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Briefing note

International Regulatory Update

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EU Commission proposes amendments to CRD 4, BRRD and SRM Regulation

The EU Commission has unveiled a package of legislative proposals intended to further strengthen the resilience of EU banks. Among other things, the proposals incorporate the remaining elements of the regulatory framework agreed within the Basel Committee on Banking Supervision (BCBS) and Financial Stability Board (FSB), as well as proposals to make the EU post-crisis reforms more growth-friendly and proportionate to banks' complexity, size and business profile. The legislative proposals comprise proposals for:

- a Directive to amend the Capital Requirements Directive (CRD 4) and a Regulation to amend the Capital Requirements Regulation (CRR); and
- two Directives to amend the Bank Recovery and Resolution Directive (BRRD) and a Regulation to amend the Single Resolution Mechanism Regulation (SRMR).

The CRD 4/CRR amendments include proposals for a binding leverage ratio (LR), requirements for the net stable funding ratio (NSFR) and the fundamental review of the trading book (FRTB) to ensure that banks hold sufficient capital in line with the effective risks they take when trading in securities and derivatives. The measures are also intended to make capital requirements more proportionate for smaller and less complex institutions, in relation to disclosure, reporting and trading book-related requirements.

The BRRD amendments include a requirement for global systemically important institutions (G-SIIs) to meet total loss-absorbing capacity (TLAC) requirements, which will be integrated into the EU's existing minimum requirement for own funds and eligible liabilities (MREL) system. The measures also propose the harmonisation of insolvency ranking of unsecured debt instruments, enhanced proportionality for the existing rules and specific measures intended to enhance the capacity of banks to lend to small and medium-sized enterprises (SMEs) and fund infrastructure projects.

The legislative proposals will now be submitted to the EU Parliament and EU Council for their consideration under the ordinary legislative procedure.

EU Commission proposes Directive on business insolvency and restructuring frameworks

The EU Commission has issued a proposal for a Directive on preventive restructuring frameworks, a second chance for businesses and measures to increase the efficiency of restructuring, insolvency and discharge procedures. The proposal has been draw up as part of the Capital Markets Union Action Plan and the EU's Single Market Strategy and is intended to contribute to removing barriers to the free flow of capital and build on national regimes that work well.

The proposed Directive focuses on three key elements:

- common principles on the use of early restructuring frameworks, which are intended to help companies continue and preserve jobs;
- rules to allow entrepreneurs a second chance through the full discharge of their debt after a maximum period of three years; and
- targeted measures for Member States to improve the efficiency of insolvency, restructuring and discharge procedures.

The proposed rules have been drawn up on the basis of certain key principles to ensure the consistency of EU insolvency and restructuring frameworks. Among other things, the principles include early warning tools for debtors, access to early restructuring for viable enterprises and a time limited 'breathing space' from enforcement action for debtors. Dissenting minority creditors and shareholders would be able to be outvoted under strict conditions in order not to jeopardise restructuring and new financing would be protected to increase the chance of a restructuring being successful.

The proposed Directive will be subject to the ordinary legislative procedure and, once adopted by the co-legislators, will have to be transposed into national law in Member States.

Alongside the text of the proposed Directive, the Commission has also published a series of questions and answers (Q&As), a high-level factsheet and a series of

factsheets that set out a brief overview of the current insolvency rules in each Member State.

EU Commission publishes results of call for evidence on financial services

The EU Commission has published a communication and staff working document setting out the results of its September 2015 call for evidence on the benefits and unintended effects of the financial legislation adopted in response to the financial crisis.

The Commission has concluded that overall the financial services framework does not need to be changed, but does propose to take on work in the following areas:

- removing unnecessary regulatory constraints on financing the economy;
- enhancing proportionality in the regulatory framework as part of a wider plan to better balance financial stability and growth objectives;
- reducing undue regulatory burdens and designing rules that achieve their objectives at minimum cost for firms and their clients; and
- making rules more consistent and forward-looking.

The Commission undertakes to monitor progress in the implementation of the respective policy commitments and intends to publish its findings and next steps before the end of 2017.

EU Commission reports on EMIR review

The EU Commission has published the findings of its review of the European Market Infrastructure Regulation (EMIR).

The report explains issues that stakeholders have identified relating to the implementation of those requirements which apply already (including reporting to trade repositories and operational risk mitigation requirements) as well as issues encountered in preparing for the clearing and margin requirements.

The report also sets out a summary of the areas where feedback has indicated that action could be necessary to ensure that the objectives of EMIR are met in a more proportionate and efficient manner.

The Commission plans a revision of EMIR under its Regulatory Fitness and Performance Programme (REFIT) in early 2017 in order to eliminate disproportionate costs to small companies in the financial sectors, corporate and pension funds, and to simplify rules while maintaining financial stability.

EU Parliament adopts resolution on the finalisation of Basel III

The EU Parliament has adopted a resolution on the finalisation of Basel III rules. Amongst other things, the resolution:

- highlights that banks are likely to remain the main source of financing in the EU for households and enterprises, especially SMEs;
- stresses that the current revision should not significantly increase overall capital requirements while at the same time strengthening the overall financial position of European banks;
- emphasises that the revision should promote the level playing field at the global level by mitigating the differences between jurisdictions and banking models, and by not unduly penalising the EU banking model;
- recalls the importance of the principle of proportionality, to be assessed not only in relation to the size of the institutions which are regulated, but also understood as a fair balance between the costs and benefits of regulation for each group of stakeholders;
- calls on the Commission to assess the impact of recent and new reforms such as the financing of the real economy in Europe and the proposed Capital Markets Union and to make use of the findings from the call for evidence on financial services regulation in the EU;
- requests that the requirements to mandate central clearing of derivative products be fully taken into account when setting the leverage ratio so as to encourage the practice of central clearing; and
- calls on the Basel Committee on Banking Supervision (BCBS) to assess the qualitative and quantitative impact of the new reforms, taking into consideration their impact on different jurisdictions and different banking models before the adoption of the standard by the Committee.

EU Parliament adopts resolution on retail financial services

The EU Parliament has adopted a resolution on retail financial services. Amongst other things, the resolution:

- highlights the need to develop initiatives and instruments that improve competition and allow consumers to identify and compare safe, sustainable and simple products within the range of products available to them;
- notes shortcomings in the national implementation of MiFID2 which, it argues, have led to labour-intensive

reporting requirements for intermediaries that do not effectively enhance consumer protection and go beyond MiFID2 itself, and calls for lessons to be learned from this experience;

- calls on the Commission to address the issue of mis-selling of financial products and services and, in particular, calls on the Commission to monitor closely the implementation of new rules under MiFID2 which ban commission for independent financial advisers and restrict its use for non-independent advisers, and on the basis of that monitoring to consider whether those restrictions should be tightened;
- emphasises that, in order for the single market in retail financial services to be efficient and dynamic, there should be no unnecessary or unfair differences between euro and non-euro Member States, while arguing that the adoption of the single currency by all Member States without exception would make the single market for retail financial services more efficient and coherent;
- calls on the Commission to set up an EU comparison portal covering most or all parts of the retail financial services market;
- calls on the Commission to examine new approaches with the potential to give companies greater regulatory flexibility to experiment and be able to innovate, while maintaining high levels of consumer protection and safety;
- encourages the Commission to monitor the transposition and implementation of the Mortgage Credit Directive (MCD) and to analyse the impact of this legislation on the retail financial services market;
- asks the Commission to conduct, with the Member States, a joint analysis of the implementation and impact of EU legislation on retail financial services; and
- asks the Commission to review the impact of the Credit Ratings Agencies Regulation in terms of products sold to retail consumers.

EU Parliament approves proposal on access to AML information by tax authorities

The EU Parliament has adopted a proposal for an EU Council Directive on access to anti-money laundering (AML) information by tax authorities, which would amend Directive 2011/16/EU on administrative cooperation in the field of taxation.

The proposal enables tax authorities to consistently access relevant AML information for the performance of their duties in monitoring the proper application of the Directive on administrative cooperation by financial institutions. The AML information relates to the information used by financial institutions to identify the beneficial owners of financial accounts when an intermediary structure is used under Directive 2014/107/EU, which amended Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

The EU Parliament will forward its approval to the EU Council, EU Commission and national parliaments.

MIFIR: RTS 4, 16 and on registration of third country firms published in Official Journal

Three sets of regulatory technical standards (RTS) under MiFIR have been published in the Official Journal.

Commission Delegated Regulation 2016/2020 sets out the final text of RTS 4 on criteria to be used by the European Securities and Markets Authority (ESMA) when determining whether derivatives that are subject to the clearing obligation should be subject to the trading obligation.

Commission Delegated Regulation 2016/2021 set out RTS 16 on access in respect of benchmarks.

Commission Delegated Regulation 2016/2022 sets out RTS on the registration of third country firms and the format of information to be provided to clients.

CRR: EBA publishes final draft RTS on assessment methodology to validate market risk models

The European Banking Authority (EBA) has published its final draft RTS on the assessment methodology for the Internal Model Approach (IMA) for market risk under the CRR.

The draft RTS set out the criteria to be applied by competent authorities when assessing the significance of positions included in the scope of market risk internal models and the two different methodologies for general and specific risk categories, both based on the standardised rules for market risk.

They provide standards to be used by competent authorities in their assessment of institutions' compliance with IMA requirements when the institutions apply to use the IMA to determine market risk capital requirements or introduce any material changes or extensions to the IMA approach. The standards are also intended to assist in the assessment of whether institutions meet minimum IMA requirements on an ongoing basis following the regular review of the internal model.

CRD 4: EBA reports on application of proportionality to remuneration requirements

The EBA has published a report on the application of the proportionality principle to the remuneration provisions laid down in CRD 4, responding to a request for advice from the EU Commission.

The report follows the EBA's December 2015 opinion on the application of proportionality, which suggested a harmonised and consistent proportionate application of remuneration requirements across the EU, taking into account compliance costs. In particular, the opinion recommended that CRD 4 be amended to allow for waivers regarding the application of deferral arrangements and the pay out in instruments for small and non-complex institutions and for identified staff that receive only a low amount of variable remuneration when specific criteria are met.

The report provides a detailed overview by Member State on the applicable framework regarding the principle of proportionality, analyses the number of institutions and staff currently benefitting from waivers in the area of remuneration and provides estimates on the number of institutions and staff that could benefit from future waivers if the amendment proposed in the first opinion were adopted.

UCITS: ESMA updates Q&A

The European Securities and Markets Authority (ESMA) has published an update to its consolidated questions and answers (Q&A) document on the application of the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive.

The Q&A includes new Q&As on how investment limits should be applied where a UCITS wants to invest in an umbrella fund.

ECB consults on draft guidance on leveraged transactions

The European Central Bank (ECB) has launched a consultation on draft guidance on leveraged transactions, with the aim of developing clear and consistent definitions, measures and monitoring of leveraged transactions.

The draft guidance recommends that banks put in place a unique and overarching definition of leveraged transactions and clearly define their strategy, specifically in relation to the underwriting and syndicating of leveraged transactions. The guidance also advises banks to ensure that realised transactions adhere to their risk appetite standards through a solid credit approval process and regular monitoring of leveraged portfolios. The ECB also recommends that the senior management of banks should regularly receive comprehensive reports on leveraged transactions.

Comments are due by 27 January 2017.

FSB publishes annual list of G-SIBs and G-SIIs

The Financial Stability Board (FSB) has published its annual lists of global systemically-important banks (G-SIBs) and global systemically-important insurers (G-SIIs).

The 2016 list of G-SIBs comprises the same 30 banks as the 2015 list, although four banks moved to a higher bucket corresponding to higher loss absorbency requirements, and three banks moved to a lower bucket. The assignment of G-SIBs to buckets in the 2016 list will determine the higher capital buffer requirements that will apply to each G-SIB from 1 January 2018.

Alongside the updated list of G-SIBs, the BCBS has published the denominators used to calculate the banks' scores, thresholds used to allocate the banks to buckets and, for the first time, the full sample of banks assessed.

The updated list of G-SIIs comprises a total of nine insurers and is the same as the 2015 list.

Basel Committee consults on money laundering and financing of terrorism in correspondent banking

The Basel Committee on Banking Supervision (BCBS) has published a consultation paper on revised guidelines for managing risks related to money laundering and the financing of terrorism. The revisions to the guidelines aim to clarify the applicable rules on anti-money laundering and countering the financing of terrorism in correspondent banking.

The consultation follows the publication by the Financial Action Task Force (FATF) in October 2016 of its guidance on correspondent banking services. The BCBS is seeking to clarify the expectations of banking supervisors, consistent with the FATF standards and guidance.

Comments are due by 22 February 2017.

MiFID2: PRA publishes second consultation on implementation

The Prudential Regulation Authority (PRA) has launched its second consultation (CP43/16) on the implementation of MiFID2. The consultation is relevant to banks, building societies, PRA-designated investment firms and their qualifying parent undertakings, which for this purpose

comprise financial holding companies and mixed financial holding companies, as well as credit institutions, PRA-designated investment firms and financial institutions that are subsidiaries.

The consultation paper sets out proposals for:

- the introduction of new rules on the management body and organisational requirements under Articles 9 and 16 of MiFID2;
- the removal of PRA Rulebook provisions that are superseded by provisions in the MiFID Delegated Regulation on organisational requirements and operating conditions;
- consequential amendments to PRA Rulebook notes and supervisory statements to update references from MiFID1 to MiFID2, as well as consequential amendments to the General Provisions Part and the Glossary of the PRA Rulebook; and
- granting authorisations in respect of the new MiFID investment activity of 'operation of an organised trading facility (OTF)', the new MiFID financial instrument of 'emission allowances' and structured deposits.

The PRA's power to accept applications from firms before 3 January 2018 for these authorisations may only be granted by HM Treasury in a statutory instrument, but the PRA proposes that if it is granted this power then firms would be able to apply for permissions in advance of 3 January 2018.

The PRA has aligned, as far as possible, the MiFID2 implementation requirements with the Capital Requirements Directive (CRD 4) and its approach to MiFID2 implementation retains the 'common platform' approach, which was previously intended to ensure that a single set of requirements apply to firms subject to MiFID1 and CRD 4.

Certain organisational and management body requirements will be directly applicable to firms' MiFID business by virtue of the Delegated Regulation. The PRA is proposing to continue to apply a single set of requirements in respect of both MiFID and non-MIFID business of firms. As such, the rules will extend the arrangements required by the MiFID2 Delegated Regulation to be put in place for all business of firms.

Comments on the consultation are due by 27 February 2017.

Belgium adopts new legislative framework for investment firms

Two laws amending the legislative framework for investment firms have been published in the Moniteur belge.

Prior to the entry into force of the new legislative framework, investment firms were regulated pursuant to the law of 6 April 1995 on the status and supervision of investment firms. This law has now been repealed and replaced by two laws.

The first law is the Law of 25 October 2016 on the regulation of investment services and on the status and supervision of companies for portfolio management and investment advice. The second law is the law of 25 October 2016 on the status and supervision of stockbroking firms. After the entry into force of these laws, stockbroking firms and companies for portfolio management and investment advice will be subject to a different legislative framework.

The laws implement various EU Directives for investment firms, including the Bank Recovery and Resolution Directive (BRRD) and the Capital Requirements Directive (CRD 4). The laws also clarify the respective roles of the two Belgian regulators, namely the Financial Services and Markets Authority and the National Bank of Belgium, in respect of each category of investment firm.

Swiss Federal Council adopts revisions to Capital Adequacy Ordinance

The Swiss Federal Council has adopted revisions to the Capital Adequacy Ordinance. The revisions implement two additions to the international framework agreement Basel III and will make capital adequacy requirements for derivatives and fund units held in the banking book more sensitive to risk as follows:

- *derivatives* – the current methods of calculating credit equivalents for derivative positions were seen to be inadequate and outdated. A new 'standardised approach' of calculating capital adequacy requirements for derivatives will be adopted, as introduced by the Basel Committee on Banking Supervision (Standardised Approach for Counterparty Credit Risk (SA-CCR)) in March 2014. The new approach will take into account the degree of contract hedging, and will increase the sensitivity to risk for loading for contingencies and replacement values; and
- *fund units* – it was observed that some highly securitised positions underpinned with equity capital were packed into 'funds' to circumvent the

requirements and apply lower capital adequacy rules. New rules published by the Basel Committee in December 2013 will now be adopted, requiring a precise analysis of underlying positions.

As the implementation of the revisions will be costly and complex, FINMA has developed a simplified approach for small to medium sized banks in supervisory categories 4 and 5, as well as banks in supervisory category 3 that are not involved in significant derivative activities and fund investments. Such institutions account for over 90% of banks.

The revisions will enter into force on 1 January 2017, with complete implementation expected one year later.

Polish Council of Ministers adopts draft amendment to Act on Trading in Financial Instruments and certain other Acts

The Polish Council of Ministers has adopted a draft amendment to the Act on Trading in Financial Instruments and certain other Acts. The bill is aimed primarily at implementing Directive 2014/57/EU on criminal sanctions for market abuse (CSMAD) into the Polish legal system. In addition, the regulations proposed in the bill are intended to support the application of the Market Abuse Regulation (EU) No 596/2014 (MAR), and facilitate the application of the Central Securities Depositories Regulation (EU) No 909/2014 (CSDR).

The most significant changes envisage the increase of the maximum penal sanction from 3 to 4 years imprisonment for disclosing inside information, making recommendations or inducing the purchase or disposal of financial instruments to which such information relates. However, the bill does not provide for a change of the penal sanction for insider dealing and for financial market manipulation.

As regards the CSDR, the bill provides for the introduction, with a view to ensuring its application, of provisions at the level of an Act of Parliament, which will allow the Polish Financial Supervision Authority to impose specific administrative sanctions on the central securities depositories and designated credit institutions for non-observance of the provisions of the CSDR.

The bill will now be submitted to the Sejm.

Hong Kong Government consults on regulations for protected arrangements under Financial Institutions (Resolution) Ordinance

The Hong Kong Government and the financial regulators, namely the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Insurance Authority, have launched a two-month public consultation on a set of proposed regulations relating to protected arrangements under the Financial Institutions (Resolution) Ordinance. The regulations are designed to meet the international standards set by the Financial Stability Board in its Key Attributes of Effective Resolution Regimes for Financial Institutions.

Enacted by the Legislative Council on 22 June 2016, the Ordinance provides the legal basis for the establishment of a cross-sectoral resolution regime for financial institutions in Hong Kong. It will come into operation on a date to be appointed by the Secretary for Financial Services and the Treasury at the same time that the regulations are put in place and ready to become operational.

Under the Ordinance, the HKMA, the SFC and the Insurance Authority are designated as resolution authorities. They are vested with a range of powers necessary to effect the orderly resolution of a non-viable systemically important financial institution for the purpose of maintaining financial stability, while seeking to protect public funds.

The financial arrangements which are identified as 'protected arrangements' under the Ordinance are clearing and settlement systems arrangements, netting arrangements, secured arrangements, set-off arrangements, structured finance arrangements, and title transfer arrangements. The consultation seeks views on the scope and the degree of protection for the different classes of protected arrangements, including necessary carve-outs from the protections in order not to overly restrict a resolution authority from achieving orderly resolution. Views are also sought on remedial actions to be taken by a resolution authority should its actions inadvertently result in the constituent parts of a protected arrangement being treated otherwise than as envisaged in the regulations.

Subject to the outcome of the public consultation, the government intends to introduce the regulations as subsidiary legislation under the Ordinance into the Legislative Council for negative vetting in the first half of 2017.

Comments on the consultation paper are due by 21 January 2017.

SFC proposes to enhance asset management regulation and point-of-sale transparency

The SFC has launched a three-month consultation on proposals to enhance its regulation of the asset

management industry in Hong Kong to better protect investors' interests and ensure market integrity.

The proposals follow a review of major international regulatory developments and take into account observations and views of industry stakeholders. The proposed changes will be made to the SFC's Fund Manager Code of Conduct (FMCC) and the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

The key areas of enhancements under the FMCC are in respect of securities lending and repurchase agreements, custody of fund assets, liquidity risk management, and disclosure of leverage by fund managers.

The proposed changes to the Code of Conduct aim to address the potential conflicts of interest in the sale of investment products and enhance disclosure at the point-of-sale by:

- restricting an intermediary from representing itself as 'independent' or using any term(s) with a similar inference if the intermediary receives commission or other monetary or non-monetary benefits or it has links or other legal or economic relationships with product issuers which are likely to impair its independence; and
- requiring an intermediary to disclose the range and maximum dollar amount of any monetary benefits received or receivable that are not quantifiable prior to or at the point of sale.

Comments on the consultation are due by 22 February 2017.

HKMA issues new guideline on approval and revocation of approval of money brokers

The HKMA has issued a new guideline on approval and revocation of approval of money brokers, superseding the previous version issued in December 2015.

The guideline, which is issued under the Banking Ordinance, describes the authorisation regime for money brokers and explains how the HKMA will interpret the minimum criteria for approval of money brokers as set out in the Eleventh Schedule to the Banking Ordinance and the grounds for revocation of approval of money brokers as set out in the Twelfth Schedule to the Banking Ordinance.

In addition, the HKMA has repealed its July 2013 guideline on authorisation of the issue of multi-purpose stored value cards.

HKMA issues new guideline on minimum criteria for authorisation

The HKMA has issued a new guideline on minimum criteria for authorisation, superseding the previous version issued in December 2015. The guideline, which is issued under the Banking Ordinance, sets out the manner in which the HKMA will interpret the licensing criteria set out in the Seventh Schedule to the Banking Ordinance and exercise the functions conferred by it.

Normally, the HKMA will not refuse to authorise an applicant if it forms the opinion that all the criteria in the Schedule are satisfied with respect to it. However, the HKMA does have a discretionary power to refuse to grant authorisation (though it has to give reasons for doing so and give the applicant the opportunity to be heard). For example, the HKMA may exercise the discretionary power where the application in question gives rise to prudential concerns which are not covered in the existing criteria in the Schedule.

The following general points apply to the criteria in the Schedule:

- they are continuing in nature – that is, they apply to institutions not only at the time of authorisation but also thereafter;
- they are forward looking – the HKMA needs to decide whether the criteria are met by the institution at the time of authorisation and will continue to be met if it is authorised; and
- they apply to the institution as a whole – this reflects the fact that it is the institution as a whole which is authorised and not simply the operations in Hong Kong.

MAS issues regulatory sandbox guidelines for financial technology experiments

The Monetary Authority of Singapore (MAS) has published regulatory sandbox guidelines to encourage and enable experimentation of solutions that utilise technology innovatively to deliver financial products or services.

The guidelines set out the objectives and principles of the sandbox, and also provide guidance to applicants on the application process and the information to be provided to the MAS.

The guidelines incorporate feedback from the MAS' public consultation on the FinTech Regulatory Sandbox Guidelines published in June 2016, and seek to improve the clarity, flexibility and transparency of the regulatory sandbox in the following ways:

- *improved clarity* – the guidelines include examples and elaborations to illustrate the MAS' expectations of the sandbox, such as the evaluation criteria for entry into the sandbox;
- *greater flexibility* – the guidelines have been refined to allow greater flexibility, including through relaxation of a number of evaluation criteria for firms looking to enter a sandbox, and allowing room for adjustments during experimentation as firms learn from market responses; and
- *increased transparency* – the MAS will work closely with sandbox applicants in the evaluation and experimentation process. Relevant information of approved sandbox applications will also be published on the MAS website.

MAS consults on local implementation of Basel III liquidity rules

The MAS has published the Consultation Paper on Local Implementation of Basel III liquidity rules – Net Stable Funding Ratio (NSFR) and NSFR Disclosure.

The NSFR requires banks to maintain a stable funding profile in relation to the composition of their assets and off-balance sheet activities. This is intended to reduce the likelihood that disruptions to a bank's regular sources of funding will erode its liquidity position in a way that could increase the risk of its failure and potentially lead to broader systemic stress. The Basel Committee on Banking Supervision (BCBS) intends for the NSFR to become a minimum standard for internationally active banks by 1 January 2018.

The MAS supports the BCBS' overall objective of strengthening the global liquidity framework via its two minimum standards for liquidity and funding, and since 2015, has implemented the Basel III Liquidity Coverage Ratio (LCR) to promote the short-term resilience of a bank's liquidity risk profile under stress periods. To complement the existing LCR requirement, the MAS proposes to impose the BCBS' NSFR, in order to ensure that banks also fund their balance sheets with stable funding sources on an ongoing basis, thus reducing their funding risk over a longer term horizon.

The MAS proposes to follow the BCBS' recommended implementation timelines for both the NSFR standard and NSFR disclosure requirements, so that the NSFR standard will become applicable from 1 January 2018, and the NSFR disclosure requirements will become effective from the date of the first reporting period after 1 January 2018.

Comments on the consultation paper are due by 15 December 2016.

ASIC extends relief from Australian financial services licensing requirements to Luxembourg fund managers

The Australian Securities and Investments Commission (ASIC) has extended the foreign financial service providers (FFSPs) Australian financial services (AFS) licence exemption to Luxembourg fund managers who meet certain criteria. This exemption applies in relation to financial services the FFSP provides to Australian wholesale clients.

Relief is available to Luxembourg fund managers who are:

- an investment company that has adopted a status of 'self-managed' under Part I of the Amended Law of 17 December 2010 of Luxembourg (2010 Law); or
- a management company under Chapter 15 of Part IV of the 2010 Law.

The instrument expires on 28 September 2018. This timing is consistent with extensions to other AFS licensing exemptions that have been granted in recent months. ASIC has stated that it will use this period to undertake a holistic review of the AFS licensing exemptions available to FFSPs operating in the Australian Market.

Regulatory Guide 176 (RG 176) and 15-051MR provide guidance on how Luxembourg fund managers who meet the requirements of legislative instrument 2016/1109 can apply for reliance on it.

RECENT CLIFFORD CHANCE BRIEFINGS

European Court of Justice provides its first ever ruling on 'possession or control' under the Financial Collateral Directive

Four years after Briggs J's judgment in the case of Re Lehman Brothers International (Europe) (in administration) [2012] EWHC 2997 (Ch) (Re LBIE), the Court of Justice of the European Union (CJEU) has given its first ever ruling on the question of what constitutes 'possession or control' of financial collateral under the Financial Collateral Directive (FCD) following a referral on questions of EU law by the Supreme Court of Latvia. The CJEU's judgment does not materially advance the current English law position on this vexed question. However, the CJEU's responses to the Latvian court leave open a number of important issues that will do little to allay concerns of market participants and practitioners about the extent of legal uncertainty in this area.

This briefing paper discusses the judgment.

https://www.cliffordchance.com/briefings/2016/11/european_court_ofjusticeprovidesitsfirsteve.html

A UK Framework for Insurance Linked Securities

On 23 November 2016 the UK's Chancellor of the Exchequer, Philip Hammond, delivered his Autumn Statement, which included a reference to the Government's plan to make London an international centre for insurance-linked securities (ILS). To bring the Government's plan into effect, two consultation papers have been published – an HM Treasury consultation on the Risk Transformation Regulations 2017 and the Risk Transformation (Tax) Regulations 2017, which will create the legal and tax framework to bring ILS business onshore and a PRA consultation on a Supervisory Statement that sets out guidance on the regulation of Insurance Special Purpose Vehicles (ISPVs) used in ILS transactions.

The consultations follow significant input from the London Market Group (LMG) ILS Taskforce, a group of industry practitioners with expertise in specialist risk transfer business. As legal advisors to the LMG and members of the ILS Taskforce, Clifford Chance has been active in the preparation of the ILS legislation and, in this briefing paper, we consider the new legal and regulatory framework.

https://www.cliffordchance.com/briefings/2016/11/a_uk_framework_forinsurancelinkedsecurities.html

UK FCA publishes interim report of asset management market study

The FCA has issued its long-awaited interim report on the UK asset management sector. The FCA identified a number of issues and proposed a wide-ranging package of remedies, including proposals aimed at increasing transparency around charges and fees and improving fund governance. The FCA is also consulting on whether to refer the investment consultancy market to the CMA for an in-depth investigation.

This briefing paper discusses the report.

https://www.cliffordchance.com/briefings/2016/11/uk_fca_publishesinterimreportofasse.html

Luxembourg Legal Update – November 2016

Clifford Chance has prepared the latest edition of its Luxembourg Legal Update, which provides a compact summary and guidance on the new legal issues which could affect your business, particularly in relation to banking, finance, capital markets, corporate, litigation, employment, funds, investment management and tax law.

This edition covers, amongst other topics, the Law of 11 October 2016 on the reform of parental leave, the Law of 23 July 2016 on the new form of simplified S.à.r.l. and the Luxembourg tax reform for 2017.

https://www.cliffordchance.com/briefings/2016/11/luxembourg_legalupdate-november2016.html

Launch of Polish transposition of LMA facility agreement

On 16 November 2016, the Polish Bank Association (Związek Banków Polskich or ZBP) launched an LMA (Loan Market Association) based recommended form Polish law governed facilities agreement in a Polish language version. This form does not have the status of an LMA document, but it has been developed with the LMA's consent. It is the most faithful transposition of an LMA facility agreement into the Polish language and into Polish law to date.

This briefing paper provides more information on this document and explains a few of the legal difficulties that had to be overcome by the working group in preparing the document.

https://www.cliffordchance.com/briefings/2016/11/launch_of_polishtranspositionoflmafacilit.html

Shanghai-Hong Kong Stock Connect – CSRC and SFC jointly tackle market manipulation

The China Securities Regulatory Commission (CSRC) and the Securities and Futures Commission of Hong Kong (SFC) have joined forces to successfully target market manipulation under the Shanghai-Hong Kong Stock Connect programme (Shanghai Connect). The case is significant as it marks the first enforcement action against cross-border market manipulation under Shanghai Connect since its launch in October 2014.

The action highlights the regulators' shared commitment to reinforcing market order and establishing a sound and mutual market access system between the Mainland China and Hong Kong securities markets.

This briefing paper discusses the case.

https://www.cliffordchance.com/briefings/2016/11/shanghai-hong_kongstockconnectcsrcandsf.html

Cross-border insolvency in Hong Kong – pushing the boundaries

In the continued absence of any statutory regime for cross-border insolvency recognition in Hong Kong, two recent decisions of Mr Justice Harris in the Court of First Instance have provided guidance to liquidators yet also given banks pause for thought as to how best to proceed when faced with requests for assistance from foreign liquidators of companies being wound up in their places of incorporation. In one of the cases, the Court went further than before in ordering the oral examination of a director of a Cayman Islands company resident in Hong Kong. In the other, Harris J cautioned banks against requiring liquidators to come to court to make what he described as unnecessary applications.

This briefing paper discusses the decisions.

https://www.cliffordchance.com/briefings/2016/11/cross-border_insolvencyinhongkongpushin.html

ASIC to repeal licensing exemption for foreign financial services providers and temporary extension of passport relief

The Australian Securities and Investments Commission (ASIC) has proposed changes to key Australian financial services (AFS) licensing exemptions relied upon by certain foreign financial services providers (FFSPs) that only provide financial services to Australian wholesale clients:

- where the FFSP has a very limited connection with Australia; and
- where the FFSP is able to be rely on the passport relief available for FFSPs regulated by certain foreign regulators.

This briefing paper discusses the proposed repeal.

https://www.cliffordchance.com/briefings/2016/11/asic_to_repeal_licensingexemptionforforeig.html