

International Regulatory Update

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IFRS 9: Commission Implementing Regulation amending CRR ITS on supervisory reporting of institutions published in Official Journal

A Commission Implementing Regulation (2017/1443) amending Implementing Regulation (EU) 680/2014, which lays down implementing technical standards (ITS) with regards to supervisory reporting of institutions under the Capital Requirements Regulation (CRR), has been published in the [Official Journal](#).

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On 22 November 2016 the EU adopted IFRS 9 Financial Instruments by means of Commission Regulation (EU) 2016/2067. IFRS 9 fundamentally changes the accounting for financial instruments for institutions that are subject to Article 99(2) of CRR. In light of this, reporting by institutions requires amendment including updates to:

- the templates and instructions relating to the reporting of the gross carrying amount of financial assets measured at fair value through profit and loss; and
- the templates and instructions for institutions that are subject to accounting frameworks based on Directive 86/635/EEC, to ensure that reported financial information remains relevant and aligned between all institutions and to address information gaps related to specific national accounting frameworks previously not fully reflected in the templates.

Implementing Regulation (EU) 2017/1443 replaces three of the Annexes to Implementing Regulation (EU) 680/2014, specifically Annex III (reporting financial information according to IFRS), Annex IV (reporting financial information according to national accounting frameworks) and Annex V (reporting on financial information).

The Regulation will enter into force on 6 September 2017 and will apply from 1 January 2018, which is the date of application of IFRS 9. For certain institutions that apply an accounting year that is different from the calendar year, Annexes I and III to the Regulation (which replace Annexes III and V of Implementing Regulation (EU) 680/2014) shall apply from the beginning of the accounting year commencing after 1 January 2018.

EBA updates data for identifying G-SIIs

The European Banking Authority (EBA) has [updated](#) the data used to identify global systemically important institutions (G-SIIs).

The data is aggregated from institutions subject to uniform disclosure requirements owing to a leverage ratio exposure measure above EUR 200 billion and their systemic relevance. This data is then used to assist with the identification of G-SIIs, and the subsequent determination of their capital requirements, in accordance with the G-SII framework established by the Financial Stability Board (FSB) and developed by the Basel Committee on Banking Supervision (BCBS).

Key figures from a stable sample of 33 institutions from across the EU show that:

- aggregate values for over-the-counter (OTC) derivatives decreased by 8% from end-2015 and by 28% from end-2013;
- the total amount for trading and available for sale securities decreased by 7% from end-2015 and by 33% from end-2013; and
- the total exposures, as measured for the leverage ratio, stood at EUR 24.6 trillion at the end of 2016, which is a 2.1% decrease.

The EBA will continue to disclose this data on a yearly basis.

CRR: EBA updates list of public sector entities

The EBA has published an updated [list](#) of public sector entities (PSEs) for the purposes of assisting the determination of their capital requirements for credit risk under the CRR.

The list includes the PSEs that are treated as regional, local or central governments in their jurisdiction of incorporation due to their reduced risk level. Such treatment means that exposures to the PSEs will qualify for the same risk weight as their respective government.

The list is compiled to supplement the requirements set out in Article 116 of the CRR, which specifies the treatment of exposures to PSEs across the EU using the Standardised Approach (SA).

MiFIR: EU Commission adopts Delegated Act on package orders

The EU Commission has adopted a [Delegated Regulation](#) supplementing MiFIR with regard to package orders. The Delegated Act is based on draft regulatory technical standards (RTS) submitted to the Commission by the European Securities and Markets Authority (ESMA) on 28 February 2017.

The Delegated Regulation has been adopted under the empowerment under Article 9(6) MiFIR and sets out the general methodology for establishing for which package orders there is a liquid market as a whole, and specific conditions under which a package order can fulfil the asset-specific criteria set out in Article 1(b), respectively for interest rate derivatives, equity derivatives and commodity derivatives.

The Regulation will enter into force on the twentieth day following that of its publication in the Official Journal and will apply from 3 January 2018.

MiFID2: ESMA publishes opinions on AMF proposals for commodity derivative position limits

ESMA has [published](#) its first opinions on position limits regarding commodity derivatives under MiFID2. The three opinions follow notifications received from the Autorité des Marchés Financiers (AMF) under Article 57(5) of MiFID2 in relation to the exact position limits the AMF intends to set for commodity derivative contracts in rapeseed, corn and milling wheat.

For the purposes of providing the opinions, ESMA has assessed the compatibility of the intended position limits with the objectives of Article 57(1) of MiFID2 and with the methodology for calculation of position limits established in regulatory technical standards (RTS) 21 (Commission Delegated Regulation (EU) 2017/591), in accordance with Article 57(3) of MiFID2. ESMA has found that the AMF's proposed position limits for rapeseed, corn and milling wheat are consistent with the objectives established in MiFID2 and with the methodology developed for setting those limits.

ESMA will continue to assess commodity derivative notifications received from national competent authorities (NCAs) and issue opinions on the specific position limits they plan to introduce for liquid contracts. Limits will apply from 3 January 2018 to the net position a person can hold in commodity derivative contracts.

IOSCO consults on proposals to improve transparency of corporate bond markets

The International Organization of Securities Commissions (IOSCO) has launched a [consultation](#) on proposed recommendations aimed at increasing the transparency of, and the information available on, secondary corporate bond markets. The consultation paper sets out seven draft recommendations, which update IOSCO's 2004 report on transparency of corporate bond markets. IOSCO recommends, amongst other things, that regulatory authorities:

- should have sufficient information to effectively perform their regulatory functions; and
- should consider how they could enhance pre-trade transparency in corporate bond markets and implement regimes that require post-trade transparency.

The proposals are intended to increase the amount of publically available information on corporate bond trading and, through this, support the price discovery process and enable participants in the corporate bond markets to make more informed investment choices and better assess execution quality.

Comments are due by 16 October 2017.

BoE consults on proposed policy on valuation capabilities to support resolvability

The Bank of England (BoE) has launched a [consultation](#) on its proposed policy on valuation capabilities to support resolvability. The BoE is required to obtain independent valuations when using resolution tools set out in Part 1 of the Banking Act 2009, which will be a key input into the decisions the BoE makes around the application of resolution tools.

The proposed policy sets out the BoE's principles-based expectations for firms' valuation capabilities and minimum standards of valuations capabilities that firms should have in place to support resolvability. Firms are expected to develop, enhance, and maintain their capabilities to meet the required standard. Where they do not, the BoE may consider using its resolvability power of direction to ensure that necessary improvements are made. Among other things, the consultation paper sets out:

- the proposed policy approach;
- the BoE's views on the scope of firms and valuations to which the proposed policy would apply; and
- the proposed principles for resolution valuation capabilities, and the rationale behind them.

Under the proposed policy, firms would be expected to meet principles relating to:

- completeness and accuracy of underlying data and information;
- valuation models;
- methodologies for valuation models;
- valuation assumptions;
- sound governance arrangements and processes to ensure that valuation capabilities are maintained;
- transparency; and
- the periodic review and evaluation of firms' valuation capabilities.

Comments on the consultation are due by 17 November 2017.

FCA consults on fee rates for market infrastructure providers and data reporting service providers

The Financial Conduct Authority (FCA) has published a consultation paper ([CP17/31](#)) on the 2017/18 periodic fee rates for market infrastructure providers (the B fee-block) and data reporting service providers (DRSPs).

CP17/31 completes the FCA's consultation on the allocation of its annual funding requirement (AFR) in respect of recognised investment exchanges (RIEs), benchmark administrators (BAs) and DRSPs. Amongst other things, views are sought on proposed variable fee rates for RIEs and BAs, and the annual flat-rate fee for DRSPs.

The consultation closes on 16 October 2017. The FCA plans to publish its feedback and final rules in the December 2017 Handbook Notice.

PSR consults on regulatory fees

The Payment Systems Regulator (PSR) has published a consultation ([CP17/30](#)) on the allocation and collection of its regulatory fees.

The consultation is broader in scope than the PSR's annual fees consultation and takes into account forthcoming changes to the payment systems industry and regulatory framework, such as the implementation of the second EU Payment Services Directive (PSD2) and retail bank ring-fencing.

CP17/30 sets out:

- a new approach to fee collection;
- guiding principles for determining fee allocation;
- high level policy options for fee allocation and calculation; and
- other policy questions, including the fee liability of payment service providers (PSPs) implementing ring-fencing and the implications of PSD2 on fee allocation.

The consultation closes on 28 September 2017. Two further consultations will take place: one in November setting out the proposed rule changes, and the second in March on the proposed fee rates. Confirmation of the PSR fee rates for 2018/19 will be published in June 2018.

PSD2: French implementing ordinance published

Pursuant to article 70 of the 2016 Sapin II Law, which authorises the French Government to legislate on this matter, [Ordinance no. 2017-1252](#) of 9 August 2017

implementing PSD2 into French law has been published in the French Journal Officiel.

In parallel with the cross-border cooperation between competent authorities, the Ordinance confirms the powers of the Autorité de contrôle prudentiel et de résolution (ACPR) to take precautionary measures and immediate action in emergency situations, as well as the obligation to appoint a central contact point in France for payment institutions operating pursuant to the right of establishment, in order to facilitate supervision by their home Member State and the ACPR.

In particular, the Ordinance:

- specifies the necessary adjustments to French law – the French financial and monetary code and French consumer code already contain provisions regarding transparency and information requirements for payment service providers and rights and obligations in relation to the provision and use of payment services in France;
- as permitted by article 32 of PSD2, simplifies the authorisation requirements for payment and electronic money institutions whose monthly average of the preceding 12 months' total value of payment transactions executed does not exceed EUR 3 million;
- reinforces the rights, protection and information of customers for their payment and account data, including by creating two new services: (i) payment initiation services provided by payment initiation service providers (i.e. credit institutions, electronic money institutions and payment institutions), and (ii) account information services provided by a new category of account information service providers; and
- reduces the risks of fraud, unauthorised payment transactions and non-repayment for payment services users who should have a limited liability except in cases of fraudulent acts or gross negligence.

The Ordinance will enter into force on 13 January 2018.

AMF's internal rules published

The internal rules [of the Board](#) and [Enforcement Committee](#) of the Autorité des marchés financiers (AMF) have been published in the French Journal Officiel.

The internal rules set out the organisation, functioning and code of conduct of the two governing bodies, and identify, prevent and manage potential conflicts of interests.

The Board is the AMF's main decision-making body and is chaired by the Chairman of the AMF. It adopts new regulations, takes individual decisions, reviews inspection and investigation reports, and initiates sanction proceedings.

The Enforcement Committee, whose members are judges and professionals different from the Board's members, enjoys full decision-making autonomy. It can impose sanctions on any person or company whose practices contravene laws and regulations that fall within the jurisdiction of the AMF. It ratifies settlement agreements and takes part in the AMF's educational efforts by clarifying financial regulations when explaining its decisions.

The AMF General Secretary has responsibility for the various AMF directorates, and decides whether to open investigations and inspections, defines the Rules of Procedure and the Rules of Professional Conduct that apply to the AMF personnel before their submission to the Board for approval. The General Secretary sets the general framework for compensation and budget before examination by the Board.

The AMF is supported by Consultative Commissions and a Scientific Advisory Board composed of recognised experts from the academic and financial fields.

AMF publishes feedback on public consultation on corporate finance

The AMF has published a [feedback statement](#) on the public [consultation](#) it carried out from 9 January to 28 February 2017 on business advisory services in capital structure and mergers and acquisitions currently provided by both regulated and unregulated professionals, and the opportunity to reshape the regulatory framework.

The document contains a summary of the responses received, the AMF's comments, as well as the AMF's decision not to establish any specific rules governing corporate finance.

In line with MiFID and MiFID2, advisory services referred to in [article L.321-2](#) of the French monetary and financial code as 'advisory services provided to firms in relation to capital structure, industrial strategy and related matters, as well as advisory services relating to mergers and acquisitions', are not investment services requiring authorisation but rather 'ancillary services' for which French and EU legislation lay down no specific rules.

In parallel, the AMF encourages all initiatives to develop a corporate finance 'professional label' or code of conduct. In order to support stakeholders in making the relevant arrangements by 3 January 2018 and the implementation of MiFID2, the AMF will publish a guide specifying the boundaries between such a freely exercised activity and investments services subject to authorisation later in 2017.

CRD 4: ACPR publishes Notice 2017 on methods for calculating and publishing capital ratios

The Autorité de contrôle prudentiel et de résolution (ACPR) has approved and published a [new version of Notice 2017](#) on the methods for calculating and publishing capital ratios in compliance with the EU legislative package covering prudential rules for credit institutions and investment firms.

Notice 2017 is intended to be explanatory and specifies how the ACPR supervises the implementation of French capital adequacy regulations on solvency, material and liquidity risks, leverage and liabilities on assets satisfying the European provisions of the Basel III Accord and the Capital Requirements Directive (CRD 4) and Regulation (CRR), as well as the relevant delegated and implementing regulations and recommendations from the EU Commission and the European Banking Authority (EBA).

Ratio of compulsory reserves taken into account for calculating liquidity ratio of Turkish banks increased to 100%

The [Regulation Amending the Regulation on the Calculation of the Liquidity Ratio of Banks](#) has been published in the Official Gazette dated 15 August 2017 and numbered 30155.

Accordingly, the ratio of the compulsory reserves which is taken into account for calculating the liquidity ratio has been amended. In particular, the ratio of the compulsory reserves has been increased from 50% to 100% for both consolidated and non-consolidated calculations.

The amendment is effective from 1 April 2017, presumably aiming to provide relief to banks retroactively.

RECENT CLIFFORD CHANCE BRIEFINGS

Foreign investment regulation in Australia

This briefing paper explains the key elements of Australia's current inbound foreign investment regime.

https://www.cliffordchance.com/briefings/2017/08/foreign_investmentregulationinaustralia.html

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