

# International Regulatory Update

26 – 30 June 2017

## IN THIS WEEK'S NEWS

- Capital Markets Union: Prospectus Regulation published in Official Journal
- Benchmarks Regulation: Commission Implementing Regulation including EONIA on list of critical benchmarks published in Official Journal
- EMIR: EU Commission adopts measure amending RTS on trade repository data
- SSM: ECB publishes decision on reporting of funding plans
- ECON Committee publishes draft report on proposed amendments to BRRD as regards insolvency hierarchy
- AMLD 4: ESAs publish final report on draft RTS on central contact point
- PSD2: EBA publishes opinion on proposal to amend draft RTS on strong customer authentication
- PSD2: EBA consults on draft RTS on central contact points
- EBA reports on use of consumer data by financial institutions
- MiFID2: ESMA updates co-legislators on implementation of IT projects
- ESMA considers product intervention powers for certain speculative products leading FCA to delay conduct of business rules for retail CfDs
- FSB reports on reforms to OTC derivatives markets
- FSB welcomes Task Force on Climate-related Financial Disclosures recommendations
- FATF consults on guidance for private sector information sharing
- CPMI and IOSCO consult on supervisory stress testing of central counterparties
- CPMI and IOSCO consult on additional critical OTC derivatives data elements
- Basel Committee consults on simplified alternative to standardised approach to market risk
- FCA publishes final report into asset management sector
- FCA bans use of restrictive contractual clauses in investment and corporate banking
- PRA and FPC consult on treatment of claims on central banks in UK leverage ratio framework

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- FPC increases countercyclical capital buffer rate to 0.5%
- MiFID2: AMF consults on changes to its regulation for assessing knowledge and competence of investment services providers
- MiFID2 implementation act published in German Federal Gazette
- Act to implement AMLD 4 published in German Federal Gazette
- Decree Law on urgent provisions regarding compulsory administrative liquidation of Banca Popolare di Vicenza S.p.A. and Veneto Banca S.p.A. published
- CSSF issues circular on adoption of EBA guidelines on sound remuneration policies
- CSSF issues regulation on countercyclical buffer rate
- Royal Decree-Law 11/2017 on urgent measures in financial matters published
- CNMV publishes technical guide on training staff of financial institutions
- CNMV publishes technical guide on audit committees
- HKMA issues circular on implementation timeline for BCBS market risk capital requirements
- HKMA and SFC release conclusions on OTC derivatives regulatory regime
- SFC clarifies competence requirements for licensees seeking to enter asset management business
- SFC consults on legal and regulatory requirements for open-ended fund companies
- HKEX consults on proposed after-hours trading enhancements
- FSC identifies domestic systemically important banks for 2018
- ASIC consults on sell-side research guidance
- Recent Clifford Chance Briefings: Changes to European cross border restructuring and insolvencies; judgement on a landmark derivatives case in Russia; and more. [Follow this link to the briefings section.](#)

#### **Capital Markets Union: Prospectus Regulation published in Official Journal**

[Regulation \(EU\) 2017/1129](#) on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, which repeals Directive (EU) 2003/71, has been published in the Official Journal. The Regulation forms part of the EU Commission's Capital Markets Union initiative and is intended to reduce burdens, deliver shorter prospectuses

and provide better and more concise information for investors, as well as a fast track regime for companies that frequently use capital markets.

The Regulation will enter into force on 20 July 2017 and will apply from 21 July 2019, except for Article 1(3) and Article 3(2) which will apply from 21 July 2018 and points (a), (b) and (c) of the first subparagraph of Article 1(5) and the second subparagraph of Article 1(5) which will apply from 20 July 2017.

#### **Benchmarks Regulation: Commission Implementing Regulation including EONIA on list of critical benchmarks published in Official Journal**

A Commission Implementing Regulation ([2017/1147](#)) amending Implementing Regulation (EU) 2016/1368, which establishes a list of critical benchmarks used in financial markets pursuant to the Benchmarks Regulation, has been published in the Official Journal. The Implementing Regulation amends the list of critical benchmarks to include the Euro Overnight Index Average (EONIA).

Under the Benchmarks Regulation a benchmark is considered to be a critical benchmark where it is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the ranges of maturities or tenors of the benchmark, where applicable. Data analysis and contributions by the European Central Bank (ECB) have indicated that the value of financial instruments and financial contracts referencing EONIA in the EU exceeds the threshold of EUR 500 billion.

The Regulation entered into force on 30 June 2017.

#### **EMIR: EU Commission adopts measure amending RTS on trade repository data**

The EU Commission has adopted a [Delegated Regulation](#) under the European Market Infrastructure Regulation (EMIR) amending Commission Delegated Regulation (EU) 151/2013 with regard to regulatory technical standards (RTS) specifying the data to be published and made available by trade repositories (TRs) and operational standards for aggregating, comparing and accessing the data.

The amending regulation sets out common provisions for:

- the operational standard for aggregation and comparison of data, including common output formats; and

- the operational standards for access to data, including data exchange procedure between TRs and the competent authorities listed in Article 81(3) of EMIR.

#### **SSM: ECB publishes decision on reporting of funding plans**

The ECB has published a [decision](#) on the reporting of funding plans of credit institutions by national competent authorities (NCAs) under the Single Supervisory Mechanism (SSM).

The decision covers requirements for reporting funding plans, remittance dates, data quality checks, qualitative information, the transmission format and reporting reference dates.

#### **ECON Committee publishes draft report on proposed amendments to BRRD as regards insolvency hierarchy**

The EU Parliament's Economic and Monetary Affairs Committee (ECON) has published a [draft report](#) on the EU Commission's proposal for a Directive to amend the Bank Recovery and Resolution Directive (BRRD) as regards the ranking of unsecured debt instruments in insolvency hierarchy.

The EU Council agreed its negotiating stance on the proposed Directive on 16 June 2017.

#### **AML4: ESAs publish final report on draft RTS on central contact point**

The European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), have published [draft RTS](#) to help determine when payment service providers (PSPs) and electronic money issuers should appoint a central contact point to defend against money laundering and terrorist financing under the fourth Anti-Money Laundering Directive (AML4).

The draft RTS set out the criteria Member States must consider when deciding whether to appoint a central contact point and list the functions this central contact point will have to carry out.

#### **PSD2: EBA publishes opinion on proposal to amend draft RTS on strong customer authentication**

The EBA has delivered an [opinion](#) on the EU Commission's intention to amend the EBA's draft RTS on strong customer authentication (SCA) under the recast Payment Services Directive (PSD2). The EBA submitted draft RTS to the Commission in February 2017 and the Commission

expressed its intention to amend the draft RTS in a letter dated 24 May 2017.

The draft RTS are intended to specify the requirements relating to:

- SCA to be complied with by PSPs;
- exemptions from the application of SCA;
- security measures to protect users' personalised security credentials; and
- common and secure open standards of communication (CSC) between account servicing payment service providers (ASPSPs), payment initiation service providers (PISPs), account information service providers (AISPs), payers, payees, and other PSPs.

In its opinion, the EBA acknowledges agreement with the aims sought in the Commission's amendments, but overall the EBA disagrees with three of the four concrete amendments that the Commission has put forward on the basis that they may negatively impact the balance between the competing objectives of PSD2. The opinion sets out suggestions for some alternative means through which the Commission's aims may be achieved.

The EBA expects the publication and submission of its opinion to conclude its work on this mandate and calls on the Commission to make the final decision on the text of the RTS for adoption.

#### **PSD2: EBA consults on draft RTS on central contact points**

The EBA has launched a [consultation](#) on draft RTS on central contact points under PSD2.

Under PSD2, host Member States may require payment institutions (PIs) or electronic money institutions (EMIs), whose head office is in another Member State and that operate through agents in their territories under the right of establishment, to set up a central contact point in their territory in order to ensure adequate communication and information reporting in the host Member State and to facilitate supervision by competent authorities in both the home and host Member State. The draft RTS set out the criteria for determining the circumstances in which the appointment of a central contact point is appropriate and the functions of those contact points.

Comments on the consultation are due by 28 September 2017.

### **EBA reports on use of consumer data by financial institutions**

The EBA has published a [report](#) on the use of consumer data by financial institutions.

Overall, the EBA takes the view that many of the risks relating to innovative uses of data by financial institutions are mitigated by an extensive set of legal requirements, including those contained in the General Data Protection Regulation (GDPR) which will apply from 25 May 2018. Consequently, the EBA intends to monitor innovative uses of data but does not propose additional industry-specific legislative or regulatory requirements.

In relation to Big Data, the report acknowledges that the EBA will carry out further work in 2017 jointly with ESMA and EIOPA within the context of the Joint Committee of the ESAs.

### **MiFID2: ESMA updates co-legislators on implementation of IT projects**

ESMA has sent an [update](#) on the implementation of IT projects for MiFID2/MiFIR to the Chair of the EU Parliament ECON Committee, the EU Council Presidency, and the EU Commission Vice-President in charge of Financial Stability, Financial Services and Capital Markets Union. Overall, ESMA has informed the co-legislators that the IT projects are developing according to the planned time schedules and in line with the 3 January 2018 start date under the MiFID2 amending Directive and MiFIR amending Regulation.

The letter, which is dated 19 June 2017, outlines developments relating to each of ESMA's projects, which will establish IT infrastructures that allow:

- the reception and publication of reference data;
- the computation and publication of the various liquidity assessments and thresholds to be used for the new transparency and tick size regimes;
- the implementation of the double volume cap mechanism (DVCM);
- the coordination of suspensions through the Suspension and Restoration Information System (SARIS); and
- the changes to the transactions reporting exchange mechanism (TREM).

ESMA reports that all projects are being implemented both on schedule and on budget.

### **ESMA considers product intervention powers for certain speculative products leading FCA to delay conduct of business rules for retail CfDs**

ESMA has issued a [statement](#) on the possible use of its product intervention powers under Article 40 of MiFIR in relation to the sale of contracts for difference (CfDs), binary options and other speculative products to retail investors.

ESMA is concerned that its supervisory convergence tools, including its questions and answers (Q&As), may not be sufficiently effective to ensure that the risks to consumer protection are sufficiently controlled or reduced. As such, ESMA has announced that it is discussing the possible use of its product intervention powers, the possible content of any such measures, and how they can be applied.

In light of ESMA's statement, the UK Financial Conduct Authority (FCA) has [announced](#) a delay to its final conduct rules for UK firms providing CfDs to retail clients. The measures being considered by ESMA take into account requirements that have been adopted or publicly consulted on by NCAs and some of the measures under discussion at ESMA are broadly similar in nature to those consulted on by the FCA in December 2016 (CP16/40). Consequently, the FCA has decided to delay making its conduct of business rules for retail CfDs.

Any decision by ESMA to use product intervention powers would require approval from its board of supervisors and would come into effect from 3 January 2018 at the earliest. The FCA has confirmed that if there is a significant delay to possible ESMA measures, it will reconsider making final rules at a domestic level in the first half of 2018.

The FCA intends to continue further work following its consultation, including further data analysis to inform future policy decisions and as a basis for evaluating the impact of any prospective rules.

### **FSB reports on reforms to OTC derivatives markets**

The Financial Stability Board (FSB) has published three reports on the progress of reforms to OTC derivatives markets.

An FSB [review of OTC derivatives market](#) reform assesses the implementation of the G20 reforms, the effectiveness of the reforms in meeting the original objectives set by G20 leaders and the broader effects of the reforms. The FSB has found that good progress had been made towards mitigating systemic risk and improving transparency. The FSB recommends further work on the effects of the reforms in protecting against market abuse.

Alongside the review, the FSB has published its [twelfth progress report](#) on OTC derivatives market reforms in FSB member jurisdictions, which provides a detailed update on progress since 2016. The report highlights that most member jurisdictions have implemented frameworks for trade reporting, central clearing requirements, and higher capital requirements for non-centrally cleared derivatives (NCCDs), but also identifies ten jurisdictions without margin requirements for NCCDs in force, and six that are not expected to be in place by end 2018.

The FSB has also published a [progress report](#) on FSB members' plans to address legal barriers to reporting and accessing OTC derivatives trade data reports. Overall the FSB has identified that while significant actions have been taken by authorities, major gaps and issues remain to be addressed by the agreed deadline of June 2018.

#### **FSB welcomes Task Force on Climate-related Financial Disclosures recommendations**

The Financial Stability Board (FSB) has [welcomed](#) the publication of the [final report](#) by the Task Force on Climate-related Financial Disclosures (TCFD), which sets out recommendations for voluntary, consistent climate-related financial disclosures by companies. To help identify relevant information for investors, lenders, and insurance underwriters when assessing and pricing climate-related risks and opportunities, the FSB established the industry-led TCFD in December 2015. The final report sets out a voluntary framework for companies to disclose climate-related information in their financial filings.

The recommendations are structured around four thematic areas:

- governance;
- strategy;
- risk management; and
- metrics and targets.

The recommendations are intended to be widely adoptable across sectors and jurisdictions and apply to financial-sector organisations, including banks, insurance firms, asset managers and asset owners. The recommendations are supported by recommended disclosures to help investors and others understand how reporting organisations assess climate-related risks and opportunities. In addition, the TCFD has published guidance to support all organisations in developing climate-related financial disclosures consistent with the recommendations and recommended disclosures, as well as supplemental guidance relating to sector-specific considerations.

The TCFD intends to continue its work until at least September 2018 in order to promote and monitor adoption of the recommendations by companies.

#### **FATF consults on guidance for private sector information sharing**

The Financial Action Task Force (FATF) has published a [consultation paper](#) on guidance for private sector information sharing. The draft guidelines are intended to promote information sharing both within and between financial institutions, and provide examples of how to promote information sharing, including through public-private partnerships.

Among other things, the consultation considers sharing information on suspicions that funds are the proceeds of crime or related to terrorist financing within a financial group in a cross border environment. The FATF also intends the final guidelines to cover information sharing between financial institutions which are not part of the same group, which may include information sharing in the context of wire transfers, correspondent relationships, and reliance situations.

Comments on the consultation are due by 31 July 2017.

#### **CPMI and IOSCO consult on supervisory stress testing of central counterparties**

The Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) have published a [consultative report](#) on draft guidance for authorities on how to design and run supervisory stress tests for central counterparties (CCPs). In particular, CPMI-IOSCO are seeking feedback on their proposed framework, which is intended to help authorities evaluate the collective response of a set of CCPs to one or more financial stresses.

The proposed framework covers six aspects of stress-testing exercises:

- setting the purpose and outlining specifications;
- establishing governance arrangements;
- developing stress scenarios;
- collecting and protecting data;
- aggregating results and developing analytical metrics; and
- determining the use of results and disclosure.

Stress testing of CCPs is intended to help authorities better understand the impact on the broader economy of a common stress event affecting multiple CCPs, and the

implications of interdependencies between markets, CCPs, and other entities, such as liquidity providers and custodians. Authorities are encouraged to use the proposed framework for conducting stress tests and to adapt it where appropriate.

Comments on the report are due by 22 September 2017.

#### **CPMI and IOSCO consult on additional critical OTC derivatives data elements**

CPMI and IOSCO have published a [consultation paper](#) on the harmonisation of critical OTC derivatives data elements (other than the unique transaction identifier (UTI) and the unique product identifier (UPI)).

The CPMI and IOSCO have consulted previously on two batches of critical data. This third batch includes critical data elements focused on collateral, prices, quantities, non-regular payments, packages and other links, and custom baskets.

This consultation forms part of the G20's commitment to report all OTC derivatives contracts to trade repositories (TRs) with the aim of improving transparency, mitigating systemic risk and preventing market abuse.

Comments to the consultation close 30 August 2017.

#### **Basel Committee consults on simplified alternative to standardised approach to market risk**

The Basel Committee on Banking Supervision (BCBS) has published a [consultative document](#) setting out a simplified alternative to the sensitivities-based method (SbM) of its standardised approach to market risk. The consultation paper proposes a reduced sensitivities-based method (R-SbM), the use of which would be subject to supervisory approach and oversight and only applicable to banks that meet certain qualitative and quantitative criteria.

The proposed R-SbM would be comprised of:

- the risk charges under the R-SbM; and
- the default risk charge and residential risk add-on detailed in the minimum capital requirements for market risk standard, which was published in January 2016.

As an alternative, BCBS is also seeking feedback on whether retaining a recalibrated version of the Basel II standardised approach to market risk would better serve the purpose of including a simplified method for market risk capital requirements in the Basel framework.

Subject to further recommendations, the Committee intends R-SbM to be effective concurrent with the implementation date for the revised market risk framework.

Comments on the consultation are due by 27 September 2017.

#### **FCA publishes final report into asset management sector**

The FCA has published the [final findings](#) of its asset management market study and announced the package of remedies it intends to take forward to address the concerns identified in its interim report into the sector.

The remedies the FCA is taking forward fall in to three areas. To help provide protection for investors who are not well placed to find better value for money, the FCA proposes to:

- strengthen the duty on fund managers to act in the best interests of investors and use the Senior Managers Regime to bring individual focus and accountability to this;
- require fund managers to appoint a minimum of two independent directors to their boards; and
- introduce technical changes to improve fairness around the management of share classes and the way in which fund managers profit from investors buying and selling their funds.

To drive competitive pressure on asset managers, the FCA intends to:

- support the disclosure of a single, all-in-fee to investors;
- support the consistent and standardised disclosure of costs and charges to institutional investors;
- recommend that the DWP remove barriers to pension scheme consolidation and pooling; and
- chair a working group to focus on how to make fund objectives more useful and consult on how benchmarks are used and performance reported.

To help improve the effectiveness of intermediaries, the FCA intends to:

- launch a market study into investment platforms;
- seek views on rejecting the undertakings in lieu of a market investigation reference regarding the institutional advice market to the Competition and Markets Authority; and
- recommend that HM Treasury considers bringing investment consultants into the FCA's regulatory perimeter.

The implementation of the remedies will take place in a number of stages. Some do not require consultation and are now being taken forward. The FCA has published a consultation paper, focussing on the remedies related to governance and technical changes to promote fairness for investors. The FCA has also published the consultation on rejecting the undertakings in lieu.

Some remedies will require further work in light of other legislative initiatives, including MiFID2 and will be consulted on later in the year. Finally, some of the measures are dependent on the outcomes of the proposed working groups. Full details of the timetable can be found in the final report.

#### **FCA bans use of restrictive contractual clauses in investment and corporate banking**

The FCA has published a policy statement ([PS17/13](#)) setting out new Handbook rules to ban the use of clauses that restrict a client's choice of future providers of primary market services (debt capital market (DCM) services, equity capital market (ECM) services and merger and acquisition (M&A) services).

With effect from 3 January 2018, firms will be banned from entering into agreements with a provision that gives them a right to provide future primary market services to their clients. The ban excludes future service restrictions in bridging loans.

The FCA believes banning these clauses will provide clients with greater choice of providers for future services, as well as more competitive terms. The rule is being introduced as a result of the findings of the FCA's market study of investment and corporate banking.

#### **PRA and FPC consult on treatment of claims on central banks in UK leverage ratio framework**

The Prudential Regulation Authority (PRA) and Financial Policy Committee (FPC) have [launched](#) consultations aimed at preventing the leverage ratio from acting as a barrier to the effective implementation of monetary policy action that increases central bank reserves. The first sets out the FPC's proposed Recommendation to exclude claims on central banks from the leverage exposure measure in the UK leverage ratio framework, and increase the minimum leverage ratio to 3.25% to compensate for the resulting reduction in capital. The second sets out the PRA's proposals for implementing the Recommendation, should the FPC adopt it, by amending the PRA Rulebook and Supervisory Statement (SS 46/15).

Both consultations are relevant to PRA-regulated banks and building societies with retail deposits equal to or greater than GBP 50 billion on an individual or consolidated basis, and apply to central bank claims including reserves held by a firm at the central bank, banknotes and coins constituting legal currency in the jurisdiction of the central bank and assets representing debt claims on the central bank with a maturity of no longer than three months.

Comments on both consultations, which may be included in a single response, are due by 12 September 2017.

#### **FPC increases countercyclical capital buffer rate to 0.5%**

The Bank of England's Financial Policy Committee (FPC) has [increased](#) the UK the countercyclical capital buffer (CCyB) rate from 0% to 0.5%. The FPC expects to increase the rate to 1% at its November meeting.

A table of current and pending CCyB rates on foreign exposures of UK institutions in Hong Kong, Norway, Sweden, Czech Republic, Iceland and Slovakia is provided on the CCyB rates page.

#### **MiFID2: AMF consults on changes to its regulation for assessing knowledge and competence of investment services providers**

As part of its implementation of the ESMA's Guidelines ESMA/2015/1886 ahead of the application of the new MiFID2 framework on 3 January 2018, the Autorité des marchés financiers (AMF) has launched a [consultation](#) on proposed changes to its General Regulation and a planned position-recommendation on investment services providers' requirements regarding knowledge and competence assessments.

In its planned draft position-recommendation, the AMF reiterates that investment services providers must verify that the individuals who give advice or information on financial services or instruments on the provider's behalf are sufficiently knowledgeable and competent, with stricter requirements for individuals giving investment advice in order to increase investor protection.

The investment services providers will carry out an annual review to ensure that staff qualifications and experience are up to date. They are required to verify the minimum knowledge of individuals in certain key positions – such as salesperson, portfolio manager, financial analyst, or compliance officer – within six months of their hiring.

Comments are due by 20 July 2017.

### **MiFID2 implementation act published in German Federal Gazette**

The [act](#) implementing MiFID2 in Germany (Zweites Finanzmarktnovellierungsgesetz) has been published in the German Federal Gazette (Bundesgesetzblatt). Amongst other things, the law amends the German Securities Trading Act (WpHG), the German Banking Act (KWG), the German Stock Exchange Act (BörsG) and the German Capital Investment Code (KAGB).

The law becomes applicable on 1 January 2018.

### **Act to implement AMLD 4 published in German Federal Gazette**

The [act](#) to implement the Fourth Anti-Money Laundering Directive (EU) 2015/849 (AMLD 4) in Germany has been published in the German Federal Gazette (Bundesgesetzblatt). Amongst other things, the law amends the German Banking Act (KWG) and the German Anti Money Laundering Act (GWG) as follows:

- identification – new procedures for identification purposes may be used such as 'video identification', subject to further substantiation by the German Ministry of Finance (section 12 GWG);
- customer due diligence – section 9 GWG lists how customer due diligence has to be conducted in general. In particular, the PEP-status has to be verified for every customer notwithstanding whether the situation presents a greater risk of money laundering; and
- automated access to account details shall be extended by including bank lockers (Schließfächer) within its scope (section 24c KWG).

The law entered into force on 26 June 2017.

### **Decree Law on urgent provisions regarding compulsory administrative liquidation of Banca Popolare di Vicenza S.p.A. and Veneto Banca S.p.A. published**

[Decree Law No. 99](#) of 25 June 2017 on urgent provisions regarding the compulsory administrative liquidation of Banca Popolare di Vicenza S.p.A. and Veneto Banca S.p.A. has been published in the Official Gazette of the Italian Republic (Gazzetta Ufficiale della Repubblica Italiana) No. 146.

The Decree Law regulates the initiation and conduct of the compulsory administrative liquidation of Banca Popolare di Vicenza S.p.A. and Veneto Banca S.p.A., as well as details and conditions of the measures in their support in

compliance with the current European provisions on State aid.

The Decree Law entered into force on 25 June 2017.

### **CSSF issues circular on adoption of EBA guidelines on sound remuneration policies**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a circular ([17/658](#)) on the adoption of the European Banking Authority (EBA) guidelines on sound remuneration policies under the Capital Requirements Directive (CRD4) (EBA/GL/2015/22) and repealing Circular 10/496.

The circular applies to all Luxembourg law credit institutions and CRR investment firms and Luxembourg branches of non-EU/EEA credit institutions and investment firms.

In the circular, the CSSF states that it intends to follow the EBA guidelines with one exception: the proportionality principle (which allows for neutralising a certain number of the specific remuneration requirements). The CSSF has indicated that it does not share the EBA interpretation of the proportionality principle and that, given the current discussions at EU level on this topic in relation to the draft CRD5, it has decided to maintain the application of CSSF Circular 11/505 (providing guidance on the CSSF expectations as regards the application of the proportionality principle by Luxembourg law credit institutions and CRR investment firms) until new European rules are applicable.

For the purpose of preparing and publishing an FAQ document in the course of 2017, the CSSF has also invited all firms to address their questions on the EBA guidelines by e-mail.

The CSSF has indicated that CSSF Circulars 10/497 and 11/505 will be updated in order to take account of recent regulatory developments.

Circular 17/658 is applicable as of 16 June 2017.

### **CSSF issues regulation on countercyclical buffer rate**

The Luxembourg financial sector supervisory authority, the CSSF, has issued a new regulation ([17-02](#)) on the setting of the countercyclical buffer rate for the third quarter of 2017.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 29 May 2017 (CRS/2017/003) and maintains a 0% countercyclical buffer



rate for relevant exposures located in Luxembourg for the third quarter of 2017.

The regulation will enter into force on 1 July 2017.

### **Royal Decree-Law 11/2017 on urgent measures in financial matters published**

[Royal Decree-Law 11/2017](#), of 23 June, on urgent measures in financial matters has been published in the Spanish State Gazette (Boletín Oficial del Estado).

The measures introduced by the Royal Decree-Law include:

- the possibility for credit cooperatives (cooperativas de crédito) to belong to institutional protection schemes (sistemas institucionales de protección);
- the creation of the new category of senior non-preferred debt – in case of insolvency (concurso) of credit entities and investment services companies, ordinary claims will be classified into preferred ordinary claims and non-preferred ordinary claims, the latter having a lower ranking than the former; and
- consideration of financial instruments which are eligible liabilities as complex financial instruments for the purposes of securities market regulations.

### **CNMV publishes technical guide on training staff of financial institutions**

The Spanish National Securities Market Commission, Comisión Nacional del Mercado de Valores (CNMV), has approved a [technical guide](#) for evaluating the knowledge and skills of staff of financial institutions.

The guide details criteria for assessing the knowledge and skills of staff who inform and advise on sales networks of financial institution, in particular credit institutions, investment services companies and collective investment institution management companies. The guide is intended to improve the level of staff training in order to benefit clients or investors, entities and their employees.

The guide sets out the minimum level of knowledge that sales network staff must acquire in order to inform or advise clients and specifies a minimum number of hours of training, which will be 80 for the staff offering information and 150 for the ones giving advice, as well as ongoing training. It also establishes the need for a minimum 6 months full-time experience in order to be able to give information or perform advisory activities autonomously.

The guide sets out three options for firms to prove that their employees have the right expertise:

- a certificate included in the list to be drawn up by CNMV;
- another external qualification, being under the responsibility of the entity to verify the equivalence of the training and evaluation with the requirements of the guide; or
- an internal qualification that fulfils the requirements set out in the guide.

The technical guide will enter into force on 1 January 2018.

### **CNMV publishes technical guide on audit committees**

The Spanish National Securities Market Commission, CNMV, has approved a [technical guide](#) on audit committees. The technical guide sets out principles, recommendations and criteria for the proper functioning of audit committees, which public interest entities must rely on. Public interest entities comprise listed companies, financial entities in general and unlisted companies whose size exceeds certain thresholds.

The guide sets out basic principles for audit committee activities relating to:

- responsibility;
- critical attitude;
- constructive dialogue among members;
- continuous dialogue with internal audit, the auditor and management; and
- analytical skills.

The guide also highlights certain good practices, which include those aimed at strengthening the independence of the committee and promoting its proper functioning in supervising the preparation and presentation of financial and nonfinancial information as well as the management, risk control and internal audit processes. Among other things, the good practices focus on:

- composition, including criteria on diversity, appointments and training and a variety of profiles to encourage a critical attitude and different points of view;
- operation, in particular the regulation governing the committee which should promote the committee's independence;
- supervision of financial and non-financial information, including sound knowledge and understanding of internal control systems for the financial information by committee members; and

- public information, including recommendations for audit committees to publicly report on their activity in an annual report.

#### **HKMA issues circular on implementation timeline for BCBS market risk capital requirements**

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) on local implementation of the new standards on minimum capital requirements for market risk issued by the Basel Committee on Banking Supervision (BCBS) on 14 January 2016.

The new standards are scheduled to be implemented by national supervisors by 1 January 2019. According to the original timeline, banks would be required to start regulatory reporting based on the revised standardised approach and/or internal models approach from 31 December 2019.

However, in the past months a number of practical implementation questions have arisen given the high complexity of the new standards, making it increasingly challenging for jurisdictions to implement the new standards in accordance with the BCBS timeline. In view of this, the HKMA has decided that the implementation of the new standards in Hong Kong will be no earlier than 1 January 2020.

The HKMA plans to issue consultation papers on the new standards, one on the standardised approach later in 2017 and another one focusing on the internal models approach in spring 2018.

#### **HKMA and SFC release conclusions on OTC derivatives regulatory regime**

The HKMA and the Securities and Futures Commission (SFC) have [published](#) the conclusions of their April 2017 joint consultation on adjustments to the scope of OTC derivative product under the OTC derivatives regulatory regime. The proposals are intended to:

- prescribe certain additional markets and clearing houses so that products traded and cleared through them will not be regarded as OTC derivative products; and
- exclude 'Delta One Warrants' from the definition of OTC derivative product.

In light of the market feedback the HKMA and SFC have concluded that the proposed adjustments should be implemented. The conclusions paper also provides further clarification as to how Delta One Warrants will be defined. The HKMA and SFC will work with the Department of

Justice on drafting the necessary legislative amendments to implement the changes.

#### **SFC clarifies competence requirements for licensees seeking to enter asset management business**

The SFC has issued a [circular](#) to clarify certain competence requirements for existing licensed persons seeking to be licensed for Type 9 regulated activity (asset management) and to provide further guidance on how the SFC assesses the competence of a corporation or a responsible officer (RO) to carry on asset management activities.

For example, an RO licensed for Type 1 regulated activity (dealing in securities) may, subject to the SFC's discretion, be licensed to engage in Type 9 regulated activity without sitting for the required examination papers if he or she has five or more years of related experience in managing discretionary accounts as a wholly incidental activity and completes additional continuous professional training (CPT) hours. The RO's firm can then carry on discretionary account business which is no longer restricted to being incidental. However, the firm cannot conduct broader Type 9 activities, including fund management, unless another RO who serves as a Manager-in-Charge of the Overall Management Oversight function meets all the requirements for being licensed for Type 9 activity, including passing the required examination papers.

For ROs who intend to manage private investment funds, an applicant should have at least eight years of industry experience in recognised local or overseas markets and complete additional CPT hours. These applicants will only be allowed to be accredited to licensed corporations which provide asset management services only to professional investors.

#### **SFC consults on legal and regulatory requirements for open-ended fund companies**

The SFC has launched a [public consultation](#) on detailed legal and regulatory requirements applicable to new open-ended fund companies (OFCs). The OFC structure will enable investment funds to be established in corporate form in Hong Kong, in addition to the current unit trust form. The Securities and Futures (Amendment) Ordinance 2016, which was gazetted on 10 June 2016, provides a legal framework for OFCs in Hong Kong and under this framework all OFCs will be required to be registered with the SFC as the primary regulator.

The consultation sets out the SFC's proposed Securities and Futures (Open-ended Fund Companies) Rules and

Code on Open-ended Fund Companies. The proposed Rules are subsidiary legislation to be made under the Securities and Futures Ordinance following vetting by the Legislative Council and set out statutory requirements concerning:

- company formation and maintenance;
- the key operators of the OFC;
- the functions of the Companies Registry;
- the segregated liability feature for umbrella and sub-funds structures and cross-investments of sub-funds of OFCs;
- disqualification of directors;
- arrangements and compromises;
- winding-up; and
- offences.

The proposed Code contains a set of general principles which all OFCs and their key operators are expected to comply with in the management and operation of OFCs. The proposed Code also elaborates on various requirements (such as naming guidance and the eligibility of key operators) applicable to all OFCs seeking the SFC's registration as well as baseline requirements applicable to all OFCs.

Implementation of the new OFC regime is envisaged in 2018 following the conclusion of the consultation and completion of the legislative process.

Comments on the consultation are due by 28 August 2017.

#### **HKEX consults on proposed after-hours trading enhancements**

Hong Kong Exchanges and Clearing Limited (HKEX) has launched a [consultation](#) on proposed enhancements to its after-hours trading (T+1 Session). Since the T+1 Session was introduced in 2013 for two stock index futures contracts, products have been added and average daily volume has increased about sixfold, with much of the activity during the time that overlaps with day time trading in the US and European markets. The T+1 Session is limited to the derivatives market and HKEX has not proposed an extension to the securities market.

The consultation paper sets out proposals to:

- extend the T+1 Session for equity index futures from the current timeframe of 17:15 to 23:45 to 17:15 to 03:00 the following day in two phases; and
- include the four most actively traded equity index option contracts (Hang Seng Index (HSI), H-shares

Index (HHI), Mini-HSI and Mini-HHI options) in the T+1 Session.

If the proposed enhancements are introduced, HKEX intends to roll-out the changes in phases to allow sufficient time for communication with the market and rehearsals to ensure all systems are ready for the changes.

Comments on the consultation are due by 4 August 2017.

#### **FSC identifies domestic systemically important banks for 2018**

The Financial Services Commission (FSC) has [identified](#) four bank holding companies and one bank as domestic systemically important banks (D-SIBs) for 2018.

Under the D-SIB framework of the Basel Committee on Banking Supervision (BCBS), the D-SIB higher loss absorbency requirement is phased in by 0.25% per year from 2016 to 2019. Therefore, those identified as D-SIBs for 2018 are required to set aside an additional common equity capital of 0.75%, and the higher loss absorbency requirement will take effect on 1 January 2018.

The BIS ratio for the identified D-SIBs at the end of March 2017 exceeds the minimum capital adequacy ratio. Therefore, there is no actual burden at present for the identified D-SIBs to set aside additional capital.

The FSC will identify D-SIBs every year in accordance with assessment criteria recommended by the BCBS.

#### **ASIC consults on sell-side research guidance**

The Australian Securities and Investments Commission (ASIC) has launched a [consultation](#) on proposed guidance on managing conflicts of interest and handling material, non-public information (MNPI) by Australian financial services (AFS) licensees that provide sell-side research.

The consultation paper (CP 290) follows ASIC's review of firms' policies and procedures for dealing with the risks relating to the handling of conflicts of interests and MNPI (Report 486), which found instances of poor and inconsistent practices. In particular, ASIC has raised concerns in relation to insufficient separation of research and the corporate advisory activities by AFS licensees during the initial public offering process.

ASIC's proposals relate to:

- the identification and handling of material, non-public information;

- the management of research conflicts during the capital raising process, including the preparation and production of investor education reports; and
- the structure and funding of research departments.

Comments on the consultation are due by 31 August 2017. ASIC intends to publish a regulatory guide on sell-side research in December 2017.

## RECENT CLIFFORD CHANCE BRIEFINGS

### Changes to European cross border restructuring and insolvencies – something for everyone?

On 26 June changes aimed at boosting the efficiency of cross-border insolvency proceedings came into effect in the form of a Recast European Insolvency Regulation. For the most part the changes offer clarity on how cross border proceedings in Europe already operate.

This briefing paper discusses the changes.

[https://www.cliffordchance.com/briefings/2017/06/changes\\_to\\_europeancrossborderrestructurin.html](https://www.cliffordchance.com/briefings/2017/06/changes_to_europeancrossborderrestructurin.html)

### The future UK-EU Relationship – Re-examining the EEA and other options

The uncertain outcome of the UK election on 8 June has reopened the question of what the UK's future relationship with the EU should be.

Whilst few doubt that the UK will actually leave the EU, many are asking whether a 'soft' Brexit is now more likely, and whether the UK may remain, in the short or longer term, a member of the European Economic Area which links Norway, Iceland and Lichtenstein to the EU's single market, but not its Customs Union.

This briefing paper re-examines the UK's options for its relationship with the EU following the UK's withdrawal, including the EEA Agreement, bilateral agreements on the Swiss model, a Customs Union agreement, a Free Trade Agreement and a 'no-deal' scenario of trading on WTO terms.

[https://www.cliffordchance.com/briefings/2017/06/the\\_future\\_uk-eurelationshipre-examiningth.html](https://www.cliffordchance.com/briefings/2017/06/the_future_uk-eurelationshipre-examiningth.html)

### Changes to the UK beneficial ownership regime

The UK PSC regime has been amended. PSC registers must now be updated and PSC register information must now be filed at Companies House within 14 day time limits. The regime now also requires a broader range of entities,

including AIM listed companies and Scottish limited partnerships, to disclose who controls them.

This briefing paper discusses the key changes.

[https://www.cliffordchance.com/briefings/2017/06/changes\\_to\\_the\\_ukbeneficialownershipregime.html](https://www.cliffordchance.com/briefings/2017/06/changes_to_the_ukbeneficialownershipregime.html)

### Update – UK Insurance Linked Securities (ILS) Framework to be completed

On 27 June 2017, at the Association of British Insurers 'Brexit – the road ahead' conference, the new Economic Secretary to HM Treasury Steve Barclay confirmed the Government's plan to place the new ILS legislation before Parliament prior to the summer recess with a view to the regime being in force during the autumn of 2017. This legislation will implement the new ILS framework and is aimed at helping London become a global leader in this field. The Government's intention was also confirmed in a letter sent to the London Market Group (LMG) which set up an ILS Taskforce to advise on the new framework.

As legal advisors to the LMG and members of the ILS Taskforce, Clifford Chance has been active in the preparation of the ILS legislation and has prepared a briefing paper considering the implication of the announcement.

[https://www.cliffordchance.com/briefings/2017/06/update\\_uk\\_insurancelinkedsecuritiesils.html](https://www.cliffordchance.com/briefings/2017/06/update_uk_insurancelinkedsecuritiesils.html)

### Changes to the Czech Insolvency Act – Implications for Corporate Insolvencies

On 1 July 2017, a set of amendments to the Czech Insolvency Act will come into force, which will have important implications for Czech corporate debtors and their creditors.

This briefing paper highlights the most significant of these changes.

[https://www.cliffordchance.com/briefings/2017/06/changes\\_to\\_the\\_czechinsolvencyactimplication.html](https://www.cliffordchance.com/briefings/2017/06/changes_to_the_czechinsolvencyactimplication.html)

### Register of Contracts with Czech governmental agencies and state-owned companies – Penalties for failure to disclose a contract in the Register of Contracts

The provisions of Act No. 340/2015 Sb., on the Register of Contracts, governing the legal consequences of the (non-)disclosure of contracts with Czech governmental agencies and state-owned companies, will come into effect on 1 July 2017. All contracts for which disclosure in the Register is

mandatory will only become effective upon their disclosure and any such contracts not disclosed in the Register will be treated as invalid from the outset.

This briefing paper discusses the penalties for non-disclosure.

[https://www.cliffordchance.com/briefings/2017/06/register\\_of\\_contracts\\_penalties\\_for\\_failure.html](https://www.cliffordchance.com/briefings/2017/06/register_of_contracts_penalties_for_failure.html)

#### **French enthusiasm for crowdfunding**

In favour of this new means of financing, France has rapidly adopted a secure legislative framework which, through its simplicity and its flexibility, is fostering the creation of crowdfunding platforms.

This briefing provides an overview of the French legislative framework for crowdfunding.

[https://www.cliffordchance.com/briefings/2017/06/french\\_enthusiasm\\_for\\_crowdfunding.html](https://www.cliffordchance.com/briefings/2017/06/french_enthusiasm_for_crowdfunding.html)

#### **New provisions of the Italian securitisation law introduce innovative tools to boost securitisations of non-performing loan and leasing receivables**

Law Decree 50 of 24 April 2017, as converted with amendments into law 96 of 21 June 2017, amended the Italian securitisation law 130 of 30 April 1999 by introducing new provisions aimed at fostering the securitisation of non-performing loans and leasing portfolios.

This briefing paper discusses the new provisions.

[https://www.cliffordchance.com/briefings/2017/06/new\\_provisions\\_of\\_the\\_italian\\_securitisation\\_law.html](https://www.cliffordchance.com/briefings/2017/06/new_provisions_of_the_italian_securitisation_law.html)

#### **Spain creates the senior non-preferred debt**

Spain has created the new category of senior non-preferred debt by means of Royal Decree-law 11/2017, of 23 June, on urgent measures in financial matters (RDL 11/2017). As from 25 June 2017, the date on which RDL 11/2017 entered into force, and in the event of the insolvency of credit entities and investment service companies, ordinary claims will be classified as either 'preferred' ordinary claims or 'non-preferred' ordinary claims, the latter having a lower ranking than the former. An ordinary claim will only be considered 'non-preferred' if it meets all of the conditions established for such purposes under RDL 11/2017.

This briefing paper discusses RDL 11/2017.

[https://www.cliffordchance.com/briefings/2017/06/spain\\_creates\\_the\\_senior\\_non-preferred\\_debt.html](https://www.cliffordchance.com/briefings/2017/06/spain_creates_the_senior_non-preferred_debt.html)

#### **Transneft vs. Sberbank – judgement on a landmark derivatives case in Russia is published**

On 21 June 2017, the Arbitrazh Court of Moscow, as a court of first instance, published the full text of its decision of 8 June 2017 in the Transneft vs Sberbank case (No. A40-3903/17-55-23), in which it upheld Transneft's claim to render invalid certain FX options.

This briefing paper summarises the key aspects of the decision.

[https://www.cliffordchance.com/briefings/2017/06/transneft\\_vs\\_sberbank\\_judgement\\_on\\_a\\_landmark.html](https://www.cliffordchance.com/briefings/2017/06/transneft_vs_sberbank_judgement_on_a_landmark.html)

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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