CLIFFORD

CHANCE

Briefing note

International Regulatory Update

20 – 24 March 2017

IN THIS WEEK'S NEWS

- EU Commission consults on operations of the ESAs
- Fintech: EU Commission consults on impact of technology on financial sector
- MiFID2: EU Parliament publishes correspondence with EU Commission on SIs operating broker crossing networks
- EuSEF and EuVECA funds: ECON Committee votes on amendments
- ECB publishes guidance to banks on tackling non-performing loans
- CSDR: ESMA publishes final reports on guidelines on CSDs' access to CCPs and rules for participant default
- EMIR: ESMA agrees MoUs on CCPs with Brazil, Japan, India, Dubai and UAE
- Credit rating agencies: ESMA publishes guidelines on methodologies
- ESMA publishes report on trends, risks and vulnerabilities
- EBA reports on EU supervisory colleges
- EU Commission publishes consumer financial services action plan
- G20 Finance Ministers and Central Bank Governors publish communiqué following Baden-Baden meeting
- Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017 made
- BaFin consults on draft circular regarding bank regulatory requirements for IT systems
- CSSF issues circular implementing ESMA MAR guidelines on information relating to commodity derivatives markets or related spot markets
- Polish President signs Act on implementation of CSMAD
- CNMV issues press release on measures on marketing of CFDs and other speculative products to retail investors
- Bank of Spain maintains countercyclical capital buffer at 0%
- CBRC eases licensing requirements for certain business activities of foreign-invested banks
- SFC concludes consultation on position limit regime

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

- Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2017 gazetted
- Notice on commencement of mandatory electronic filing of disclosure of interests notifications and reports gazetted
- SGX adopts securities industry working group recommendations
- MAS consults on proposed framework for Singapore Variable Capital Companies
- SEC shortens standard US settlement cycle to T+2
- Recent Clifford Chance briefings: the Great Repeal Bill; FCA v Macris; and more. Follow this link to the briefings section.

EU Commission consults on operations of the ESAs

The EU Commission has launched a consultation on the operations of the European Supervisory Authorities (ESAs), which comprise the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA), established under the three ESA Regulations.

The consultation is intended to:

- gather evidence in order to evaluate whether the ESAs are delivering as expected considering their objectives to protect the public interest by contributing to the short term, medium and long-term stability and effectiveness of the EU financial system; and
- build a clearer overview of areas where the effectiveness and efficiency of the ESAs can be strengthened and improved.

In the consultation paper the Commission highlights that the consultation is necessary to reflect on what possible changes to the current legal framework are needed to optimise the rules within which the ESAs operate in order to increase their ability to deliver on their mandates. In particular, the Commission is seeking evidence on their tasks and powers, governance, supervisory architecture and funding.

Comments on the consultation are due by 16 May 2017.

Fintech: EU Commission consults on impact of technology on financial sector

The EU Commission has launched a consultation on technology and its impact on the European financial services sector as part of its consumer financial services action plan.

The consultation aims to gather information on the impact of innovative technology on the financial sector to aid the EU Commission in developing its policy approach and to help assess whether the regulatory and supervisory framework fosters technological innovation.

The EU Commission is consulting on the opportunities and challenges relating to its key fintech policy objectives, including:

- fostering access to financial services for consumers and businesses;
- bringing down operational costs and increasing efficiency for the industry;
- making the single market more competitive by lowering barriers to entry; and
- balancing greater data sharing and transparency with data security and protection needs.

Comments are due by 15 June 2017.

MiFID2: EU Parliament publishes correspondence with EU Commission on SIs operating broker crossing networks

The EU Parliament has published correspondence between members of the Committee on Economic and Monetary Affairs (ECON) and the EU Commission on MiFID2. In particular, the EU Commission Vice President for the Euro and Social Dialogue, also in charge of Financial Stability, Financial Services and Capital Markets Union, Valdis Dombrovskis, has responded to a letter from the EU Parliament's negotiating team on MiFID2, following communications from the European Securities and Markets Authority (ESMA), which raised concerns in relation to the possible establishment of networks of systematic internalisers (SIs) operating broker crossing networks.

In a letter dated 24 February 2017, the Parliament's negotiating team highlighted that it shares ESMA's concern that certain investment firms may be setting up interconnected SIs to bring together third party buying and selling interests via matched principal trading, or other types of back-to-back transactions, which may potentially circumvent obligations under MiFID2 or go against the spirit of the legislation. As such, the letter requested that the Commission examine the issue and consider whether action should be taken.

The Vice President's response, dated 16 March 2017 and published on 23 March 2017, sets out the results of a preliminary investigation. The letter proposes that the Commission engage in a dialogue with ESMA and national competent authorities (NCAs) to determine the jurisdictions in which the alleged broker crossing networks could potentially be established and then engage with the relevant authorities on how to address the establishment of such networks within the MiFID2 rules.

EuSEF and EuVECA funds: ECON Committee votes on amendments

The ECON Committee has voted to support EU Commission's proposals to extend the range of managers eligible to set up EuVECA and EuSEF funds, extend the range of companies that can be invested in by EuVECA funds and reduce the complexity and cost of the cross border marketing of funds. The measures are intended to improve the uptake of both types of funds.

Moreover, the ECON Committee has adopted additional targeted amendments to the Commission's proposal with a view to facilitating investment in EuSEF funds:

- broadening the definition of positive social impact of the qualifying investment to 'services and goods generating social return'; and
- lowering minimum investment in EuSEF from EUR 100,000 to EUR 50,000 in order to remove barriers to small investors.

MEPs also voted to:

- set an initial capital requirement for both types of funds at EUR 30,000 and agreed that own funds should always amount to at least one eighth of the fixed costs from the preceding year;
- enhance the supervisory role of ESMA; and
- adopt a mandate to open trilogue negotiations on the final shape of the rules.+

ECB publishes guidance to banks on tackling non-performing loans

The European Central Bank (ECB) has published its final guidance on non-performing loans (NPLs).

The publication of the guidance follows a consultation launched in September 2016. The ECB has also published a feedback statement indicating where changes have been made to the guidance following feedback received to the consultation.

The guidance outlines measures, processes and best practices which banks should incorporate when tackling NPLs. Although the guidance is non-binding in nature, it is intended to clarify the supervisory expectations regarding NPL identification, management, measurement and write-offs in areas where existing Regulations, Directives or guidelines lack specificity.

The ECB has called on banks to implement strategies to work towards a holistic approach regarding NPLs.

CSDR: ESMA publishes final reports on guidelines on CSDs' access to CCPs and rules for participant default

ESMA has published final reports on two sets of guidelines under the Central Securities Depositories Regulation (CSDR) relating to access by a central securities depository (CSD) to a CCP's transaction feeds and rules for CSD participant default.

ESMA's guidelines on CSDs' access to CCPs' or trading venues' transaction feeds set out the conditions under which access could be refused, especially as this type of access is not covered under the Markets in Financial Instruments Regulation (MiFIR).

Under the CSDR, CSDs are left to define rules and procedures in order to address the insolvency of one or several of their participants. ESMA's guidelines on CSD participant default specify how such rules and procedures should be defined.

The two sets of guidelines will be translated into the official EU languages and the final texts published on the ESMA website. The deadline for compliance notifications from national competent authorities will be two months after the publication of the translations.

EMIR: ESMA agrees MoUs on CCPs with Brazil, Japan, India, Dubai and UAE

ESMA has established five Memoranda of Understanding (MoUs) under the European Market Infrastructure Regulation (EMIR). The MoUs establish cooperation arrangements, including the exchange of information, regarding central counterparties (CCPs) which are established and authorised or recognised in Brasil, Japan, India, the Dubai International Financial Center or the United Arab Emirates, and which have applied for EU recognition under EMIR.

EMIR provides for cooperation arrangements between ESMA and the relevant non-EU authorities whose legal and supervisory frameworks for CCPs have been deemed equivalent to EMIR by the EU Commission.

The MoUs are applicable as per their dates of signature.

Credit rating agencies: ESMA publishes guidelines on methodologies

ESMA has published its final guidelines on the validation and review of credit rating agencies' (CRAs') methodologies. The guidelines clarify how CRAs should validate and review their methodologies to help protect investors and financial stability.

The guidelines aim to increase the quality of the quantitative measures used by requiring CRAs to review their methodologies':

- discriminatory power, meaning their ability to rank the rated entities in accordance to their future status (defaulted or not defaulted) at a predefined time horizon;
- predictive power, by comparing the expected behaviour of the credit ratings to the observed results; and
- historical robustness, through the assessment of other elements of the methodology such as the stability of the credit ratings assigned by the methodology.

The guidelines take effect on 23 May 2017.

ESMA publishes report on trends, risks and vulnerabilities

ESMA has published its latest report on trends, risks and vulnerabilities (TRV) and the accompanying risk dashboard. The TRV identifies political and policy uncertainty, such as potential repercussions from the upcoming elections in some EU Member States, as the main risk drivers for 2017.

ESMA's overall risk assessment remains unchanged: market and credit risks remain very high, which is the highest level, while liquidity and contagion risk remain high. The TRV covers market developments from July to December 2016 and provides an outlook for the next reporting period.

ESMA will update its report semi-annually, complemented by its quarterly risk dashboard, as part of its ongoing market surveillance.

EBA reports on EU supervisory colleges

The EBA has published its annual report assessing EU supervisory colleges, which are responsible for the effective supervision of EU cross-border banking groups. The report highlights a number of achievements made by colleges in the course of 2016, including a good level and quality of engagement, and identifies areas for improvement in 2017.

The report finds that the group risk assessment reports, one of the key deliverables of colleges, provided a good overview of risk profiles but improvements could be made in the completion and sharing of the decomposition of capital requirements by individual risks. In addition, the report highlights that the joint decision documents on capital and liquidity, which are the ultimate outcomes of colleges work, were well reasoned and contained information on and references to the conclusions of the Supervisory Review and Evaluation Process (SREP), as reflected in the group risk/liquidity risk assessment reports.

EU Commission publishes consumer financial services action plan

The EU Commission has published a consumer financial services action plan. The plan is intended to deepen the single market by enhancing competition and enabling firms and consumers to obtain financial services, regardless of whether providers are domestic or from another Member State.

The action plan draws on the Commission's conclusions from its Green Paper on retail financial services, which was published in December 2015, and has been prepared as one of the Commission's commitments under the Capital Markets Union action plan.

The actions are grouped into three main strands:

- increasing consumer trust and empowering consumers, which includes proposals to make it easier to take car insurance 'no-claims bonuses' abroad, reduce fees for cross-border transactions involving non-Euro countries and more transparent pricing of car rental insurance;
- reducing legal and regulatory obstacles affecting businesses when seeking to expand abroad, which will include work on common creditworthiness assessment criteria and facilitating the exchange of data between credit registers; and
- supporting innovative technologies, including electronic identification and trust services and reviewing rules on selling financial services remotely, including by phone and online.

G20 Finance Ministers and Central Bank Governors publish communiqué following Baden-Baden meeting

The G20 Finance Ministers and Central Bank Governors have delivered a communiqué following their meeting in Baden-Baden on 17-18 March 2017.

The G20 Ministers and Governors reaffirmed their commitment to international economic and financial cooperation and their determination to individually and collectively use all policy tools to achieve the goal of strong, sustainable, balanced and inclusive growth, while enhancing economic and financial resilience.

Among other things, the communiqué also highlights:

- the G20's commitment to further strengthen the international financial architecture and the global financial safety net with a strong, quota-based and adequately resourced International Monetary Fund (IMF) at its centre;
- the importance and benefits of open capital markets and the IMF's work on macroprudential policies;
- the G20's commitment to support the timely, full and consistent implementation and finalisation of financial sector reform, support for the Financial Stability Board's (FSB's) policy recommendations to address structural vulnerabilities from asset management activities, calls on the FSB to present by the Leaders Summit in 2017 its assessment of the adequacy of monitoring and policy tools available to address risks from shadow banking and calls on the G20 to ensure the full and timely implementation of reforms for OTC derivatives markets;
- the work by the Committee on Payments and Market Infrastructures (CPMI), IOSCO and the FSB on enhancing the resilience, recovery and resolvability of central counterparties (CCPs), with a report expected by the Leaders Summit;
- the G20's support for work by the Basel Committee on Banking Supervision (BCBS) to finalise Basel III;
- the publication of the FSB report on misconduct risks by the Leader's Summit;
- the G20's support for the FSB's work on a structured framework on post-implementation evaluation of the effects of the G20 financial regulatory reforms;
- that all countries should closely monitor developments in digital finance and welcomes work by the FSB on fintech from a financial stability perspective;
- the G20's commitment to the implementation of the Base Erosion and Profit Shifting (BEPS) package and calls on the OECD to report back on progress on implementation by the Leaders Summit; and
- an intention to broaden international economic and financial cooperation with African countries to foster sustainable and inclusive growth in line with the African Union's Agenda 2063.

Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017 made

The Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017 (SI 2017/443) have been made. The Regulations extend the definition of 'investment bank' to bring two specified classes of institution within the definition in section 232 of the Banking Act 2009 and amend the Investment Bank Special Administrations Regulations 2011 to implement certain recommendations made in the Bloxham Review, which published its final report in January 2014.

Among other things, the Regulations make provision for:

- extending the bar date mechanism for submitting claims to client money and for a 'hard' bar date for custody assets and client money through which administrators would be able to set a final deadline for the submission of client claim forms;
- removing restrictions to the transfer of clients' assets and contracts associated with a business transfer, and have the effect of treating contracts (to the extent transferred) as if they had been made by the transferee; and
- in relation to the transfer of the whole of an investment bank's business, the administrator would not need to give clients notice of transfer of their assets and their contracts with the bank or obtain their consent. The Regulations make no change to partial business transfers.

The draft Regulations also provide for other amendments relating to requirements regarding client assets and a duty for administrators to co-operate with the scheme manager of the Financial Services Compensation Scheme (FSCS).

The Regulations come into effect on 6 April 2017.

BaFin consults on draft circular regarding bank regulatory requirements for IT systems

The German Federal Financial Supervisory Authority (BaFin) has published a draft circular regarding bank regulatory requirements for IT systems.

The draft circular specifies BaFin's circular on minimum requirements for risk management (MaRisk) with respect to IT security and outlines the requirements for IT security which BaFin and the Bundesbank impose on institutions.

In addition, the circular is intended to increase institutions' awareness of IT risks, also in relation to companies which provide IT services for institutions on the basis of an outsourcing agreement.

CSSF issues circular implementing ESMA MAR guidelines on information relating to commodity derivatives markets or related spot markets

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new circular (17/653) to implement ESMA's Market Abuse Regulation (MAR) guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives (ESMA/2016/1480) into Luxembourg regulation.

The circular is addressed to all relevant market participants and explains that the guidelines concern one of the criteria of the definition of inside information relating to commodity derivatives under Article 7(1)(b) of MAR; in particular, the guidelines provide a non-exhaustive and indicative list of information which is reasonably expected or is required to be disclosed in accordance with the legal or regulatory provisions in EU or national law, market rules, contract, practice or custom, be it on the relevant commodity derivatives markets or on the spot markets as referred to in Article 7(1)(b) of MAR.

The circular entered into force on 14 March 2017.

Polish President signs Act on implementation of CSMAD

The President of the Republic of Poland has signed the Act Amending the Act on Trading in Financial Instruments and Certain Other Acts, the aim of which is to implement the Directive on criminal sanctions for market abuse (2014/57/EU - CSMAD) into Polish law. Furthermore, the new regulations are intended to serve the application of MAR and also enable the application of the CSDR.

To ensure the application of the CSDR, the Act also confers the level of an act of parliament on the provisions enabling the regulatory authority (the Polish Financial Supervision Authority) to impose certain administrative sanctions on central securities depositories and designated credit institutions for failing to comply with the Regulation.

The Act awaits publication in the Journal of Laws.

President of Poland

CNMV issues press release on measures on marketing of CFDs and other speculative products to retail investors

The Spanish National Securities Market Commission (Comisión Nacional del Mercado de Valores) (CNMV) has announced several measures to enhance the protection of retail investors in Spain when investing in complex and high risk instruments, such as contracts for differences (CFDs), rolling-spot forex contracts (forex products) or binary options.

Among these measures, the CNMV has required brokers that market CFDs or forex products with leverage greater than 10 times (10:1) or binary options to retail investors in Spain, and do so outside the scope of investment advice, to take the following action:

- to expressly warn investors that the CNMV believes that due to their complexity and risk the purchase of these products is not appropriate for retail investors;
- investors must be informed about the cost they would incur if they decide to close out their position immediately after entering into the transaction and, in the case of CFDs and forex products, that this cost may be even greater than the amount originally invested;
- entities must obtain from the investor a written text or voice recording that proves that the customer is aware of the complexity of the product he/she is about to purchase; and
- advertising used by companies to promote CFDs, forex products or binary options must always contain a warning on the difficulty of understanding these products and a disclosure of the fact that the CNMV believes they are not appropriate for retail investors owing to their complexity and risk.

Bank of Spain maintains countercyclical capital buffer at 0%

The Bank of Spain (Banco de España) has decided to maintain at 0% the value of the countercyclical capital buffer (CCB) applicable to credit exposures in Spain in the second quarter of 2017.

This measure has been adopted pursuant to the powers granted to the Bank of Spain by Law 10/2014 on the regulation, supervision and solvency of credit institutions, and by Royal Decree 84/2015 and Bank of Spain Circular 2/2016, implementing that Law.

The Bank of Spain's analysis of indicators warning of emerging systemic risk associated with excessive credit growth currently advises against setting the CCB above 0%, and other central indicators considered homogeneously indicate not to activate the CCB for the moment.

CBRC eases licensing requirements for certain business activities of foreign-invested banks

The China Banking Regulatory Commission (CBRC) has issued the 'Circular on Relevant Issues Regarding Certain Business Activities Undertaken by Foreign-invested Banks', as part of its efforts to open up China's financial sector and assist Chinese firms in doing business overseas. The circular is intended to highlight the Chinese government's efforts in fighting protectionism and defending globalisation and send a clear signal that the regulator is and will be granting more breathing room to foreign-invested banks in China, including wholly-owned foreign banks, joint venture banks and branches (FIBs).The key aspects of the circular include the following:

- FIBs are no longer required to obtain any prior approval/license from the CBRC for treasury bond underwriting (not available to branches), custody services and financial advisory services, and instead need to submit a post-commencement report to the CBRC only. However, for custody services in respect of securities investment funds and overseas wealth management products, prior CBRC approval/licensing requirements should continue to apply;
- FIBs are allowed to co-operate with their offshore headquarters and affiliated banks (Offshore Group Companies) and provide comprehensive financial services to Chinese firms in order to assist their overseas bond issuance, IPO, M&A and other financing activities abroad, provided that FIBs specify the allocation of rights and obligations and profit sharing arrangements with their Offshore Group Companies; and
- to the extent that risks are controllable, FIBs (excluding branches) are allowed to use the capital in their onshore balance sheet to invest in domestic banking financial institutions. In other words, both FIBs and Offshore Group Companies can become shareholders of domestic banking financial institutions and they may be subject to different eligibility and procedural requirements. Issues arise as to whether FIBs' investments will be treated as domestic investments or foreign investments and whether their shareholdings need to be aggregated for the purpose of counting foreign shareholding limits.

The circular came into effect on 10 March 2017. Clifford Chance has prepared an English translation and is happy to provide it upon request.

SFC concludes consultation on position limit regime

The Securities and Futures Commission (SFC) has published the conclusions to its September 2016 consultation on expanding the scope of the position limit regime.

In light of the market feedback, the SFC has concluded that the proposals as set out in the consultation will be implemented. These include a 300% cap on the excess position limit that may be authorised by the SFC, a statutory position limit of 150,000 contracts for stock options as well as new excess position limits for index arbitrage activities, asset managers and market makers of exchange-traded funds.

In light of the market responses, the minimum 'assets under management' requirement applicable to asset managers will be lowered from HKD 100 billion to HKD 80 billion.

The proposed amendments to the Securities and Futures (Contracts Limits and Reportable Positions) Rules will be submitted to the Legislative Council for negative vetting before the end of March 2017. Subject to the legislative process, the SFC plans for the amended rules to come into effect on 1 June 2017.

Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2017 gazetted

Following the publication of the SFC's conclusions on its consultation on the proposed expansion of the scope of the position limit regime, the Hong Kong Government has gazetted the Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2017 to bring into effect the proposed changes.

The amendments include a 300% cap on the excess position limit that may be authorised by the SFC, a statutory position limit of 150,000 contracts for stock options as well as new excess position limits for index arbitrage activities, asset managers and market makers of exchange-traded funds. The minimum 'assets under management' requirement applicable to asset managers will also be lowered from HKD 100 billion to HKD 80 billion.

The Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2017 will come into effect on 1 June 2017.

Notice on commencement of mandatory electronic filing of disclosure of interests notifications and reports gazetted

The Hong Kong Government has gazetted the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2017 to commence mandatory electronic filing of disclosure of interests notifications and reports with effect from 3 July 2017.

The Commencement Notice brings into effect Part 4 of the Securities and Futures (Amendment) Ordinance 2014, which mandates disclosure of interests notifications and reports by corporate insiders and substantial shareholders of listed corporations to the Stock Exchange of Hong Kong (SEHK) under Part XV of the Securities and Futures Ordinance to be filed electronically. Currently, disclosure of interests notifications and reports may be filed by hand, by post, by fax or by email.

In addition, corporate insiders and substantial shareholders of listed corporations will no longer be required to submit notifications of their interests and short positions to the relevant listed corporation. The SEHK will provide the notifications it receives to the relevant listed corporation.

To facilitate the filing of the notifications and reports, the Securities and Futures Commission (SFC) is refining its filing forms, and plans to publish them in April 2017. There will be no change in the scope of information required to be filed under the existing law.

The Commencement Notice will be tabled before the Legislative Council on 29 March 2017 for negative vetting.

SGX adopts securities industry working group recommendations

Singapore Exchange (SGX) has announced that it has adopted the recommendations of the Securities Industry Working Group (IWG) to improve the operational resilience of Singapore's securities market.

The SGX, in consultation with the Monetary Authority of Singapore (MAS), formed the IWG in September 2016 to assess and make recommendations by the first quarter of 2017. The IWG took into consideration feedback garnered from members and participants, while the Securities Association of Singapore solicited input through various working and discussion groups.

The IWG made specific recommendations in the following six areas:

- restoration of corrupt data;
- market recovery procedures;
- market closure and resumption;
- trade assumption;
- incident communication; and
- business continuity testing and support.

The SGX has adopted all six recommendations and implemented three with immediate effect. The recommendations that the SGX has implemented include establishing a Master Record as the authoritative source of data in the event of complex malfunctions; providing more clarity on the timing and principles for market closure and resumption during a market-wide incident; and establishing a clear protocol for trade assumption.

For the remaining recommendations, the SGX will form and chair an Executive Steering Group, comprising the SGX and existing broker-members of the IWG, to oversee full implementation.

The MAS has directed the SGX to complete implementation of the recommendations within 24 months.

MAS consults on proposed framework for Singapore Variable Capital Companies

MAS has published a consultation paper on the proposed legislative framework for a new corporate structure tailored for collective investment schemes, the Singapore Variable Capital Company or S-VACC.

The S-VACC seeks to complement the three existing structures used by investment funds in Singapore, namely unit trusts, companies formed under the Companies Act of Singapore and limited partnerships, with one that is tailored for investment funds. The S-VACC structure is also intended to act as a platform for fund managers to anchor their substantive operations in Singapore, where control and management will be executed from Singapore. As tax treatment is a key consideration when deciding the domicile and management of funds, the MAS is studying the tax regime for S-VACCs, and welcomes feedback.

Amongst other things, the key proposals include the following:

- a new Singapore Variable Capital Companies Act (Annex B of the consultation paper);
- usage of the S-VACC structure as a vehicle for Collective Investment Schemes only;
- allowing S-VACCs to be structured as open-ended or closed-ended funds, and to require the rights of and limits to redemption to be set out in the constitution of a S-VACC;
- a cellular structure for S-VACCs, and safeguards against the risk of cross-cell contagion within a S-VACC;
- allowing a sub-fund to be wound up as if it were a separate legal person in the event of a sub-fund's insolvency;
- allowing only fund managers licensed, registered or exempt under the Securities and Futures Act to manage S-VACCs;
- the imposition of anti-money laundering and countering the financing of terrorism requirements on S-VACCs;
- requiring S-VACCs consisting of Authorised or Restricted Schemes to have an approved custodian that is an Approved Trustee, and to align the duties of the approved custodian with those of an Approved Trustee under the Securities and Futures Act, except where such duties are already imposed on the S-VACC or its directors as covered under the S-VACC legislation;
- adoption of the same requirements on re-domiciliation as those under the Companies Act for S-VACCs; and
- adoption of a winding-up regime similar to that under the Companies Act for S-VACCs and sub-funds, as well as the proposed modifications.

The consultation period ends on 24 April 2017.

SEC shortens standard US settlement cycle to T+2

The US Securities and Exchange Commission (SEC) has amended Rule 15c6-1(a) under the Securities Exchange Act of 1934 to shorten the standard settlement cycle for most US broker-dealer transactions from three business days after the trade date to two business days after the trade date, known as T+2.

This amendment is part of the SEC's ongoing efforts to enhance efficiency and reduce risk for market participants. Transaction parties remain able to agree expressly on longer settlement cycles at the time of a transaction.

The effective date for this rule amendment is 5 September 2017.

RECENT CLIFFORD CHANCE BRIEFINGS

Brexit – What will the Great Repeal Bill do?

The Great Repeal Bill will, according to the UK Government, preserve EU law as it stands at the moment before the UK leaves the EU and allow changes to be made by secondary legislation in order to ensure that it functions sensibly. Though apparently straightforward, the volume and complexity of EU law makes this domestication of EU law a complicated task.

This briefing paper discusses the Great Repeal Bill.

https://www.cliffordchance.com/briefings/2017/03/brexit_what_willthegreatrepealbilldo.html

Financial Conduct Authority v Macris

On 22 March 2017 the Supreme Court handed down its judgment in the long-awaited decision of FCA v Macris [2017] UKSC 19, defining what it means to be 'identified' in a Financial Conduct Authority (FCA) Enforcement notice and in doing so, overturned the decisions of the Upper Tribunal and the Court of Appeal.

This briefing paper discusses the judgment.

https://www.cliffordchance.com/briefings/2017/03/financial_conductauthorityvmacris.html

UAE Competition Law Update – Implications for M&A Transactions

Following the enactment of Cabinet Resolution 13 of 2016 which set out the relevant market share thresholds for the UAE's competition law regime, the Ministry of Economy has also established the UAE's Competition Authority. Now, with an operational Authority ready to accept filings and the establishment of the relevant market share thresholds, parties will need to consider the competition law regime from the initial stages of their UAE M&A transactions.

This briefing paper provides an update on developments in the UAE competition law regime since publication of Cabinet Resolution 13 of 2016. It also contains an analysis of the implications of the regime in the context of M&A transactions.

https://www.cliffordchance.com/briefings/2017/03/uae_competition_lawupdateimplicationsform.html

SEC publishes IFRS taxonomy and proposes to require Inline XBRL

The US Securities and Exchange Commission (SEC) will require foreign private issuers that are subject to US public reporting requirements and that prepare financial statements in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB) to comply with the SEC's XBRL reporting requirement for fiscal years ending on or after 15 December 2017. To enable compliance, the SEC has published on its website a specific set of data labels, or XBRL tags (collectively referred to as a taxonomy), customized for IFRS as issued by the IASB. In addition, the SEC has proposed to amend its XBRL reporting requirement to mandate use of Inline XBRL.

This briefing paper discusses the key issues.

https://www.cliffordchance.com/briefings/2017/03/sec_publishes_ifrstaxonomyandproposest.html