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Briefing note

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Capital Markets Union: EU Commission reports on tackling national barriers to cross-border investments

The EU Commission has adopted a report on tackling national barriers to cross-border investments in the EU. The report is based on the work of an expert group of Member States' representatives alongside the Commission to map national barriers to cross-border capital flows and find the best ways of tackling barriers identified as being not justified by public interest considerations or as being disproportionate. The report follows a call from the ECOFIN Council in 2015 for a roadmap to tackle national barriers and relates to the Commission's work on creating a Capital Markets Union (CMU).

The report distinguishes between different types of national barrier:

- ex ante barriers, which are of immediate concern when investors consider engaging in cross-border activity;
- in itinere barriers, which deter investors from maintaining or increasing their cross-border exposure; and
- ex post barriers, which lead to difficulties at the end of the investment process.

For each type of barrier, the report builds on the Commission's discussions with the expert group and proposes next steps. The barriers identified include withholding tax procedures, residence requirements imposed on the management of financial institutions and a lack of financial literacy.

The report calls on the Member States to endorse the proposed roadmap and take action accordingly.

EMIR: Delegated Regulation correcting RTS on risk-mitigation techniques for uncleared derivatives published in Official Journal

Commission Delegated Regulation (EU) 2017/323 correcting Delegated Regulation (EU) 20016/2251 with regard to regulatory technical standards (RTS) for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (CCP) has been published in the Official Journal.

The Delegated Regulation corrects an error in Article 37 of the RTS where paragraphs on the phase-in of the variation margin (VM) requirements to intra-group transactions were omitted.

The Delegated Regulation entered into force on 25 February 2017 and applies from 4 January 2017.

EMIR: EU Commission adopts Delegated Regulation on exempted entities

The EU Commission has adopted a draft Delegated Regulation which amends the European Market Infrastructure Regulation (EMIR) with regard to the list of exempted entities.

The draft Delegated Regulation allows central banks and public bodies charged with or intervening in the management of the public debt from Australia, Canada, Hong Kong, Mexico, Singapore, and Switzerland to be added to the list of exempted entities under EMIR. This draft Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal.

Anti-Money Laundering: EU Parliament Committees back amendments on access to beneficial ownership information

The EU Parliament's Committees on Economic and Monetary Affairs (ECON) and Civil Liberties (LIBE) have approved a set of amendments to the fourth Anti-Money Laundering Directive (AMLD 4) which would allow EU citizens to access data on firm owners. Under these amendments, EU citizens could access registers of beneficial owners of companies without having to demonstrate a 'legitimate interest,' and trusts would have to meet the same transparency requirements as firms. The amendments would aim to plug the gaps in the EU's framework legislation against money laundering and terrorism financing. They would also introduce stricter transparency rules to prevent tax evasion.

The Committees voted by 92 votes to 1, with 1 abstention, to enter into negotiations on the legislation with the EU Council. Parliament as a whole must now give the go-ahead in the March plenary session for MEPs to start three-way talks with the EU Commission and Council.

MiFIR: ESMA publishes final draft RTS on package orders

The European Securities and Markets Authority (ESMA) has published a report on final draft RTS regarding the treatment of package orders under MiFIR Paragraph 6 of Article 9, which was added to MiFIR by the MiFIR Amending Regulation (2016/1033).

Based on feedback from its consultation on draft RTS in November 2016, ESMA has revised the RTS considerably to narrow the scope of package orders that qualify as having a liquid market as a whole. ESMA intends to monitor the trading activity in packages closely and may consider amendments to the RTS in the medium term.

EBA reports on high default portfolio and market risk benchmarking exercises

The European Banking Authority (EBA) has published two reports that set out the results of two benchmarking exercises conducted under the mandate laid down in Article 78 of the Capital Requirements Directive (CRD 4) and related draft technical standards.

The reports present findings from exercises on:

- high default portfolios (HDPs), which sets out the level of variability of RWAs and examines the different drivers that explain the dispersion observed. The report sets out several areas which supervisors should investigate further, including:
  - practices regarding defaulted exposures;
  - the definition of default;
  - the use of global models and the interaction with country-specificities for exposures with counterparties from different jurisdictions; and
  - unjustified differences between regulatory approaches; and
- market risk benchmarking, which outlines the conclusions obtained from a market hypothetical portfolio exercise (HPE) that was conducted by the EBA to assess the level of variability observed in market-risk-weighted assets (MRWA) produced by banks' internal models. Among other things, the report highlights certain areas that may require further investigation by competent authorities, such as accentuated pricing variability for equity derivatives, commodities trades and credit spreads products.

EBA consults on recommendations on coverage of entities in a group recovery plan

The EBA has launched a consultation on a draft recommendation on the coverage of entities in banking group recovery plans, which seeks to define common criteria to identify entities (subsidiaries and branches) that need to be covered in group recovery plans, and the extent of such coverage.

The draft recommendation envisages that the coverage of entities in a group recovery plan needs to be proportional, so that the amount of information will vary according to relevance of the entities. The EBA therefore recommends that, for recovery planning purposes, entities should be categorised as:

- relevant for the group;
- relevant for the economy or financial system of a relevant Member State; or
- relevant for neither of the two.

Different levels of information are identified for each category. A transitional phase is included to allow the incorporation of available information from existing individual plans into group plans.

While the draft recommendation does not interfere with the tasks and responsibilities of the home and host competent authorities under the Capital Requirements Directive (CRD) and Bank Recovery and Resolution Directive (BRRD), it is designed to limit requests for individual plans, based on an inadequate coverage of an entity in the group recovery plans. The recommendation is also designed to support the effective assessment of group recovery plans in the context of the joint decision process on recovery plans.

Comments are due by 2 June 2017.

EBA consults on specification of an economic downturn

The EBA has launched a consultation on draft regulatory technical standards (RTS) under the Capital Requirements Regulation (CRR) specifying the nature, severity and duration of an economic downturn according to which institutions shall estimate the downturn loss given default (LGD) and conversion factor (CF).

The consultation forms part of the EBA's review of the internal ratings based (IRB) approach, which is aimed at reducing the variability in the outcomes of internal models, while preserving the risk sensitivity of capital requirements.

The draft RTS propose an economic factor approach for identifying the economic downturn conditions, where the downturn is driven by macroeconomic and credit factors selected according to an analysis of their dependency with specific features of realised LGDs and CFs defined as model components. However, the EBA is also seeking feedback on two alternative approaches:

- a reference value approach, where institutions would be given flexibility in choosing their own methodologies in identifying the relevant economic indicators from a minimum list provided; and
- a supervisory add-on approach, where the LGD downturn would be estimated as the long-run average plus an add-on subject to a supervisory calibration, with the aim of reflecting portfolio specific differences in terms of realised losses.

Additionally, the EBA is proposing a method to be used regarding the LGD parameter as a proposed amendment to the downturn adjustment section of the guidelines on the probability of default (PD) and LGD estimation and the treatment of defaulted assets.

The EBA is aiming to implement these standards by end-2020. This deadline refers to the implementation of all changes stemming from the EBA's regulatory review of the IRB approach.

Comments are due by 29 May 2017.

FSB announces outcome of plenary meeting

The Financial Stability Board (FSB) has announced the outcome of its plenary meeting in Cape Town on 27-28 February 2017.

Among other things, the plenary discussed:

- implementation and effects of post-crisis reforms, including a review of the evolution of shadow banking risks since the financial crisis and the implementation of OTC derivatives markets reforms;
- work on identifying regulatory and supervisory issues raised by fintech from a financial stability perspective;
- current and emerging vulnerabilities facing the financial system, including levels of domestic and foreign currency debt, elevated real estate values and uncertainty over the path of future interest rates;
- an interim report that seeks to quantify interdependencies between central counterparties (CCPs), major clearing members and financial service providers and the resulting systemic implications, as well as work on preparing guidance for CCP resolution alongside the Basel Committee on Banking Supervision (BCBS), Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO), which will be finalised by the G20 Leaders Summit;
- a progress report on governance arrangements for unique transaction identifiers (UTIs) and unique product identifiers (UPIs) for OTC derivatives reported to trade repositories; and
- work to address misconduct risk, including further work on strengthening governance frameworks, a draft consultation on the use of compensation tools to address misconduct which will be published ahead of the G20 Leaders Summit and an update on the implementation of the FSB's 2014 recommendations for reform of major interest rate benchmarks.

The FSB also held its third annual emerging market and developing economies (EMDEs) forum, which considered, among other things, international work on correspondent banking and the potential of fintech to expand financial inclusion.

Basel Committee issues statement on Basel III reforms

The Chair of the Basel Committee on Banking Supervision (BCBS) has issued a statement on its progress towards finalising the Basel III reforms.

The statement reiterates BCBS' broad support for the key features of the reforms and notes that while the finalisation of Basel III has taken longer than anticipated, BCBS continues to work towards reaching an agreement.

Basel Committee and EBA report on Basel III monitoring exercises

The BCBS has published the results of its latest review of the implications of the Basel III standards for banks.

On a fully phased-in basis, data as of 30 June 2016 show that nearly all participating banks meet both the Basel III risk-based capital minimum Common Equity Tier 1 (CET1) requirements and the target level of 7.0% (plus the surcharges on global systemically important banks, as applicable). The 100 large internationally active banks which participated in the exercise ('Group 1 banks') continued to reduce their capital shortfalls relative to the higher Tier 1 and total capital target levels.

The monitoring reports also collect data on Basel III's liquidity requirements. The Liquidity Coverage Ratio (LCR) was raised from 60% in 2015 to 70% in 2016, and will continue to rise in equal annual steps to reach 100% in 2019. 88% of the Group 1 banks in the LCR sample and 94% of the 'Group 2 banks' (banks with a Tier 1 capital of less than EUR 3 billion, or those that are not internationally active) reported an LCR that met or exceeded 100%, and all banks reported an LCR at or above the 70% minimum requirement.

The report also covers the Net Stable Funding Ratio (NSFR), and found that 84% of the Group 1 banks and 86% of the Group 2 banks in the NSFR sample reported a ratio that met or exceeded 100%.

The EBA has also published a report setting out the results of its own monitoring exercise relating to the EU Capital Requirements Directive (CRD 4) and Regulation (CRR), as well as Basel III, which has been run in parallel with the exercise carried out at a global level by the BCBS.

Overall, the results of this exercise showed:

- there is a total average CET1 ratio of 12.8% assuming full implementation of CRD 4/CRR;
- only 4.7% of sampled banks would be constrained by the minimum leverage ratio requirement of 3% additionally to risk-based minimum requirements;
- the average LCR is 133.7%;
- 95.4% of sampled banks show an LCR above the full implementation minimum requirement applicable from January 2018 (100%); and
- based on Basel III standards, in the absence of a finalised EU definition, the average NSFR is 107.8%.

CPMI-IOSCO issue guidance on harmonisation of Unique Transaction Identifier

The Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) have published a joint report providing technical guidance to authorities to enable them to set rules on assigning uniform global Unique Transaction Identifiers (UTIs) to over-the-counter (OTC) derivatives transactions.

The primary purpose of the UTI is uniquely to identify individual OTC derivatives transactions that are required by authorities to be reported to trade repositories. Global uniform UTIs are intended to facilitate the consistent global aggregation and analysis of OTC transaction data reported across trade repositories that authorities can use in service of their legal obligations and prudential requirements.

The report provides technical guidance to authorities on the definition, format and usage of the UTI and covers the following areas:

- the circumstances in which a UTI should be used;
- the impact life cycle events should have on the UTI;
- which entity (or entities) should be responsible for generating UTIs;
- when UTIs should be generated; and
- the UTI's structure and format.

CPMI reports on distributed ledger technology in payment clearing and settlement

The CPMI has published a report on distributed ledger technology (DLT) in payment clearing and settlement.

The report provides an analytical framework for central banks and other authorities to review and analyse the use of distributed ledgers in payment, clearing and settlement activities. The aim of the framework is to help central banks and other authorities understand the uses of DLT and identify both the opportunities and challenges associated with this technology.

The framework focuses on the potential implications for efficiency and safety and for the broader financial markets, and contains a set of questions that may be useful to authorities and others to consider when looking at DLT arrangements.

HMT publishes final policy on amending definition of financial advice

HM Treasury (HMT) has published feedback to its consultation on changing the definition of financial advice and its final approach. HMT consulted on the change following the Financial Advice Market Review (FAMR), which identified a lack of clarity among firms about the point at which general forms of consumer support become regulated advice.

HMT has announced that it will proceed with its proposal to amend the definition of regulated advice in Article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) to bring it in line with the MiFID definitions, but only for regulated firms. Regulated firms will therefore be giving advice only where they provide a personal recommendation. For unregulated firms, HMT intends leave in place the existing RAO definition of advice as 'advising on investments' in response to concerns among some respondents that a narrower definition for all firms may have consumer protection issues. This means that unregulated firms will not be able to provide more detailed and tailored guidance services.

The Government intends to lay a statutory instrument before Parliament that will come into force on 3 January 2018, in order to align the change with the implementation of MiFID2 in the UK and to provide the Financial Conduct Authority (FCA) time to prepare for the change. The FCA has launched a webpage setting out the changes to the RAO and has announced its intention to consult on necessary changes to its Handbook and Regulatory Guides later in 2017.

Bank of England becomes Prudential Regulation Authority

The Bank of England (BoE) has become the Prudential Regulation Authority (PRA) under the Financial Services and Markets Act 2000. The Bank of England and Financial Services Act 2016 transfers the functions of the PRA to the BoE. These functions were formerly performed by a subsidiary of the BoE. The BoE will exercise its functions as the PRA through a new Prudential Regulation Committee which replaces the PRA Board.

The PRC will consist of:

- the Governor of the Bank;
- the Deputy Governor for prudential regulation;
- the Deputy Governor for financial stability;
- the Deputy Governor for markets and banking;
- one member appointed by the Governor of the Bank with the approval of the Chancellor of the Exchequer;
- the Chief Executive of the Financial Conduct Authority; and
- at least 6 members appointed by the Chancellor of the Exchequer.

HM Treasury has announced that the current external members of the PRA Board have been re-appointed by the Chancellor to the PRC. The Chancellor has also approved the BoE Governor's appointment of the Deputy Governor for Monetary Policy, Ben Broadbent, as a member of the PRC.

PRA and FCA update policies on loan-to-income ratio in mortgage lending

The PRA has published a policy statement (PS5/17) on amendments to its rules on loan to income (LTI) ratios in mortgage lending. The amendment relates to a change to the current fixed quarterly limit into a four-quarter rolling limit. The limit would still need to be complied with and monitored at the end of every quarter, but the relevant flows of loans for compliance with the limit would now be those during a rolling period of four quarters in total, instead of one quarter as currently applied. These four quarters refer to the immediate quarter under consideration and the three quarters preceding it.

Alongside the PRA policy statement, the FCA has published finalised guidance (FG17/2), which updates the guidance issued to FCA-authorised mortgage lenders in October 2014. The changes and clarifications made by the FCA mirror those being made by the PRA. The FCA has also made clarifications on exclusions from the LTI flow limit for:

- second and subsequent charge mortgages;
- interest roll-up bridging loans; and
- mortgages ported to another property where there is no increase in the principal outstanding.

The PRA has confirmed that the change will be implemented with immediate effect, so that the loan to income (LTI) flow limit is applied on a four-quarter rolling basis from the current quarter onwards. The PRA views compliance under the previous fixed quarterly limit as automatically implying compliance with the limit under a four-quarter rolling basis.

FCA consults on availability of information in IPO process

The FCA has published a consultation paper (CP17/05) on the availability of information in the UK equity IPO process. The consultation proposes measures to improve the IPO process including the timing, sequencing and quality of information being provided to market participants.

The consultation proposes an IPO process:

- with enhanced standards of conduct during the production and distribution of connected research;
- where a prospectus document plays a more central role; and
- where the necessary conditions exist for the emergence of unconnected IPO research.

Comments are due by 1 June 2017.

BaFin to accept draft applications for authorisation from data reporting services providers

The German Federal Financial Supervisory Authority (BaFin) has published a notice on its website stating that, whereas it cannot accept or process formal applications for authorisation from data reporting services providers and for an assessment of whether the authorisation conditions are met until after the entry into force of the German legal provisions implementing the revised Markets in Financial Instruments Directive (MiFID2) and governing BaFin's respective competence, as from 1 March 2017 it will accept and preliminarily assess draft applications.

Data reporting services providers will require an authorisation and be supervised by BaFin once the relevant German MiFID2 implementing provisions take effect, which will likely be the case on 3 January 2018. In order to allow a smooth transitional period for companies wishing to operate as data reporting services providers from 3 January 2018, the current draft German implementing provisions include transitional provisions which provide for notional authorisation for data reporting services providers, provided that they submit a complete application for authorisation by 2 July 2018.

AMF publishes guide to use of stress tests for asset management companies

The French Autorité des marchés financiers (AMF) has published a guide to give an overview of the stress tests practices of French asset management companies (AMCs) that manage undertakings for collective investment in transferable securities (UCITS) or alternative investment funds (AIFs), or provide a discretionary portfolio management service. The guide may also be useful to investment services providers that provide such services.

In the context of the overall risk management policy as required by the UCITS and AIFM Directives, the guide develops the conditions under which stress tests are implemented and used by AMCs of different sizes and from different sectors. It provides several examples and scenarios of stress tests, which have to be adapted to the characteristics of each fund or portfolio.

The guide also defines some good practices to follow.

CSSF issues circular on law of 23 December 2016 on credit agreements for consumers relating to residential immovable property

The Luxembourg financial sector supervisory authority, the CSSF, has issued a new circular (17/651) on the law of 23 December 2016 on credit agreements for consumers relating to residential immovable property and transposing Directive 2014/17/EU in a new Chapter 6 of the Luxembourg Consumer Code. Pursuant thereto, the CSSF is appointed as competent authority for the execution of Chapter 6 of the Consumer Code.

The circular, addressed to all CSSF-supervised professionals, presents the new Chapter 6 and highlights the entry into force of several guidelines issued by the European Banking Authority (EBA) in relation to pre-contractual information requirements for real estate loans, information on interest rates, execution and enforcement, as well as real estate credit intermediaries (including conduct of business rules and educational requirements). It further sets out the features of the representative example (exemple représentatif) provided for in Article L. 226-6(2) of the Consumer Code on the publicity of credit agreements relating to immovable property.

More specifically, the circular also points out that Chapter 6 Consumer Code provisions are mandatory and any clause or combination of clauses in the credit agreement contrary to these provisions may be declared void.

The circular, which entered into force on 22 February 2017, also clarifies the staggered entry into force of the various provisions of the new Chapter 6.

CSSF publishes statement on mortgage credit intermediaries

The CSSF has announced the introduction of the new regulated profession of mortgage credit intermediaries under the law of 23 December 2016 on mortgage credit agreements. The Law implemented the EU Mortgage Credit Directive (2014/17/EU - MCD) in Luxembourg and the new regulated profession concerns the intermediation of residential immovable property loans to consumers.

In the statement, the CSSF has highlighted that mortgage credit intermediary activities are subject to a prior requirement to obtain authorisation granted by the Minister of Finance following an instruction of the file performed by the CSSF. In order to obtain authorisation and benefit from the European passport, applicants must produce evidence of their professional reputation, of an appropriate level of knowledge and experience in the field of mortgage credit agreements, and of a central administration located in Luxembourg. Professionals exercising the activity of a mortgage credit intermediary prior to the law entering into force have until 21 March 2017 to comply with the new requirements.

Authorised credit intermediaries are subject to the supervision of the CSSF, which disposes of sanction powers, such as the power to impose an administrative fine that can go up to EUR 250,000.

Council of Bank Guarantee Fund sets total amount of contributions for 2017

The Council of the Bank Guarantee Fund has set the amount of the annual contributions in 2017 at PLN 2.1 billion.

The total amount of the contributions to the guarantee fund of banks has been set at PLN 915,000,000 while the total amount of contributions to the fund for the forced restructuring of banks has been set at PLN 1,182,000,000.

SAFE allows CIBM overseas institutional investors to hedge foreign exchange risks by trading FX derivatives

The State Administration of Foreign Exchange (SAFE) has issued the Circular Regarding the Management of Foreign Exchange Risks by Overseas Institutional Investors on the China Interbank Bond Market, allowing overseas institutional investors (OIIs) under the PBOC Announcement [2016] No. 3 to hedge their foreign exchange (FX) risks while investing in the China interbank bond market (CIBM). The main aspects of the Circular include the following:

- OIIs can trade RMB/FX derivatives (FX Derivative Trading) with their settlement agents (which are also approved by SAFE to conduct FX Derivative Trading for their clients). Such FX derivatives include forwards, FX swaps, currency swaps and options, and several trading modes are available, such as reverse position-closing, gross and netting settlements;
- currently, the OIIs' FX Derivative Trading must follow the principle of 'real needs', and be limited to hedging the FX risk exposures arising from the cross-border fund remittance in the course of CIBM investments. The FX derivative exposures shall be adjusted if there is any change to the underlying FX risk exposures; and
- relevant FX receipts and payments involved in the FX Derivative Trading shall be handled through the special FX account according to the Circular on Issues concerning Foreign Exchange Administration on the Investment by OIIs in the CIBM (SAFE Circular [2016] No.12) issued by the SAFE in May 2016.

The Circular has come into effect. Clifford Chance has prepared an English translation and is happy to provide it upon request.

HKMA issues circular on bank culture reform

The Hong Kong Monetary Authority (HKMA) has issued a circular to authorised institutions on bank culture reform. The circular is intended to provide guidance for authorised institutions to develop and promote a sound corporate culture that supports prudent risk management and contributes towards incentivising proper staff behaviour leading to positive customer outcomes and high ethical standards in the banking industry. The circular supplements corporate governance guidelines set out in existing supervisory policy manual (SPM) modules.

The HKMA expects authorised institutions to adopt an effective framework for fostering a sound culture within the institution, in particular in relation to three pillars for promoting sound bank culture:

- governance;
- incentive systems; and
- assessment and feedback mechanisms.

Authorised institutions are required to review their governance arrangements, policies and procedures in relation to corporate culture drawing references from the circular. The necessary enhancement measures should be implemented within one year of the date of the circular. Specifically, locally incorporated authorised institutions should aim to implement the guidance in the circular, including but not limited to the establishment of a dedicated board-level committee. Overseas incorporated authorised institutions will also be expected to have similar frameworks and mechanisms in place, albeit tailored to fit individual circumstances. The intended emphasis is on the effectiveness of individual institution's governance arrangements, policies and procedures in promoting a sound corporate culture and the guidance may be applied on a proportionate basis for those institutions with smaller and less complex business. Where an institution is part of an international banking group and adopts a relevant framework formulated at the group level, it should make necessary adjustments, having regard to local circumstances and the applicable guidelines and circulars issued by the HKMA.

HKMA has advised authorised institutions to send the circular to all board directors in the case of a locally incorporated authorised institution and the head of the regional/head office in charge of the governance function in the case of an overseas incorporated authorised institution. The boards of locally incorporated authorised institutions and the senior management of regional/head offices of overseas incorporated authorised institutions are required to take a proactive role in implementing the guidance set out in the circular.

HKMA issues circular on local implementation of Basel Committee standards on interest rate risk in banking book

The HKMA has issued a circular to authorised institutions on the local implementation of the new standards for interest rate risk in the banking book (IRRBB) issued by the Basel Committee on Banking Supervision (BCBS) on 21 April 2016. The HKMA intends to implement the new standards by 1 January 2018, in accordance with the BCBS timetable.

The HKMA expects to publish a consultation paper with an updated draft of the supervisory policy manual (SPM) module on interest rate risk management by June 2017. The updated SPM module will largely follow the new BCBS standards, with minor adjustments reflecting specific characteristics of the local banking system. The HKMA recommends all relevant authorised institutions to start working on the relevant risk management systems and necessary processes as soon as possible, so that they are ready to report IRRBB measures based on the new standardised framework by 1 January 2018.

SFC proposes to standardise rules for prescribing professional investors

The Securities and Futures Commission (SFC) has launched a public consultation on proposed amendments to the Securities and Futures (Professional Investor) Rules (PI Rules) to allow joint accounts with non-associates and assets held in investment vehicles owned by individuals to be counted in ascertaining whether individuals meet the monetary threshold to qualify as professional investors.

In addition, the categories of professional investors would be expanded to include corporations which have investment holding as their principal business and are wholly owned by one or more professional investors, as well as corporations which wholly own another corporation that is a qualified professional investor. Alternative forms of evidence would also be allowed to demonstrate qualification as a professional investor.

Under the proposals, the SFC envisages that more persons will qualify as professional investors. Nevertheless, intermediaries remain subject to the suitability requirement and other fundamental requirements when serving them.

Comments on the consultation paper are due by 3 April 2017.

SFC updates circular on disclosure of ongoing charges and past performance information by SFC-authorised funds

The SFC has updated its circular issued to management companies of SFC-authorised funds with regard to the disclosure of ongoing charges figure and past performance information in the product key facts statements (KFS).

Paragraphs 6(e) and 30 in the guidelines for the disclosure and calculation of the ongoing charges figure have been updated to clarify the requirements in respect of the ongoing charges figure incorporating performance fees.

International Enterprise Singapore Board (Amendment) Bill 2017 passed

The International Enterprise Singapore Board (Amendment) Bill 2017 was moved for its second reading in Parliament and passed on 7 February 2017.

The amendments to the International Enterprise Singapore Board Act (IESBA) set out in the Bill are intended to align International Enterprise Singapore Board's (IE Singapore) regulatory functions over the commodity trading industry within the reduced scope of the Commodity Trading Act (CTA).

The amendments are either consequential due to the Securities and Futures (Amendment) Bill 2016, or are administrative in nature. Key amendments to the IESBA include:

- limiting IE Singapore's regulatory function over the commodity trading industry to spot commodity trading and the rubber trade industry in order to clarify IE Singapore's regulatory role under the CTA and the Rubber Industry Act, when the Securities and Futures (Amendment) Bill 2016 comes into force;
- clarifying that IE Singapore can collect, compile and analyse information relating to the commodity trade and industry for policy formulation purposes; and
- setting out the circumstances under which IE Singapore may disclose confidential information related to the commodity trading industry to another public agency.
- In addition to the key amendments highlighted above, there will also be an administrative amendment to update the purposes for which the Singapore Rubber Fund may be used, to take into account the revised functions of IE Singapore.

CFTC staff relief allows swap dealers operating in Japan additional time to exchange variation margin for qualifying uncleared swaps

The staff of the Commodity Futures Trading Commission's (CFTC's) Division of Swap Dealer and Intermediary Oversight (DSIO) has issued limited no-action relief to swap dealers that operate in Japan from the CFTC's requirement to post and collect variation margin from certain financial counterparties within one business day of swap execution and daily thereafter (the T+1 Requirement), particularly in cases where the CFTC's substituted compliance determination of 15 September 2016 would not apply. The DSIO has granted this relief with respect to uncleared swaps with counterparties subject to Japan's margin requirements (Supervised Counterparties) and it is conditioned on the following:

- initial/ongoing VM obligation – subject to any minimum transfer amount not exceeding the amount permitted under the regulation, the swap dealer posts or collects any variation margin amount required within three business days of swap execution (T+3) and thereafter at least T+3;
- compliance efforts expected – the swap dealer uses its best efforts to comply with the CFTC's T+1 Requirement for transactions with Supervised Counterparties as soon as possible; and
- expiration of relief granted – no later than 1 March 2020, the swap dealer complies with the CFTC's T+1 Requirement for all transactions with Supervised Counterparties.

In granting this relief, the DSIO acknowledged that transactions in Japanese Government Bonds, a safe and highly liquid form of eligible collateral, currently settle in 2 or 3 business days rather than on a T+1 basis.

RECENT CLIFFORD CHANCE BRIEFINGS

New Mortgage Law in UAE – briefing on key issues

A new UAE Mortgage Law, entering into force on 15 March 2017, is anticipated to be a milestone for parties seeking to create effective security packages over movable assets in the UAE.

On the face of it, the law introduces a new form of registered mortgage which circumvents the cumbersome requirement for physical transfer of possession as a fundamental feature of security over movables and expressly allows for security over future assets to be taken. The law also appears to offer more expedient enforcement processes and enhances possibilities for transactional due diligence, given that, once established, the mortgage register is expected to be publicly searchable.

This briefing paper provides an overview of the current position, the key provisions of the Mortgage Law and what the new regime might potentially offer to those seeking to utilise it. The briefing paper also outlines some key areas of uncertainty and further actions which we recommend our clients consider as part of their strategies now. In particular, it will be critical for parties to remain aware over the coming months that increasingly time-sensitive steps, many of which are yet to be clarified, are likely to need to be taken in relation to existing security packages over movable assets once the infrastructure for registration is in place.

https://www.cliffordchance.com/briefings/2017/02/new_mortgage_lawinuaebriefingonkeyissues.html

NY DFS cybersecurity rules take effect

On 1 March 2017, the new requirements on cybersecurity from the New York Department of Financial Services (DFS) took effect. The cybersecurity rules are an unprecedented action by a state government agency and contain strict requirements for DFS-licensed entities to establish enhanced cybersecurity programs, adopt written cybersecurity policies and procedures, and report cyber-events to DFS.

This briefing paper discusses the rules.

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