 August 2016) with regard to voluntary reciprocity for macroprudential policy measures.

The new regulation follows the Luxembourg Systemic Risk Committee's recommendation of 25 July 2016 (CRS/2016/005) regarding the reciprocity measure taken by the National Bank of Belgium (NBB) under Article 458 (5) of the Capital Requirements Regulation (CRR) and in line with the European Systemic Risk Board's recommendation of 15 December 2015.

The CSSF hereby recognises the decision of the NBB to apply to Belgian branches of Luxembourg credit institutions using the internal ratings based (IRB) approach a 5% increase of risk-weighted retail mortgage credit exposures (other than SME) relating to residential real estate in Belgium.

The regulation is immediately applicable for Belgian branches of Luxembourg credit institutions using the IRB approach.

**CSSF issues circular on risk weights applicable to retail exposures secured by mortgages on residential immovable property in Luxembourg**

The CSSF has published a new circular (No 16/664 of 30 August 2016) on risk weights applicable to retail exposures

(other than SME) secured by mortgages on residential immovable property in Luxembourg.

The new circular follows the Luxembourg Systemic Risk Committee's (LSRC's) recommendation of 1 July 2016 (CRS/2016/004) on the use of rating systems for the purpose of the internal ratings based (IRB) approach. The risk-weighted exposure for credit risk of credit institutions should accordingly not amount to an average risk weight of less than 15% in relation to retail exposures (other than SME) secured by mortgages on residential immovable property in Luxembourg.

The CSSF is required to submit to the LSRC a report on the practice of Luxembourg credit institutions in relation to this by 31 October 2016. Therefore, credit institutions which (i) operate in the residential real estate sector in Luxembourg and (ii) use the IRB approach to calculate risk-weighted exposure for credit risk, are required to inform the CSSF by 30 September 2016 whether they are compliant with the LSRC's recommendation, and where not, to indicate which measures will be taken to ensure their compliance.

In addition, the relevant credit institutions are required to document the above within their internal capital adequacy assessment process (ICAAP) on an annual basis.

**Ordinance of the President of the Council of Ministers on contributions to cover costs of banking supervision comes into force**

The Ordinance of the President of the Council of Ministers of 23 August 2016 on contributions to cover the costs of banking supervision came into force on 1 September 2016. The Ordinance sets out the time limits for paying, the amount of and the method of calculating contributions to cover the costs of banking supervision, taking into account banks' 16.5% share in covering the costs of supervision of the capital market. The Ordinance introduces a new method of determining the contributions to cover the supervision costs based on progressive settlement – the new solutions will apply commencing 2016.

**China starts to reform regulatory regime for foreign direct investment**

The Standing Committee of the National People's Congress (NPCSC) of the PRC has adopted a resolution to amend certain clauses in the Law on Sino-foreign Equity Joint Venture, the Law on Sino-foreign Cooperative Joint Venture, the Law on Wholly Foreign-owned Enterprise and the Law on Protection of Taiwanese Investment in Mainland China, with effect from 1 October 2016.

The amendment generally provides that, to the extent that the relevant industrial sector is not subject to a special access restriction imposed by the State, the establishment of a foreign-invested enterprise (FIE) only needs to complete a filing formality with the relevant authority in charge of foreign investment. The list of industrial sectors subject to special access restriction (the 'negative list') is to be published from time to time by the State Council. Those FIEs whose business activities fall within the scope of the negative list will still be subject to the current examination and approval regime.

The Ministry of Commerce (MOFCOM) has also published a consultation draft of measures to implement the resolution. According the consultation draft, the filing procedure can be completed within 30 days after the incorporation of the FIE. The closing date for submission of comments on the consultation draft is 22 September 2016.

**Chinese regulators issue new rules to relax foreign exchange administration of RQFII regime**

The People's Bank of China and the State Administration of Foreign Exchange (SAFE) have jointly published the 'Circular on Relevant Matters regarding Domestic Securities Investment by RQFIIs'. The Circular is intended to relax the foreign exchange administration under the RQFII regime and bring it more in line with the new QFII rules issued by SAFE in February 2016.

Among other things, the key changes in the Circular include the following:

- generally speaking a 'basic quota' based filing system will be applicable for RQFIIs, under which no prior approval is required for an RQFII as long as the quota amount it applies for does not exceed its basic quota, an amount linked to such RQFII's total assets or assets under management determined by a specific formula;
- capital remitted into China by an RQFII (except for open-ended funds) is subject to an initial lock-up period of 3 months starting from the date on which an aggregate amount equal to RMB 100 million has been remitted inwards under the RQFII's investment quota; and
- a balance quota management approach is adopted, which means the aggregated net amount of investment capital remitted into China shall not exceed an RQFII's investment quota.

The Circular became effective as of its issuance.

**HKMA launches Fintech Supervisory Sandbox**

The Hong Kong Monetary Authority (HKMA) has launched a Fintech Supervisory Sandbox (FSS) to facilitate the pilot trials of Fintech and other technology initiatives of authorised institutions before they are launched on a fuller scale.

The HKMA notes that more Fintech and innovative technologies (including mobile payment services, biometric authentication, blockchain, robotics and augmented reality) are being implemented or explored by the banking industry and recognises the need for a supervisory arrangement with greater flexibility to enable authorised institutions to conduct more timely live tests of these initiatives before their formal launch. The FSS will enable authorised institutions to gather real-life data and user feedback on their new Fintech products or services more easily in a controlled environment, so that they can make refinements to them as appropriate.

The HKMA will adopt the following principles in operating the FSS:

- the FSS is available to Fintech as well as other technology initiatives intended to be launched in Hong Kong by authorised institutions;
- within the FSS, an authorised institution is allowed to conduct a pilot trial of its initiatives involving actual banking services and a limited number of participating customers (such as staff members or focus groups of selected customers) without the need to achieve full compliance with the HKMA's usual supervisory requirements during the trial period, subject to the conditions specified in this regard; and
- the FSS should not be used by authorised institutions as a means to bypass applicable supervisory requirements.

The HKMA does not intend to stipulate an exhaustive list of the supervisory requirements that may potentially be relaxed within the FSS. Examples of these requirements include security-related requirements for electronic banking services, and the timing of independent assessment prior to launching new technology services. Authorised institutions intending to access the FSS are advised to contact the HKMA early. As the FSS is a new supervisory arrangement, the HKMA will refine the arrangement over time in light of the implementation experience and industry development.

**HKMA issues circular on de-risking and financial inclusion**

The HKMA has issued a circular to authorised institutions to highlight its concerns about financial inclusion in light of recent actions by some authorised institutions engaged in the process of 'de-risking', i.e. banks declining or discontinuing business relationships with customers or categories of customers to avoid, rather than manage, the risk involved.

While it stresses the importance of ensuring that anti-money laundering and counter-terrorist financing (AML/CFT) controls are sufficiently robust and comply with all the relevant regulatory requirements, the HKMA expects authorised institutions to adopt a risk-based approach (RBA) and refrain from adopting practices that would result in financial exclusion, particularly in respect of the need for bona fide businesses to have access to basic banking services. To guide authorised institutions in this regard, the circular sets out guiding principles for:

- RBA implementation in relation to customer due diligence (CDD); and
- interface with customers.

The HKMA advises authorised institutions' senior management to review their existing processes and practices to ensure that they are consistent with the principles outlined in the circular. Where there are inconsistencies, the HKMA should be informed of the plans and timeline by which remediation measures will be taken. Where any requirements or standards mandated by an authorised institution's head office or overseas authority might conflict with the application of the suggested principles, these should be reported to the HKMA with a view to resolving the issue. Authorised institutions should also provide adequate training to their front line staff to ensure clear understanding and consistent implementation.

The HKMA advises the boards of locally incorporated authorised institutions and senior management of regional/head offices of branches of foreign banks in Hong Kong to take a proactive role in ensuring that CDD processes comply with the principles of RBA and customer interface requirements as set out in the circular.

The HKMA has indicated that it will work with the banking industry on how identification of money laundering/terrorist financing risks and the implementation of AML/CFT requirements can be made more consistent and effective so as to lessen the side effects of de-risking.

**CFTC issues comparability determination for Japanese swap margin requirements**

The Commodities Futures Trading Commission (CFTC) has approved a comparability determination regarding certain of Japan's margin requirements for uncleared swaps. As a result of this determination, a Japanese swap dealer registered with the CFTC can comply with many aspects of US margin rules by meeting Japan's corresponding requirements, including the following:

- methodologies for calculating initial and variation margin amounts;
- timing and manner of collection of payment of margin;
- threshold levels or amounts;
- risk management controls for calculation of initial and variation margin;
- eligible collateral;
- custodial arrangements, segregation and rehypothecation; and
- margin documentation.

The comparability determination does not apply to inter-affiliate swaps. While Japan does not require collection or posting of initial or variation margin between consolidated affiliates, US rules do require collection and posting of variation margin (and, in some cases, collection of initial margin) between consolidated affiliates.

**FRB issues final policy statement on countercyclical capital buffer**

The Federal Reserve Board (FRB) has released a final policy statement concerning the framework it intends to follow in setting the countercyclical capital buffer (CCyB) for private-sector credit exposures located in the United States. The CCyB is a macroprudential tool that can be used to increase the resilience of the financial system by raising capital requirements on internationally active banking organizations when the risk of above-normal losses is elevated. The CCyB applies to banking organizations that are subject to the advanced approaches capital rules, generally those with more than USD 250 billion in assets or USD 10 billion in on-balance-sheet foreign exposures, and to any depository institution subsidiary of such banking organizations.

Some of the factors that the FRB may take into account in evaluating settings for the buffer include, among other things, leverage in the nonfinancial sector, leverage in the financial sector, maturity and liquidity transformation in the financial sector, and asset valuation pressures.

In response to comments, the final policy statement clarifies that the FRB expects the CCyB will be activated only when systemic vulnerabilities are meaningfully above normal and that it generally intends to increase the CCyB gradually. The CCyB will be removed or reduced by the FRB when the conditions that led to its activation abate or lessen and when the release of CCyB capital would promote financial stability. The FRB states that it expects to provide notice to the public and seek comment on the proposed level of the CCyB as part of making any final determination to change the CCyB.

## RECENT CLIFFORD CHANCE BRIEFINGS

**The new EU benchmarks regulation – What you need to know**

The new EU Regulation on financial benchmarks has been published in the Official Journal and has now entered into force. The Regulation imposes new requirements on firms that provide, contribute to or use a wide range of interest rate, currency, securities, commodity and other indices and reference prices. Most of the new rules will not apply until 1 January 2018 but some provisions relating to critical benchmarks are already in effect and the Commission has already designated the first critical benchmark under the Regulation. Consultations have begun on the 'Level 2' measures to be adopted under the Regulation. The new rules present a significant implementation challenge, particularly where EU firms reference non-EU benchmarks in securities or derivatives or use them in the management of investment funds.

This briefing paper discusses the regulation.

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

**The EU legislative process explained**

EU institutions continue to work on a substantial volume of new legislation in the financial sector, including both new and existing proposals for directives and regulations to be adopted by the Council of the EU and the European Parliament and a broad range of delegated and implementing acts and technical standards to provide more detail on adopted legislation.

This new Clifford Chance guide provides an overview of the key institutions of the EU, the EU legislative process and the roles of the European Commission and the European Supervisory Authorities in the creation of the technical rules

that are central to the implementation of the single rulebook in financial services.

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

**The EU's EUR 13 Billion Apple tax recovery order – why it was adopted, its broader context, and initial takeaways**

The European Commission has adopted a decision requiring Ireland to recover up to EUR 13 billion in taxes from Apple Inc. This amount, the highest recovery order ever imposed as a result of a finding of state aid, could grow considerably as a result of interest being applied. It is not a fine due to be paid to the EU, but the quantum of taxes that in the Commission's view Apple should have paid from 2003 to 2014, and which Ireland will now have to claim back. The Commission investigation into the advance tax rulings granted to Apple in Ireland has led the Commission to conclude that Apple has been benefitting from a tax advantage in breach of EU state aid rules since 1991.

This briefing paper discusses the Commission's decision.

https://www.cliffordchance.com/briefings/2016/09/the_eu_s_13_billionappletaxrecoveryorder.html

**China reforms her foreign direct investment regulatory regime**

On 3 September 2016, China's Standing Committee of the National People's Congress (NPCSC) adopted a resolution to abolish the current examination and approval regime applicable to the establishment of most foreign-invested enterprises (FIEs) in China. On the same day, the Ministry of Commerce (MOFCOM) published a set of draft measures to implement the change. Both developments represent a major milestone moving towards a simplified regime for regulating foreign direct investment in China.

This briefing paper discusses the NPCSC resolution and MOFCOM consultation draft.

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

**China regulators relax foreign exchange restrictions on RQFIIs**

On 5 September 2016, the People's Bank of China (PBoC) and the State Administration of Foreign Exchange (SAFE) jointly published the Circular on Matters related to Domestic Securities Investment by RMB Qualified Foreign Institutional Investors, effective from the issuance date. The Circular further relaxes quota administration and foreign exchange control for RQFIIs and is expected to promote an increasing inflow of funds into China.

This briefing paper discusses the Circular.

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

**US Court Determines That Circumstantial Evidence Can Prove Manual 'Spoofing' of Futures Market**

A trader who places US futures market orders manually can be found to have engaged in prohibited 'spoofing,' without direct proof of intent, if his trading pattern, market conditions and examples of trading show that he likely intended to withdraw the orders rather than to trade, according to a recent federal court ruling. This expands upon previous cases involving spoofing using automated trading systems to place orders.

This briefing paper discusses the ruling.

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

**US Arrests of Foreign Nationals for Acts Committed Overseas Warrant Vigilance**

Recently publicised arrests of unsuspecting non-US citizens for fraud, market manipulation and corruption-related offenses allegedly committed outside the United States have reignited interest in the extraterritorial reach of US criminal statutes, as well as the procedures for secret charging instruments and surprise arrests at borders or overseas. The global nature of telecommunications and the Internet, along with ubiquitous reliance on the US financial system, can provide a basis for geographically expansive United States criminal jurisdiction. This, coupled with US prosecutors' use of sealed indictments, stayed statutes of limitations and arrest requests to border and overseas authorities, suggests that non-US citizens and residents engaged in international business should be aware of the potentially applicable prohibitions of US criminal law. They should stay alert to current prosecutorial priorities as well as to the existence of investigations, which can relate to long-past conduct. While grand jury investigations in the United States are confidential, and indictments are typically returned under seal, counsel for individuals who may be the subject of or otherwise involved in an investigation can often gain insight into the focus and progress of the investigation through direct inquiry with the appropriate authorities.

This briefing paper discusses the key issues.

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

**Big Data, Big Opportunities, Big Privacy**

Advertisers and marketers were early adopters of big data analytics and techniques and their uses are becoming critical in non-advertising fields such as artificial intelligence, fintech and biotech.

The increasing use of big data techniques and data sets requires businesses to be diligent about how data is collected, used and stored throughout the entire information lifecycle.

The Office of the Australian Information Commissioner has developed a draft Guide to Big Data and the Australian Privacy Principles to assist businesses meet their obligations under the Privacy Act 1988 (Cth).

This briefing paper discusses the guidelines.

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

**Australian Government releases exposure draft legislation amending Australia's Competition Laws and provides businesses the opportunity to make their final comments and suggestions**

On 5 September 2016 the Australian Government released exposure draft legislation which seeks to implement the majority of the wide-ranging competition law reforms recommended by the Competition Policy Review (Harper Review).

Businesses should consider how they might seek to respond to the proposed implementation of the Harper Review reforms as set out in the exposure draft legislation, as this is likely to be the final opportunity to comment on the appropriate formulation of reforms to Australia's competition laws, before they are introduced to Parliament.

This briefing paper discusses the Harper Review.

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