

International Regulatory Update

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

International Regulatory Group Contacts

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

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

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

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

[Paul Landless](#) +65 6410 2235

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

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

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

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

www.cliffordchance.com

SSM: ECB publishes guideline and recommendation on options and national discretions for less significant institutions

The European Central Bank (ECB) has published a [guideline](#) and a [recommendation](#) on the exercise of options and national discretions (O&Ds) available in EU law in relation to less significant institutions (LSIs) which are directly supervised by national competent authorities (NCAs). The documents, both of which are addressed to NCAs, are intended to further harmonise the way that banks are supervised within the Single Supervisory Mechanism (SSM).

The documents follow the ECB's harmonisation of the exercise of O&Ds in the supervision of significant institutions (SIs) under its direct responsibility within the SSM. The ECB has applied many of the O&Ds in the same way for LSIs as for SIs.

For more information and resources on the SSM, see the Banking Union Topic Guide on the Clifford Chance Financial Markets Toolkit.

Benchmarks: EMMI adopts governance framework for EONIA

The European Money Markets Institute (EMMI) has adopted a [governance framework](#) for the Euro OverNight Index Average (EONIA) benchmark, concluding the first phase of its EONIA review.

The aim of the governance framework is to ensure the integrity and robustness of the EONIA benchmark. The governance framework consists of:

- the [governance code of conduct](#), which sets out the governance arrangements and control framework to be implemented by EMMI as an administrator;
- the [code of obligations for panel banks](#), which sets out the requirements for banks contributing to the EONIA determination; and
- the [EONIA benchmark determination methodology](#), which establishes the methodology for the calculation of EONIA under both regular and contingency circumstances.

The governance framework will enter into force on 1 August 2017. EMMI intends to commence the second phase of the EONIA review in the second half of 2017.

EMIR review: ESRB publishes paper

The European Systemic Risk Board (ESRB) has published a [paper](#) on the EU Commission's proposal to revise the

European Market Infrastructure Regulation (EMIR). The paper is intended to highlight some issues which the ESRB deems important but does not include specific proposals.

In particular, the ESRB has highlighted:

- the framework under which third-country central counterparties (CCPs) are recognised to provide clearing services in the EU, which it believes could be reinforced;
- the possibility for further analysis with regard to CCPs offering their services in the EU, in the context of international work on the interconnectedness and concentration of clearing of certain financial instruments across CCPs;
- the possibility for future analysis of the potential interactions between the risk models used by CCPs to determine margin requirements and default fund contributions, and those used by intermediaries for risk mitigation in non-centrally cleared transactions, which could have implications for the EMIR Level 1 text; and
- the possibility for future analysis on whether to include further microprudential tools to limit the procyclical effects of margin and haircut-setting in the regulatory technical standards (RTS 153/2013).

Overall the ESRB supports the Commission's assessment that no fundamental change to the EMIR core requirements are needed at this time, although certain improvements may be possible.

EMIR: ESMA signs MoU with New Zealand regulators on CCPs

The European Securities and Markets Authority (ESMA) has signed a [memorandum of understanding \(MoU\)](#) on CCPs with the Reserve Bank of New Zealand and the Financial Markets Authority of New Zealand.

The MoU establishes cooperation arrangements regarding CCPs which are established and authorised or recognised in New Zealand, and which have applied for legal recognition under EMIR. The MoU is effective as of 28 February 2017.

ESAs report on risks and vulnerabilities for EU financial system

The Joint Committee of the European Supervisory Authorities, comprising the European Banking Authority (EBA), ESMA and the European Insurance and Occupational Pensions Authority (EIOPA), has published its spring 2017 [report](#) on risks and vulnerabilities in the EU's financial system.

The report focuses on continued challenges highlighted in the August 2016 report, but also highlights increasing challenges posed by rapid advances in information and communication technologies (ICT), including cyber risks. The main risks affecting the financial system are considered to be:

- low profitability of financial institutions;
- valuation risks around search for yield and repricing of risk premia;
- interconnectedness within the financial system; and
- cyber risks and IT-related operational risks.

The report also highlights the vulnerability of the European financial sector due to political and economic uncertainty.

BRRD: ISDA publishes 2017 Bail-in Article 55 Protocol (Austrian/Belgian/Danish/Swedish entity-in-resolution version)

The International Swaps and Derivatives Association (ISDA) has [launched](#) the [ISDA 2017 Bail-in Article 55 BRRD Protocol](#) to be used in connection with bail-in requirements under Article 55 of the Bank Recovery and Resolution Directive (BRRD).

The Protocol is intended to help in-scope Austrian, Belgian, Danish and Swedish entities to comply with requirements in relation to their ISDA Master Agreements. The 2017 Protocol follows publication of the 2016 Protocol for Dutch, French, German, Irish, Italian, Luxembourg, Spanish and UK entities.

FCA sets out its mission and business plan, and consults on fees and levies for 2017/18

The Financial Conduct Authority (FCA) has published its business plan for 2017/18 alongside a document on its mission, sector views, and a consultation on regulated fees and levies for the coming year.

The [business plan](#) sets out details of the specific areas of work the FCA will prioritise for the next year, including:

- work to prepare for the UK's withdrawal from the EU;
- a campaign to encourage consumers to make a decision on payment protection insurance (PPI) ahead of the August 2019 deadline;
- examining the issue of vulnerable consumers;
- continuing work on high-cost credit; and
- considering the issue of long term savings and retirement outcomes.

The FCA's [mission document](#) sets out how the FCA's objective to ensure that relevant markets function well and operational objectives on consumer protection, integrity of the UK financial system, and promoting competition, affect the FCA's decisions. It is intended to explain to firms the intervention framework for the strategic decisions the FCA makes, the reasoning behind its work and the way it chooses the tools to do it. It builds on the FCA's consultative document on its future mission, which was published in October 2016, and is accompanied by a [feedback statement](#) on the consultation. The FCA intends to publish detailed explanations of how it delivers specific regulatory functions later in 2016.

The [sector views documents](#) are intended to present a high level view on how the financial system works within individual sectors and markets. The FCA intends to update the individual sector views once a year, three months after the FCA Board has approved the content.

The [consultation](#) on fees and levies sets out proposals to cover the cost of the FCA's regulatory activities, the Financial Ombudsman Service (FOS) and the Money Advice Service in 2017/18. It also includes proposals for the ring-fencing implementation fee, application fees for the recast Payment Services Directive (PSD2) and levies for pensions guidance and illegal money lending. Comments are due by 9 June 2017.

BaFin publishes new circular on video identification process

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has published a new [Circular 3/2017 \(GW\)](#) on identification by video.

The new circular updates the requirements for a video identification for the purposes of anti-money laundering and provides more details.

The new circular will enter into force on 15 June 2017.

CSSF issues circular on survey of amount of covered deposits held as of 31 March 2017

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued [Circular CSSF-CPDI 17/05](#) dated 23 November 2016 to conduct a survey of the amount of covered deposits held as of 31 March 2017.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the Entreprise des Postes et Télécommunications, and to Luxembourg branches of non-EU/EEA credit institutions), and informs them that, from now on, the CPDI aims to collect the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year. The circular further draws members' attention to the provisions of CSSF-CPDI Circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus and fiduciary accounts. The volume of omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) will also have to be reported where credit institutions wish to ensure deposit protection for relevant beneficiaries.

In addition, FGDL members are requested to provide the data at the level of their legal entity, comprising branches located within other Member States, for the 28 April 2017 at the latest. In order to transmit this data, institutions have been asked to complete the table attached to the circular, which is also available on the CSSF website. The file containing the data shall be duly completed in all cases, shall respect the special surveys naming convention, as defined by CSSF Circular 08/344, and shall be submitted through secured channels (E-File/SOFiE).

Polish Financial Supervision Authority issues statement on closed list of entities engaged in marketing of brokerage services

In connection with the publication of the Act of 9 March 2017 Amending the Act on Trading in Financial Instruments and Certain Other Acts, the Polish Financial Supervision Authority (KNF) has issued an [announcement](#) in which it draws attention to certain changes introduced by this amending legislation.

According to the announcement, after the amendments enter into force, only an investment firm or agent of an investment firm will be able to take action to solicit clients or potential clients, including informing them of the scope of brokerage services or financial instruments that are the subject thereof, unless the information is provided simultaneously to a wide group of clients or potential clients of the investment firm or to an unspecified addressee. The KNF notes that the amendment to the provisions will have a material effect on the operation of foreign investment firms that, on the basis of a notification to the KNF, have

conducted brokerage activity without opening a branch but when providing information on their services used entities physically present in Poland.

CBRC publishes plan to enhance banking regulation

The China Banking Regulatory Commission (CBRC) has issued the '[Circular on Effectively Making up for Regulatory Deficiencies and Upgrading Regulatory Efficacies](#)', setting out a series of regulatory requirements for both banking regulators and financial institutions intended to further enhance its regulation of the banking sector. The circular is among a set of new rules issued by the CBRC this April with an overarching aim of defusing financial risks in the banking sector.

Among others, the following aspects of the circular are worth noting:

- the CBRC will enhance its regulation on shareholders of banking financial institutions by formulating a set of unified rules (for both listed and unlisted banks, and both PRC shareholders and non-PRC shareholders), strictly reviewing the eligibility on a look-through basis and the legitimacy of the sources of funds, and monitoring the activities of shareholders on an on-going basis;
- the CBRC will increase its on-site and off-site inspections and collaborate with other financial regulators to carry out joint actions to avoid regulatory arbitrage;
- banks are required to further expand the scope of information disclosure and ensure disclosure accuracy in respect of both periodic disclosures and ad hoc disclosures (e.g. on non-performing assets, liquidity risks associated with inter-banking financing and underlying assets for inter-bank investments), and truly, accurately and fully disclose in a timely manner the relevant information for financial products based on product types to better protect consumer interests;
- the CBRC will further improve its punishment rules and procedures, and enhance its punishment of non-compliance identified through off-site inspections. Local bureaus of the CBRC are encouraged to make full use of all regulatory measures for both institutions and individuals, exercise their punishment powers in a stringent manner, and disclose to the public the punishment information; and
- banks are required further to enhance their accountability review system and increase the independence of the accountability review, and hold

both directly responsible persons and negligent management personnel liable.

A list of proposed rules is attached to the circular, indicating the CBRC's regulation formulation plan in 2017. Among other things, the rules on administration over banks' shareholders, liquidity risks, credit risks and wealth management business are listed in the 'to-be-issued' category, while rules on bankruptcy resolution of commercial banks are listed in the 'to-be-advanced' category.

FSTB releases consultation conclusions on legislative proposals to enhance anti-money laundering and counter-terrorist financing regulation in Hong Kong

The Financial Services and the Treasury Bureau (FSTB) has published the [conclusions](#) of its two consultations launched in January 2017 on legislative proposals to enhance anti-money laundering and counter-terrorist financing regulation in Hong Kong.

The consultations proposed to amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO) to prescribe statutory customer due diligence and record-keeping requirements for designated non-financial businesses and professions, and amend the Companies Ordinance to require companies incorporated in Hong Kong to maintain beneficial ownership information.

The government notes that respondents generally agreed with the overall direction and principles as well as the broad framework of the legislative proposals. The government will proceed to prepare legislation based on the consultation conclusions, with a view to introducing the two amendment bills into the Legislative Council by July 2017.

FSDC releases report on optimising Hong Kong's listed structured products market

The Financial Services Development Council (FSDC) has released a [report](#) entitled 'Optimising Hong Kong's Listed Structured Products Market'. The report sets out recommendations intended to optimise Hong Kong's listed structured products market and to ensure Hong Kong maintains its competitiveness as a world-leading listed structured products marketplace.

The report reviews the existing listed structured products market in Hong Kong, including the regulatory framework, product types and market operations. It also compares Hong Kong's listed structured products market with other global markets.

The report recommends the diversification of the available product range by including non-leveraged and 'hold to maturity' type products on the exchange platform. The report also suggests a review of the Hong Kong Exchanges and Clearing Limited's naming conventions for stock short names, procuring a shorter timeframe and streamlined process to launch a new listed structured product, and providing investor education for new structured product types.

SFC enhances access to licensing information

The Securities and Futures Commission (SFC) has published a comprehensive [Licensing Handbook](#) to provide easier access to licensing information. The licensing section of the SFC website has also been revamped to improve users' experience.

The new Licensing Handbook consolidates information previously issued by the SFC in its licensing information booklet and in frequently asked questions (FAQs) and circulars in this regard. Common questions asked in the more than 30,000 licensing-related enquires the SFC receives each year were taken into account when compiling the Handbook. Amongst other topics, common enquiries are mainly about how to set up a new licensed corporation, which types of licences are required for the various regulated activities, and competence requirements for licensed individuals.

The SFC has encouraged members of the public to consult the website for answers to their questions about licensing and other SFC-related matters.

CFTC staff extends its temporary no-action relief to swap dealers complying with EU uncleared swap margin requirements

The staff of the Commodity Futures Trading Commission's (CFTC's) Division of Swap Dealer and Intermediary Oversight has [extended](#) by six months the duration of temporary no-action relief that it had granted to swap dealers subject to EU uncleared swap margin requirements. The relief permits these swap dealers to comply with the EU requirements in lieu of certain CFTC margin requirements that are eligible for substituted compliance. This no-action relief became effective on 4 February 2017 – when many swap dealers had to begin to comply with EU margin requirements. While originally set to expire on 8 May 2017, the no-action relief is now scheduled to expire on 7 November 2017.

Pursuant to the substituted compliance framework established in the CFTC's Cross-Border Margin Rule, the CFTC has been analyzing the EU Commission's request that the CFTC determine that EU margin requirements provide a sufficient basis for an affirmative finding of comparability. Pending such a determination, the extended relief period gives swap dealers who would otherwise also be subject to both EU margin requirements and the CFTC's

margin requirements certainty about their compliance obligations.

The CFTC's margin requirements apply only to swap dealers and major swap participants that are not subject to oversight by a prudential regulator.

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

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