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Briefing note

International Regulatory Update

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- Recent Clifford Chance briefings: Hong Kong's new resolution regime; Competition spotlight on Australia's financial sector; and more. Follow this link to the briefings section.

Money Market Funds Regulation published in Official Journal

Regulation (EU) 2017/1131 on money market funds (MMFs) has been published in the Official Journal. The Regulation lays down rules and common standards on the structure of MMFs, their credit quality and liquidity.

The Regulation will enter into force on 20 July 2017 and will apply from 21 July 2018 with the exception of Article 11(4), Article 15)7), Article 22 and Article 37(4) which will apply from 20 July 2017.

MAR: ITS on procedures for competent authorities exchanging information with ESMA published in Official Journal

Commission Implementing Regulation (EU) 2017/1158 laying down implementing technical standards (ITS) with regards to the procedures and forms for competent authorities exchanging information with the European Securities Market Authority (ESMA) under the Market Abuse Regulation (MAR) has been published in the Official Journal.

The Implementing Regulation will enter into force on 20 July 2017.

Recommendation to grant ECB competence over clearing systems published in Official Journal

A European Central Bank recommendation on amending its statute to provide it with clear legal competence in the area of central clearing has been published in the Official Journal.

The recommendation follows the General Court's judgment in UK v ECB [2015] EUECJ T-496/11, where it held that the ECB did not have the competence necessary to regulate the activity of clearing systems, including central counterparties (CCPs), and annulled a requirement that CCPs be located within the euro area.

The proposed amendment, introduced according to a simplified amendment procedure, seeks to address that finding by granting the ECB regulatory competence over clearing systems, including powers to adopt additional requirements for CCPs involved in the clearing of significant amounts of euro-denominated transactions.

The Commission is yet to issue an Opinion on the recommendation.

EU Commission publishes inception impact assessment for review of the Cross-border Payments Regulation

The EU Commission has published an inception impact assessment for a review of Regulation (EC) No 924/2009 on cross-border payments, in order to extend its scope to all non-euro currencies in the EU.

The Cross-border Payments Regulation equalised fees for cross-border and national payments in euro within the EU. The impact assessment highlights that transaction costs for cross-border payments in currencies other than the euro are substantially higher than for domestic transactions, possibly creating economic barriers between Member States and imposing significant costs on citizens who need to make cross-border transactions in non-euro currencies.

The EU Commission's initiative proposes to extend the Regulation to all currencies in the EU, which could be achieved by:

- equalising fees for local currency cross-border transfers and corresponding domestic transfers and excluding currency conversion costs. This corresponds to article 14 of the Regulation, which is currently optional;
- equalising fees for local currency transactions with euro transactions, corresponding with article 3(3) of the Regulation (this is also optional and is currently only implemented by Sweden); or
- imposing requirements on fee structures applied to payment services users such as minimum fees, *ad valorem* pricing or maximum fee caps for cross-border transactions.

Comments on the impact assessment are due by 2 August 2017.

CRR: EU Parliament adopts resolution on covered bonds framework

The EU Parliament has adopted a resolution on a pan-European covered bonds framework under the Capital Requirements Regulation (CRR).

The resolution states that domestic and cross-border investments in covered bonds work well in EU markets under the current legislative framework and warns that a mandatory harmonisation of national models or their replacement by an EU initiative could lead to negative consequences for the market. It calls for a principles-based approach at EU level which establishes the objectives but leaves the ways and means to be specified in the transposition to national laws. Finally, it calls for a clear definition of covered bonds and that henceforth, securities called 'covered bonds' must not fall below the standards currently set by Article 129 of the CRR and that securities incompatible with this definition but compatible with Article 52(4) of the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive are properly defined in the same Directive under a name clearly distinct from 'covered bonds'.

ECB reports on supervisory practices and legal frameworks related to non-performing loans

The ECB has published a second stocktake of national supervisory practices and legal frameworks related to non-performing loans (NPLs) in the euro area. This follows a stocktake which was published in September 2016, which focused on eight jurisdictions with relatively high levels of NPLs. The follow-up report has been extended to cover all euro area countries, including updates for the eight countries included in the original report, as at 31 December 2016. The ECB intends for the report to encourage dialogue on NPLs with other stakeholders in Europe.

The report recommends that stakeholders be proactive before NPL levels become elevated, in order that frameworks for managing NPLs are robust from the outset. It also recommends that banks should ensure that their second and third lines of defence guarantee compliance

with various regulatory standards and good practices in order that NPLs are promptly identified and managed.

PRIIPs Regulation: ESAs publish Q&As on KIDs

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and ESMA, have published the first set of questions and answers (Q&A) on the key information document (KID) requirements for packaged retail and insurance-based investment products (PRIIPs).

The Q&A document includes answers on the presentation, content and review of the KID, including the methodologies underpinning the risk, reward and costs information.

The ESAs intend to periodically update the document with new Q&As.

Benchmarks: ESMA publishes Q&A on transitional provisions under Benchmarks Regulation

ESMA has published a Q&A on practical questions regarding the implementation of the Benchmarks Regulation.

The Q&A includes two answers regarding the transitional provisions under the Benchmarks Regulation, clarifying which benchmarks supervised entities will be allowed to use after 1 January 2018 as a result of the transitional provisions.

The aim of the document is to be a practical convergence tool used to promote common supervisory approaches and practices in the application of the Benchmarks Regulation.

Prospectus Regulation: ESMA consults on technical advice

ESMA has launched three consultations on technical advice under the Prospectus Regulation.

The three consultation papers set out draft proposals on:

- the format and content of the prospectus (ESMA31-62-532), including the introduction of targeted alleviations and the content of the new Universal Registration Document (USD);
- the EU Growth prospectus (ESMA31-62-649), including a standardised format and sequence of the specific registration document and specific securities note; and
- scrutiny and approval (ESMA31-62-650), including standard criteria for scrutiny and, approval and filing procedures.

The consultations close on 28 September 2017. ESMA intends to deliver the technical advice to the EU Commission by 31 March 2018.

ESMA consults on evaluation of Short Selling Regulation

ESMA has launched a consultation regarding its future technical advice to the EU Commission on the Short Selling Regulation.

ESMA is consulting on the three main elements of its advice to the EU Commission:

- the scope and functioning of the exemption for market making activities;
- the procedure for imposing a short term ban on short selling in case of a significant fall in price of a financial instrument; and
- the transparency of net short positions, and the related reporting and disclosure requirements.

ESMA intends to evaluate to what extent the Short Selling Regulation has achieved its original objectives in terms of relevance, effectiveness, coherence, and efficiency, and will propose potential changes to the legal framework in its technical advice with the aim of improving the Short Selling Regulation.

ESMA expects to deliver its final advice to the EU Commission by 31 December 2017. Comments are due by 4 September 2017.

MiFID2: ESMA publishes opinions on interim transparency calculations for non-equity instruments and on market size calculation for ancillary activity test

ESMA has published an opinion which includes interim transparency calculations for non-equity instruments under MiFID2. MiFID2 introduces transparency requirements for bonds, structured finance products, emission allowances and derivatives, although national competent authorities are able to waive or defer these transparency obligations if the instruments do not have a liquid market or if an order or transaction exceeds a certain size.

ESMA has performed calculations which assess the liquidity of financial instruments and determine the large-in-scale (LIS) (compared to normal market size) and size-specific to the instrument (SSTI) thresholds for pre-trade and post-trade transparency purposes. These calculations, which are based on data submitted by EU trading venues relating to their 2016 activity, specify which transparency

regime is applicable to the trading of instruments in secondary markets.

Calculations have been issued for all non-equity instruments except for bonds, which have been classified as liquid in accordance with Delegated Regulation (EU) 2017/583 (RTS 2). The publication of LIS and STTI thresholds per bond type, which was initially planned for 3 July 2017, has been delayed until August 2017 to allow ESMA to perform an additional quality review of the information submitted by third parties for this exercise.

ESMA has also published an opinion on the market size calculations for the MiFID2 ancillary activity test. The opinion is intended to help market participants and competent authorities determine market size to ensure the correct application of Article 2(3) of the MiFID2 Delegated Regulation (2017/592), which further specifies criteria for establishing when an activity is to be considered as ancillary to the main business at a group level pursuant to Article 2 of MiFID2. Under MiFID2, exemptions apply to persons dealing on own account or providing investment services in specific cases, including where their activity is an ancillary activity to their main business provided certain conditions are met.

ESMA's opinion is based on data collected for the calculation of the on-venue market size from trading venues located in the EEA, which it provides for 2015 and the second half of 2016, and the size of the OTC market for the second half of 2016 based on data from trade repositories. The calculation of the overall market trading activity is necessary for the establishment of the size of trading activity per market participant which ultimately determines whether an activity is ancillary and whether a market participant falls within the scope of MiFID2.

ESMA has highlighted that the data used for the guidance may bear some limitations, including in respect of its accuracy and completeness. As such, ESMA has stated that competent authorities may consider any alternative data which market participants may provide for the purpose of the application of Article 2(3) of the Delegated Regulation.

EBA consults on implementation of methods for calculating deposit guarantee scheme contributions

The EBA has published a draft report on the implementation of the EBA guidelines on risk-based methods for calculating contributions from banks to deposit guarantee schemes (DGSs) for consultation.

The report sets out a preliminary assessment of the application of the guidelines and whether there is appropriate and consistent implementation, including key findings that:

- the risk-based method may allow too much flexibility, which may need to be revisited in the future;
- some areas may need to be more consistently applied, such as the way the riskiness of an institution is translated into specific components of the risk-based calculation formula; and
- there is no current need to amend the guidelines to enhance transparency, and that the methodology does not seem to lead to excessive additional reporting requirements.

Comments on the consultation draft are due by 28 August 2017. Any changes to the guidelines will be considered as part of a wider DGSC review in 2019.

Brexit: AFME publishes report on European SMEs, corporates and investors

The Association for Financial Markets in Europe (AFME) has published a report entitled 'Bridging to Brexit: Insights from European SMEs, Corporates and Investors', which was commissioned from The Boston Consulting Group (BCG) with support from Clifford Chance. The report examines the impact of Brexit on SMEs, large corporates and investors and, in particular, on their use of wholesale banking and capital markets services.

To assess the potential effects, BCG interviewed 62 end users of wholesale banking services, as well as ten trade associations. The feedback and insights from these interviews are supported by quotes and real-life case studies which illustrate the potential impacts to their businesses. BCG then presents a quantitative analysis of specific Brexit-related challenges that the banking industry will face in trying to match client expectations identified in the interviews.

The findings of the report indicate that:

- a hard Brexit would be a particular challenge for SMEs, but also raises issues for corporates and investors, with wider implications for growth in the real economy; and
- the resulting potential fragmentation suggests an even greater need for timely implementation of the Capital Markets Union initiative, of which AFME is a strong supporter.

FSB reports to G20 leaders on financial regulatory reforms

The Financial Stability Board (FSB) published a letter from its Chair to G20 leaders, alongside its third annual report on the implementation of the G20's financial regulatory reforms and a framework for evaluating their effects, ahead of the G20 summit, which was held in Hamburg on 7-8 July.

Among other things, Dr. Carney's letter highlights that there is still work to be done to finalise and implement reforms, such as the implementation of Basel III and building effective cross-border resolution regimes, and reiterates the FSB's intention to continue to identify and address new and emerging risks to financial stability. The letter sets out the view that G20 countries have an opportunity create an open, global financial system and further support the cross-border investment needed for strong, sustainable growth across the G20.

The third annual report on the implementation and effects of the G20's financial regulatory reforms has identified that implementation is progressing unevenly across the four core areas. In particular, the report sets out that the following areas require continued attention from authorities:

- maintaining an open and integrated global financial system;
- market liquidity; and
- the effects of reforms on emerging market and developing economies.

The FSB also published its framework for post-implementation evaluation of the effects of the G20 financial regulatory reforms. This framework will guide analyses of whether the reforms are achieving their intended outcomes and help to identify any material unintended consequences that may need to be addressed without compromising the objectives of the reforms.

FSB publishes resolution planning guidance and reform report

The FSB has published two guidance documents for global banks on resolution planning and its sixth report on the implementation of resolution reforms.

The first guidance document, Guiding Principles on the Internal Total Loss-Absorbing Capacity (TLAC) applies to global systematically important banks (G-SIBS) and provides guidance on the size and composition of the internal TLAC requirement, cooperation and coordination between home and host authorities and the trigger mechanism for internal TLAC.

The second guidance document, Guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution, applies to FMI providers, participants and authorities, and sets out arrangements and safeguards to facilitate continuity of access to clearing, payment, settlement, custody and other services by FMIs.

A report entitled 'Ten years on – taking stock of post-crisis resolution reforms', broadly shows continued progress but notes that significant work remains to remove obstacles to cross-border resolution and to implement resolution reforms comprehensively and consistently across sectors, including for central counterparties and insurers.

FSB publishes progress report on actions to reduce misconduct risks in the financial sector

The FSB has published a progress report for G20 Leaders on actions to reduce misconduct risks in the financial sector, based on its work plan agreed in May 2015.

The report sets out an overview of the measures taken by the FSB and other international bodies in addressing misconduct risks since the publication of the FSB's last progress report in September 2016. In particular, the report sets out work on:

- measures to strengthen financial institution governance, including responsibility mapping in significant financial institutions, addressing information gaps and due diligence in employment of individuals with a history of misconduct, and the use of governance frameworks to address cultural risk factors that drive misconduct;
- authorities' capacity to address misconduct risks, focussing on the International Organization of Securities Commissions (IOSCO) report on wholesale market conduct and the FSB's work to develop recommendations for consistent national reporting and data collection on the use of compensation tools to address misconduct risk in significant financial institutions; and
- the Global Code of Conduct for the Foreign Exchange Markets and other actions directed at improving market structures.

The report also highlights further steps that are planned to reduce misconduct risk and thereby strengthen trust in the financial system.

FSB publishes assessment of shadow banking activities and risks

The FSB has published an assessment of the evolution of shadow banking activities and risks since the global

financial crisis, and the adequacy of post-crisis policies and monitoring to address those risks.

The report identifies that the shadow banking activities generally considered to have made the financial system most vulnerable, and which contributed to the financial crisis, have declined significantly and are no longer considered to pose financial stability risks.

The report discusses measures introduced at national and regional levels to address financial stability risks, which include:

- system-wide oversight and monitoring frameworks intended to ensure that appropriate policy measures can be taken, such as the FSB's annual monitoring exercise;
- reducing liquidity and maturity mismatches in the shadow banking system;
- increasing capitalisation of banks' securitisation-related exposures and undertaking reforms to address incentive problems associated with securitisation; and
- addressing banks' involvement in shadow banking, including through enhanced consolidation rules for off-balance sheet entities and strengthened bank prudential rules.

The FSB has not identified additional financial stability risks associated with shadow banking that require additional regulatory action at the global level, but the report recommends that authorities should continue to monitor and address emerging risks.

Report on implementation of joint workplan for strengthening resilience and recovery of CCPs published

The FSB, the Committee on Payments and Markets Infrastructures (CPMI), IOSCO, and the Basel Committee on Banking Supervision (BCBS) have published a report on the implementation of their joint workplan for strengthening the resilience, recovery and resolvability of central counterparties (CCPs). In 2015, the joint chairs adopted a workplan which called for the development of further guidance on the implementation of existing standards relating to CCP resilience, recovery planning, resolution and resolution planning, and analysis of central clearing interdependencies.

The chairs report that implementation of the workplan is now largely complete. The report sets out actions in the next phase, which include:

- continued monitoring of implementation of the principles set out in CPMI/IOSCO's Principles for Financial Market Infrastructures regarding resilience and recovery of CCPs, and finalisation of the framework on supervisory stress testing for CCPs;
- implementation of the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions consistent with the expectations regarding CCP resolution and resolution planning expanded upon in the FSB guidance;
- additional analysis of central clearing interdependencies to assess whether the key findings are stable over time; and
- further work to assess incentives to clear centrally arising from the interaction of post-crisis reforms.

Basel Committee and IOSCO consult on criteria for identifying simple, transparent and comparable short-term securitisations

BCBS and the IOSCO have launched a consultation on criteria for identifying simple, transparent and comparable short-term securitisations.

The BCBS and IOSCO are consulting on developing the criteria that they originally published in July 2015, in order to account for the characteristics of asset-backed commercial paper (ABCP) conduits, such as:

- the short maturity of the commercial paper issued;
- the different forms of programme structures; and
- the existence of multiple forms of liquidity and credit support facilities.

The aim of the criteria is to assist the financial industry in its development of simple, transparent and comparable short-term securitisations. They are also intended to help the parties to such transactions to evaluate the risks of a particular securitisation across similar products and to assist investors with their conduct of due diligence on securitisations. The BCBS has concurrently issued a consultative document on the capital treatment for simple, transparent and comparable short-term securitisations outlining how the short-term STC criteria could be incorporated into the regulatory capital framework for banks.

Comments on both consultations are due by 5 October 2017.

Basel Committee reports to G20 on Basel III implementation

BCBS has published a report to G20 leaders on progress by its 27 member jurisdictions in implementing the Basel III regulatory reforms. The report outlines progress made since the BCBS' last report in August 2016.

Overall, the BCBS reports that further progress has been made in implementing the standards since its last report. In particular, BCBS has identified that:

- capital and liquidity standards have largely been implemented in a timely and consistent manner;
- banks continue to improve their capital and liquidity buffers; and
- significant progress has been made in certain areas, including margin requirements for non-centrally cleared derivatives and the net stable funding ratio (NSFR).

However, BCBS considers that certain challenges remain, including the implementation of the standardised approach for measuring counterparty credit risk (SA-CCR) and capital requirements for exposures to central counterparties (CCPs).

Basel Committee reports on implementation of liquidity coverage ratio in EU, China and US

BCBS has published reports assessing the implementation of the liquidity coverage ratio (LCR) in the EU, China and the United States.

BCBS has found the EU implementation to be 'largely compliant' with the Basel LCR framework, the second-highest of the four possible grades. The report identifies 20 deviations from the BCBS standards that were not judged as having a material impact at the time of the review.

The LCR regulations in China and the US were both assessed as compliant, the highest possible grade.

IOSCO consults on recommendations and good practices in liquidity risk management for collective investment schemes

IOSCO has published consultative documents on liquidity risk management for collective investment schemes (CIS) and open-ended fund liquidity and risk management.

In 2013 IOSCO published a report that assessed the quality of regulation and industry practices concerning liquidity risk management of CIS, taking into account lessons learned from the 2008 financial crisis. In its January 2017 report addressing structural vulnerabilities from asset management activities, the Financial Stability Board (FSB) issued recommendations addressed to IOSCO as to how residual risks arising in relation to the liquidity risk management of CIS should be managed. IOSCO wishes to build further on the overall approach previously set out in the 2013 report, taking into account the financial stability focus emphasised in the FSB Recommendations while encompassing investor protector considerations. IOSCO aims to re-affirm and enhance the guidance in its 2013 report as proposed in the consultation.

IOSCO is simultaneously publishing for comment a consultation report on good practices for open-ended fund liquidity and risk management which aims to provide practical information on measures that may be taken to address liquidity risk management. These good practices are designed to provide responsible entities with a useful reference point against which to assess whether their own practices follow a similar approach and to assist further with evolving the most effective approach to the responsible management of liquidity.

Comments to both papers close 18 September 2017.

MiFID2: FCA publishes second policy statement on implementation

The Financial Conduct Authority (FCA) has published its second policy statement on the implementation of MiFID2 (PS17/14). The policy statement sets out its final rules on conduct of business, client assets and certain other matters, as well as finalising the near-final rules published in its March 2017 policy statement (PS17/5) in light of certain technical changes arising from the finalisation of HM Treasury's implementing legislation and the rules in PS17/14.

The policy statement sets out the feedback received to issues across the FCA's five consultation papers on the implementation of MiFID2, but most notably the client asset rules consulted on in the second consultation (CP 16/19) and the conduct rules consulted on in the third consultation (CP 16/29). In response to the feedback received, the FCA has made certain policy changes in relation to conduct areas, including:

- the application of inducements provisions to collective portfolio managers as well as to investment firms subject to MiFID2;
- the criteria for local authorities opting up to professional client status; and

- a decision not to apply the changes in the MiFID2 best execution rules to alternative investment fund managers (AIFMs).

The FCA has also highlighted that in some areas its implementation of MiFID2 has gone beyond what the legislation requires, and the policy statement sets out the FCA's rationale for its choices in these areas.

Final rules consulted on in the fifth consultation (CP17/8) relating to business conducted by occupational pension scheme firms will be published later in 2017. The FCA also expects to publish final versions of its guides relating to the implementation of the markets provisions in MiFID2 and organisational requirements under MiFID2 in due course.

Alongside the policy statement, the FCA has also published its sixth consultation on MiFID2 implementation (CP17/19), which sets out proposals for a small number of changes to the FCA Handbook that have not been consulted on previously, as well as consequential and miscellaneous changes to the Handbook and guidance on the use of third parties where firms are required to submit financial instrument reference data or commodity derivatives position reports. Among other things, the proposals relate to:

- Financial Services Compensation Scheme (FSCS) cover for recognised investment exchanges (RIEs) operating multilateral trading facilities (MTFs) and organised trading facilities (OTFs);
- changes to the Decision Procedure and Penalties Manual (DEPP) and Enforcement Guide (EG); and
- consequential changes to the Prospectus Rules and Glossary.

Comments on the consultation are due by 7 September 2017.

BoE publishes code of practice for the governance of recognised operators of payment systems

The Bank of England (BoE) has published a policy statement, including a code of practice and supervisory statement, on the governance of recognised operators of payment systems (RPSO).

The policy statement summarises the responses to the BoE's consultation on the proposal published in September 2016, and sets out the final code of practice and a supervisory statement on governance.

The aim of the code of practice is to provide transparency on the minimum requirements that all RPSOs, as specified under section 184 of the Banking Act 2009 with the exception of those operated by a recognised clearing house or a central securities depository, must meet. The supervisory statement is intended to complement the code by setting out in more detail how the BoE expects RPSOs to comply with the provisions in the code. Unlike the code, the provisions in the supervisory statement will not in themselves be binding although they will provide RPSOs with guidance as to how the BoE will assess compliance with the code.

The code of practice will come into force on 21 June 2018.

IFRS 9: PRA publishes policy statement on changes to reporting requirements

The Prudential Regulation Authority (PRA) has published a policy statement (PS18/17) setting out changes to regulatory reporting requirements in light of the introduction of International Financial Reporting Standard 9 (IFRS 9) from 1 January 2018.

PS18/17 is relevant to UK banks and buildings societies applying IFRS 9 and contains final amendments to the Regulatory Reporting Part of the PRA Rulebook and the Guidelines for completing regulatory reports (SS34/15). Amongst other things, it provides:

- that firms use the European Banking Authority (EBA) taxonomy (initially version 2.7) to report their templates and adhere to the EBA's filing and validation rules; and
- an implementation timeline, including details on rule modifications and notifications for firms that do not have an accounting year end of 31 December and banks intending to implement IFRS 9 in advance of 1 January 2018.

PRA publishes findings of consumer credit lending review

The PRA has issued a statement setting out the findings of its review of consumer credit lending, which examines PRA-regulated firms' asset quality and underwriting practices for credit cards, unsecured personal loans and motor finance.

The statement identifies issues that PRA-regulated firms providing consumer credit should consider and act upon. Among other things, the PRA is requesting evidence from all firms with material exposures to consumer credit of how they will, across consumer credit portfolios, ensure that:

- credit-scoring adequately reflects medium-term risk;
- stress-testing approaches do not under-estimate potential downturn risk;

- loss leader segments are explicitly reported and monitored;
- the Consumer Credit Sourcebook (CONC) has been interpreted prudently in underwriting;
- consideration is given as to whether, at the cut-off point for new business, a 'prudent add-on' is or should be applied
- a borrower's total debt is taken into account in the underwriting process; and
- firms' risk appetite, management information and governance frameworks are sufficient to oversee consumer credit portfolios.

Firms' responses to this statement, together with the results of the 2017 annual cyclical scenario stress test, which will include the assessment of stressed losses on consumer credit lending, will be used to inform firm-specific supervisory action by the PRA, as well as system-wide policy decisions by the Financial Policy Committee.

FCA consults on staff incentives in consumer credit firms

The FCA has launched a consultation on how consumer credit firms should manage risks associated with staff incentives, remuneration and performance management.

The FCA is seeking feedback on a proposed package of rules and guidance, developed in response to the findings of its thematic review, which are intended to help consumer credit firms identify and manage their risks effectively. The draft package includes examples of different kinds of incentives, the effect they may have on customer risk and steps firms can take to control that risk.

Comments are due by 4 October 2017.

FCA publishes policy statement on regulated fees and levies for 2017/18

The FCA has published a policy statement (PS15/17) setting out the 2017/18 regulatory fees and levies for the FCA, the Financial Ombudsman Service general levy, the Money Advice Service, the pensions guidance levies and the illegal money lending levy.

PS15/17 also includes feedback on the responses received to the FCA's consultation on draft fees and levies rules (CP17/12).

Financial Advice Market Review baseline report published

The FCA and HM Treasury (HMT) have jointly published a report on monitoring the development of the financial advice market following the Financial Advice Market Review (FAMR).

The report sets out a range of indicators designed to give a snapshot of the market for financial advice and establish a baseline for monitoring developments. The indicators include both demand side measures of consumer use of advice and guidance, and supply side measures relating to the provision of the services.

The report is expected to assist with a full review of the outcomes of FAMR, scheduled to be carried out in 2019 and reported on by 2020.

MAR: Law Society and CLLS joint working parties update Q&A

The City of London Law Society (CLLS) and Law Society Company Law Committees' Joint Working Parties on Markets Abuse, Share Plans and Takeovers Code have updated their Q&A document on the Market Abuse Regulation (MAR). The Q&A has been updated to include a new Part C relating to contractual arrangements involving a subscription for shares.

The Q&A is not intended to be relied upon as legal or regulatory advice but sets out how, in the view of the joint working parties, MAR should apply to certain practical situations.

MiFID2/MiFIR: AMF consults on application of waivers for pre-and post-trade transparency mechanisms

The Autorité des marchés financiers (AMF) has launched a public consultation on the application of waivers and deferrals to the pre- and post-trade transparency requirements for buying and selling interests on trading venues and for the terms of executed transactions under MiFIR.

From 3 January 2018, the transparency requirements will apply to trading venues, systematic internalisers and investment firms dealing OTC, regarding equities and equivalent instruments, and other instruments such as bonds and derivatives.

The AMF does not intend to restrict the scope of waivers offered by MiFIR and, subject to its approved market rules, makes the following proposals:

- pre-trade transparency applicable to trading venues: the AMF proposes to keep the possibility of using all the waivers offered for transactions executed on the basis of a reference price, negotiated transactions

within a certain price range, large in scale transactions and orders placed in the order book pending disclosure;

- post-trade transparency applicable to venues: the AMF proposes to keep all possible deferred publication regimes; and
- transparency concerning the terms of OTC transactions: the AMF proposes to keep all the rules, with ex post review.

Comments on the consultation are due by 31 August 2017.

AMF approves amendments to Alternext rules regarding listing sponsors

The AMF has published a decision approving amendments made to Alternext/Euronext Growth Market rules (harmonised and non-harmonised) regarding listing sponsors.

Among other things, the amendments reiterate that unless a specific exemption is granted by the Relevant Euronext Market Undertaking or if the rules specifically do not require the appointment of a Listing Sponsor, each issuer whose securities are admitted to trading on an Euronext Growth Market shall appoint and permanently have a listing sponsor as part of its ongoing obligations.

The rules governing the measures in case of breach of obligations by a listing sponsor are laid down in a new appendix IV entitled 'Policy with respect to Listing Sponsor'.

The new provision will enter into force on a date determined by Euronext Paris S.A.

AMF approves amendments to Euronext rules regarding pre-trade transparency

The AMF has published a decision approving amendments made to Euronext Harmonised Rules (Book I) regarding pre-trade transparency requirements and the eligible information which the relevant Euronext Market Undertakings shall continuously publish.

These new provisions enter into force on a date determined by Euronext Paris S.A.

MiFID2: ordinance excluding AMCs that perform collective asset management from the IF category published

In the context of the transposition of MiFID 2 into national law by 3 July 2017 and pursuant to articles 46 and 122 of the 2016 Sapin II Law which authorise the French Government to legislate on this matter, ordinance no. 2017-1107 on markets in financial instruments and the separation between the asset management companies (AMCs) and investment firms (IFs) legal regimes, has been published in the French Official Journal.

In light of certain sector-based European regulations, particularly UCITS and AIFMD, and in order to minimise any gold-plating associated with applying MiFID2 measures to all AMCs in their capacity as IFs, the ordinance enacts the exclusion of AMCs that perform collective asset management from the IF category. AMCs that perform collective asset management (UCITS or AIFs) will no longer have the IF status, and only investment services provided by them (e.g. third-party portfolio management, investment advice) will be governed by MiFID2.

The ordinance also contains provisions relating to the powers of the competent authorities, as well as other necessary legal measures to fully transpose MiFID2 and MiFIR into French law while ensuring consistency with existing French legal measures regarding rules applicable to the provision of investment services.

The ordinance will enter into force on 3 January 2018.

German Federal Council approves abolishment of card payment fees and further amendments regarding payment services

The German Federal Council (Bundesrat) has approved the abolishment of fees for card payments, credit transfers and direct debits, which was introduced by the German Parliament (Bundestag) on 1 June 2017.

The law, which implements the revised Payment Services Directive (PSD2) in German law, includes the following:

- special fees for card payments, credit transfers and direct debits are abolished;
- consumers' liability for unauthorised payment transactions will be reduced from a maximum of EUR 150 to a maximum of EUR 50;
- a credit assessment is generally not required in cases of follow-up financing and debt restructuring in cases of consumer real estate financing; and
- payment initiation service providers (Zahlungsauslösedienstleister) or service providers who offer account information (Kontoinformationsdienstleister) will be supervised by the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin).

The law is intended to enter into force on 13 January 2018.

CSSF issues circular on EU Funds Transfer Regulation

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a circular (17/660) on the EU Regulation on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (Funds Transfer Regulation).

The Funds Transfer Regulation introduces a number of new requirements and changes to some of the obligations under the current regime, i.e. the rules on information on payers and payees, accompanying transfer of funds, in any currency, for the purposes of preventing, detecting and investigating money laundering and terrorist financing, where at least one of the payment service providers involved in the transfer of funds is established in the EU.

The circular reminds all CSSF supervised persons and entities that the Funds Transfer Regulation became applicable in all Member States from 26 June 2017. The CSSF has therefore asked all such entities and persons to verify and adapt (where necessary) their internal processes and procedures, in particular anti-money laundering and counter terrorist financing, in order to comply with the new requirements.

CSSF publishes a new form of fit and proper declaration and updates notice on key function holders approval process

The CSSF has published a new form of fit and proper declaration for natural persons supporting new applications submitted by significant institutions.

The new fit and proper declaration is based on, and implements, the EBC's fit and proper questionnaire document adopted by the ECB's Supervisory Board on 3 August 2016 as a model to be used by national competent authorities.

The CSSF has updated its information notice on prudential process of key function holders in credit institutions accordingly. The updated notice replaced the previous version with effect from 30 June 2017. Notification and authorisation files pending on that date have to be completed on request of the competent authority, in order to respond to the requirements of the new approval process notice version.

Bill implementing MiFID2 and MiFIR in Luxembourg published

A new bill (no. 7157) implementing MiFID2 and MiFIR has been lodged with the Luxembourg Parliament. The bill implements MiFID2 and ensures implementation of MiFIR in the Luxembourg legal framework. The bill further implements Article 6 on inappropriate use of title transfer collateral arrangements under Commission Delegated Directive 2017/593/EU supplementing MiFID2.

Entry into force is foreseen for 3 January 2018 in line with the MiFID2/MiFIR implementation deadline.

Grand Ducal Regulation on the audit profession enters into force

Following the entry into force on 1 July 2017 of the Grand Ducal Regulation of 20 June 2017 on the audit profession, the following Regulations have been updated:

- Grand Ducal Regulation of 9 July 2013 determining the requirements for the professional qualification of statutory auditors (réviseurs d'entreprises) and approved statutory auditors (réviseurs d'entreprises agrées); and
- Grand Ducal Regulation of 18 December 2009 determining the conditions for the recognition of service providers from other Member States in order to carry out any duties exclusively entrusted to statutory auditors by way of free provision of services.

Additionally, the Audit Regulation repeals the Grand Ducal Regulation of 15 February 2015 organising the continuing training of statutory auditors and approved statutory auditors with effect as of 1 August 2016.

National Bank of Poland and Polish Financial Supervision Authority issue communication on virtual currencies

The Polish Financial Supervision Authority (PFSA) and the National Bank of Poland (NBP) have issued a communication warning against the risks associated with buying virtual currencies (such as bitcoin, litecoin and ether) and investing funds in them. They note that holding virtual currencies involves many types of risks, not only for the users but also for financial institutions. The NBP and the PFSA consider that the buying, holding and selling of virtual currencies by institutions supervised by the PFSA would carry a high risk and would not ensure stable and prudential management of a financial institution. Furthermore, the PFSA and the NBP point out that financial institutions should exercise special caution when entering into cooperation and cooperating with entities trading in virtual currencies, in particular with regard to the risk of those entities being used to launder money and finance terrorism.

Bank of Spain consults on draft circular on public and supervisory financial reporting standards and forms

The Bank of Spain, Banco de España, has published a draft circular to credit institutions on public and supervisory financial reporting standards and forms. The circular sets out proposed modifications to the accounting system of Spanish credit institutions to adapt to new accounting requirements under the International Financial Reporting Standards (IFRS) adopted by the EU. In particular, the draft circular relates to IFRS 9 (Financial instruments) and IFRS 15 (Revenue from Contracts with Customers), which will enter into force on 1 January 2018.

This proposed circular is intended to:

- facilitate a solid accounting system;
- minimise uncertainties and costs that the coexistence of different accounting systems may involve; and
- promote consistency when applying the IFRS.

The proposed circular is subject to public consultation until 24 July 2017.

Council of Ministers amends regime for undertaking leveraged trades and derivatives transactions

The Council of Ministers has amended Decree No. 32 on the Protection of the Value of the Turkish Currency.

As such, those who are resident in Turkey will only be allowed to undertake leveraged trades and derivative transactions that are determined to be subject to the same regime as leveraged trades through the intermediary of institutions authorised by the Capital Markets Board (CMB) of Turkey.

RQFII quota for Hong Kong increased to RMB 500 billion

The People's Bank of China (PBoC) has announced that, as approved by the State Council, the total RMB Qualified Foreign Institutional Investors (RQFII) quota for Hong Kong has been increased to RMB 500 billion. The increased quota amount almost doubles the current Hong Kong quota amount, which is RMB 270 billion and has been used up for nearly 3 years.

HKMA issues circular on implementation of supervisory policy manual on recovery planning

The Hong Kong Monetary Authority (HKMA) has issued a circular to authorised institutions to inform them of the third 'wave' of implementation of the supervisory policy manual (SPM RE-1) module RE-1 on recovery planning and provide further guidance to authorised institutions covered under this wave. The third 'wave' of implementation of SPM RE-1 will cover overseas-incorporated authorised institutions with branch operations in Hong Kong (branches) and smaller, less complex locally-incorporated authorised institutions (smaller authorised institutions). Authorised institutions in this latest wave will be individually notified of the timeline for submitting recovery plans and related information to the relevant Banking Supervision Department case teams.

As provided in the SPM, all authorised institutions are expected to develop and maintain a recovery plan commensurate with the nature, scale, significance and complexity of their operations. To date the majority of locally incorporated licensed banks have prepared recovery plans and submitted their plans to the HKMA via two separate 'waves'.

In particular, the guidance in the circular covers the following areas:

- scope of application of the recovery planning requirements;
- governance structure and oversight of recovery planning;
- menu of recovery options;
- development of recovery triggers;
- stress scenarios and stress testing; and
- communication plan.

SFC issues circular on processing of post-authorisation applications for unit trust and mutual fund management companies

The Securities and Futures Commission (SFC) has issued a circular addressed to the management companies of authorised unit trusts and mutual funds on the launch of a pilot process to enhance the processing of post-authorisation applications. The revamped process will be adopted for a six-month pilot period to take effect from 1 August 2017 and end on 31 January 2018.

The revamped post-authorisation process is intended to enhance the processing of applications for the approval of post-authorisation changes, including scheme changes, termination, merger and withdrawal of authorisation, and authorisation of revised offering documents for SFC-authorised funds (collectively, referred to as applications).

The SFC proposes to adopt a two-stream approach under the revamped post-authorisation process with applications classified to enter either a 'simple applications' stream or a 'complex applications' stream. If an application is in good

order and accompanied with all the necessary supporting documents that meet the applicable regulatory requirements, SFC authorisation or approval may be granted without issuing any first requisition. Otherwise, processing of simple applications and complex applications will be subject to a maximum period of two-month and six-month processing times respectively from the issue of the first requisition by the SFC.

Applications will lapse if no approval or authorisation is granted within the applicable processing time period as indicated in the first requisition issued by the SFC.

SEC expands availability of non-public review process for draft registration statements

The Securities and Exchange Commission (SEC) has announced that from 10 July 2017 staff will accept voluntary draft registration statement submissions for non-public review from all issuers as follows:

- for initial registrations under the Securities Act (IPOs), provided the issuer confirms in a cover letter that it will publicly file its registration statement and non-public draft submissions at least 15 days prior to any road show or, in the absence of a road show, at least 15 days prior to the requested effective date of the registration statement;
- for initial registrations under Section 12(b) of the Exchange Act (including Level 2 ADR programs), provided the issuer confirms in a cover letter that it will publicly file its registration statement and non-public draft submissions at least 15 days prior to the anticipated effective date of the registration statement for its listing on a national securities exchange; and
- during the 12 months following initial registration, provided the issuer confirms in a cover letter that it will publicly file its registration statement and non-public draft submission such that it is publicly available on the EDGAR system at least 48 hours prior to any requested effective time and date. Responses to any staff comments would need to be made by public filing.

As such, issuers seeking to list on a US exchange will be able to submit drafts of their initial registration statements to the SEC for non-public review regardless of whether they are emerging growth companies. Issuers, such as emerging growth companies, currently eligible for non-public review may continue to follow existing guidance and procedures.

RECENT CLIFFORD CHANCE BRIEFINGS

Report urges companies to disclose climate change impacts in financial filings

Companies will come under pressure to disclose climate change impacts facing their businesses as a result of a new report. In the report, the industry-led Task Force on Climate-related Financial Disclosures has published recommendations and detailed guidelines for companies to include climate-related information within their financial disclosures.

This briefing paper discusses the recommendations.

https://www.cliffordchance.com/briefings/2017/07/report_urges_companiestodiscloseclimatechang.html

Fund structures with Scottish Limited Partnerships – Impact of changes to the UK PSC Regime

All Scottish limited partnerships and certain Scottish general partnerships are now subject to PSC (persons with significant control) information filing requirements at Companies House. The PSC register regime already applies to all UK companies and LLPs, subject to certain exclusions. These requirements do not apply to English limited partnerships.

This briefing paper highlights the key changes relevant to private fund structures using Scottish Limited Partnerships.

https://www.cliffordchance.com/briefings/2017/07/fund_structures_withscottishlimite.html

Too big to fail? Details of Hong Kong's new resolution regime

When the Financial Institutions (Resolution) Ordinance (FIRO) and the Financial Institutions (Resolution) (Protected Arrangements) Regulation become effective on 7 July 2017, the landscape in Hong Kong for the recovery and resolution of financial institutions will change significantly.

This briefing paper discusses the changes.

https://www.cliffordchance.com/briefings/2017/07/too_big_to_fail_detailsofhongkongsne.html

First prosecution in Singapore of a director for company money laundering

The Singapore High Court has convicted and sentenced a director to imprisonment for charges relating to money laundering activities carried out by the company. The case is the first reported case of a director being sentenced to

imprisonment for failing to exercise reasonable diligence under the Companies Act.

This briefing paper discusses the landmark case.

https://www.cliffordchance.com/briefings/2017/07/first_prosecutioninsingaporeofadirectorfo.html

Competition spotlight on Australia's financial sector

As part of its 2017-18 Budget, the Australian Government announced a number of measures impacting Australia's financial sector. In the area of competition, the Government will implement an open banking regime to give consumers greater control over their banking data. It has tasked the Productivity Commission (PC) to undertake an inquiry into the state of competition in the financial system and will provide the Australian Competition and Consumer Commission (ACCC) with an additional AUD 13.2 million to undertake regular in-depth inquiries into financial system competition issues. The ACCC will also examine mortgage pricing decisions made by the major banks as a result of the introduction of a new bank levy.

This briefing paper considers the competition implications of the PC inquiry and ACCC inquiry.

https://www.cliffordchance.com/briefings/2017/06/competition_spotlightonaustraliasfinancia.html

Australia – Mid Year Competition and Consumer Law Review

One of the key challenges with reforming Australia's competition and consumer laws stems from the dynamic and rapidly evolving business landscape, with 'disruptors' of traditional business models such as Netflix, Facebook and Google in the media sector and Uber and Airbnb in the ride sharing and hotel accommodation sectors. Each of these companies has already made significant impacts in Australian markets and, if international experience provides a guide, further disruption is inevitable.

The disruption created by these international businesses has been recognised by the Australian Government, which has proposed regulatory responses in some areas. For example, it is widely acknowledged that the Government's media law reform proposals have been put forward because of the impact of Netflix, Google and Facebook in the traditional media sector, particularly in the area of advertising revenue.

This briefing paper looks at the reforms proposed to Australia's competition and consumer laws in this context. It discusses how the perception of increasing concentration in particular markets has been a catalyst for reform, in particular for the misuse of market power provisions in section 46 of the Competition and Consumer Act (2010) (Cth) (CCA), and considers whether the reforms are fit for purpose given Australia's evolving markets.

https://www.cliffordchance.com/briefings/2017/07/australia_-_mid_yearcompetitionandconsumerla.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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