

International Regulatory Update

21 – 25 August 2017

IN THIS WEEK'S NEWS

- Capital Markets Union: EU Commission consults on post-trade services
- CRR: EU Commission adopts Delegated Regulation extending MBS waiver
- PRIIPs Regulation: ESAs publish updated Q&As and flow diagram on risk and reward calculations in KID
- EMIR: ESMA publishes final guidelines on data transfer between TRs
- BaFin publishes guidance note on authorisation procedure
- Bank of Italy publishes guidelines on corporate structure reporting requirements
- MiFID2/MiFIR: France continues process of implementation
- Ministerial order approving amendments to AMF General Regulation concerning granting of loans by FPS and FPCI published
- AMF applies ESMA's opinion on unit or share classes of UCITS
- Fintech cooperation agreement between French Prudential Supervision Authority and Monetary Authority of Singapore published
- Cooperation agreement between French Prudential Supervision Authority and Financial Services Agency of Japan published
- State Council issues measures to regulate financing security companies
- ASIC extends deadline for disclosure of certain fees and costs of Australian superannuation funds
- Australian government consults on Corporate Collective Investment Vehicle
- Recent Clifford Chance briefings: EU financial services horizon scanner; Brexit; and more. [Follow this link to the briefings section.](#)

Capital Markets Union: EU Commission consults on post-trade services

The EU Commission has published a [consultation paper](#) on post-trade services used in financial transactions, including clearing, settlement and collateral management.

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

If you would like to continue to receive International Regulatory Update or would like to request a subscription for a colleague, please [click here](#).

To request a subscription to our Alerter: Finance Industry service, please email [Online Services](#).

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

International Regulatory Group Contacts

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

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

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

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

[Paul Landless](#) +65 6410 2235

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

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

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

Clifford Chance LLP, 10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

The consultation is divided into two sections. The first considers EU and global trends, new technologies and competition in post-trade markets. The second considers post-trade barriers and the action that could be taken to remove them.

The consultation is accompanied by a [report](#) by the European Post Trade Forum (EPTF), an expert group established by the EU Commission to assist the review of post-trading developments. The report provides, amongst other things:

- an overview of the current state of post-trade reform;
- an assessment of the dismantling of barriers (both Giovannini and EPTF Barriers);
- an abstract of its analysis of the current European post-trade landscape; and
- descriptions of the individual barriers and proposed solutions.

The consultation closes on 15 November 2017. The responses will contribute to a communication on post-trade planned for the end of 2017 and future legislative reviews.

CRR: EU Commission adopts Delegated Regulation extending MBS waiver

The EU Commission has adopted a [Delegated Regulation](#) amending the Capital Requirements Regulation (CRR) as regards the waiver on own funds requirements for certain covered bonds. Under CRR the Mortgage Backed Securities (MBS) waiver is used for the purpose of including senior units of securitised residential or commercial property exposures in the cover pool. In addition, it has been used for pooled covered bond structures.

Article 503(4) of CRR requires the Commission to review this waiver in order to determine whether it is still appropriate and to make a delegated act if it should be made permanent. It appeared from the European Banking Authority's (EBA's) report for the Commission, published in 2014, that only a limited number of national covered bond frameworks allow the inclusion of residential or commercial mortgage backed securities or intra-group pooled covered bond structures. However, since some institutions rely in their business models on the use of the waiver granted by competent authorities, the Commission views it as appropriate for reasons of legal certainty to allow the competent authorities to extend the waiver referred to in Article 496(1) of CRR. As such, the Delegated Regulation amends Article 496(1) to repeal the date mentioned in that provision.

The Delegated Regulation will apply from 1 January 2018.

As a reassurance to the Member States that have indicated concerns in relation to the permanent extension of all elements of the waiver, the Commission has sought to state that the waiver may be reassessed in the context of a future covered bonds framework.

PRIIPs Regulation: ESAs publish updated Q&As and flow diagram on risk and reward calculations in KID

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA), has published an update of its [questions and answers document](#) on the key information document (KID) requirements for packaged retail and insurance-based investment products (PRIIPs).

The document has been updated to include new Q&As on:

- market risk assessment (Annex II, Part 1);
- methodology for assessing credit risk (Annex II, Part 2);
- summary risk indicator (SRI) (Annex III); and
- presentation of costs (Annex VII);

The ESAs will continue to assess whether further guidance is needed.

To accompany the updated Q&A document, the ESAs have published [flow diagrams](#) setting out the calculation steps for the SRI and performance scenario calculations described in Commission Delegated Regulation (EU) 2017/653.

The ESAs will review both documents periodically and will issue further updates as necessary.

EMIR: ESMA publishes final guidelines on data transfer between TRs

ESMA has published its [final guidelines](#) on data transfer between trade repositories (TRs) authorised under the European Market Infrastructure Regulation (EMIR).

The guidelines are intended to:

- set out arrangements for the consistent application of the relevant EMIR requirements that underpin a competitive TR environment;
- provide the basis to ensure high quality data is available to authorities, including the aggregation carried out by TRs, even in those cases where the TR participant changes the TR to which their derivatives are reported; and

- establish a consistent and harmonised way to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR.

The guidelines also specify ESMA's expectations for compliance with the requirement established in Article 79(3) of EMIR for the transfer of reporting flow in the case of withdrawal of registration of a TR.

The guidelines will become applicable on 16 October 2017 and will require assessment on the compliance by the TRs with the guidelines on an annual basis.

BaFin publishes guidance note on authorisation procedure

The German Federal Financial Supervisory Authority (BaFin) has published a [guidance note](#) on the authorisation procedure that credit institutions need to follow when applying for a banking licence in Germany. In particular, the guidance covers the form and content of the application letter and lists the documents and declarations that need to be provided.

Bank of Italy publishes guidelines on corporate structure reporting requirements

The Bank of Italy has published a set of [guidelines](#) intended to provide instructions as to how to comply with reporting requirements on supervised institutions' corporate structures.

The guidelines apply to:

- credit institutions;
- investment firms (SIMs);
- payment institutions and EMIs;
- investment managers, SICAV and SICAF; and
- financial intermediaries (intermediari finanziari).

MiFID2/MiFIR: France continues process of implementation

[Decree no. 2017-1253 of 9 August 2017](#) and a [Ministerial order of 3 July 2017](#) have been published in the French Journal Officiel, continuing the process of implementing MiFID2 and MiFIR into French law.

The Decree (en Conseil d'Etat) relates to the separation between the legal regimes for asset management companies (AMCs) and investment firms (IFs) and ensures the implementation of MiFID2 and MiFIR in the French legal framework as of 3 January 2018. It amends a number of provisions of the regulatory section of the French monetary

and financial code (Financial Code), including in relation to information communicated by the French authorities to other competent authorities and ESMA, the authorisation process for investments services providers and the provision of investment services subject to the relevant French authorities' approval in the context of the separation of the AMCs and IFs legal regimes.

The Ministerial order approves amendments to the General Regulation of the Autorité des marchés financiers (AMF) implementing into national law measures set out in the MiFID2 Delegated Directive (EU) 2017/593 of 7 April 2016, in particular as regards:

- the safeguarding of financial instruments belonging to clients;
- product governance, with a new Chapter III Bis and definition of 'producer';
- fees and inducements; and
- general adjustments to comply with MiFID2/MiFIR provisions, for example the alignment of 'financial instrument' in
- Book III with the term as defined in article L.531-0 of the Financial Code to take into account CO2 quotas.

The new provisions will enter into force on 3 January 2018.

Ministerial order approving amendments to AMF General Regulation concerning granting of loans by FPS and FPCI published

A [Ministerial order dated 17 July 2017](#) approving amendments to the General Regulation of the AMF has been published in the French Journal Officiel.

Following [Decree no. 2016-1587 of 24 November 2016](#) establishing the conditions under which certain French professional investment funds can provide loans to companies, the Ministerial order sets out implementing measures for the granting of loans by professional specialised investment funds – fonds professionnels spécialisés (FPS) – and professional private equity investment funds – fonds professionnels de capital investissement (FPCI).

New articles 423-36-2, 423-36-3 and 423-36-4 of the [AMF General Regulation](#) now specify:

- the conditions for FPS and FPCI to assign unmatured or closed-out loans, subject to the AMF's approval;
- the operating requirements and procedures for credit risk analysis, valuation, monitoring and control, with which their management companies must comply; and

- in order to avoid liquidity risks, the conditions for such funds to implement gates or restrictions on redemptions above the thresholds provided by their rules.

The Ministerial order sets at a maximum of:

- 90% of the remaining due capital, the percentage under which no AMF prior authorisation is required to assign unmatured or closed-out loans, under the conditions set out in article R. 214-203-2 of the French monetary and financial code (Financial Code); and
- 30% of the net assets of the lending fund or, if applicable, the total amount of its uncalled subscriptions, as set out in the fund's rules, as this is permitted by the borrowing cumulative conditions provided by article R. 214-203-6 of the Financial Code.

These amendments entered into force on 18 July 2017, i.e. the day following publication of the Ministerial order.

AMF applies ESMA's opinion on unit or share classes of UCITS

The AMF has published its [position](#) applying ESMA's [opinion](#) on share classes of UCITS, which was published on 30 January 2017 and promotes the harmonisation of practices and investor protection in the absence of a common legal and regulatory framework for share classes throughout the EU.

The AMF will grant authorisation to UCITS comprising unit/share classes which comply with the following principles and criteria defined by ESMA in its opinion:

- common investment objective of unit/share classes of the same fund;
- non-contagion risk of adverse impact of one unit/share class on other unit/share classes of the same fund;
- pre-determination of all features of a unit/share class before it is set up, for potential investors to gain a full overview of their investment; and
- common level of transparency vis-à-vis all investors.

Hedging arrangements at unit/share class level can be used only for currency risk hedging purposes which involve the following additional operational principles:

- implementation of stress tests at unit/share class level in order to avoid contagion risk;
- limitation of the risk exposure for each derivatives-based hedging which must be systematic, pre-

determined and not exceed the levels stated by ESMA; and

- compliance at unit/share class level with diversification ratios, especially regarding counterparty risk.

In line with ESMA's opinion, existing unit/share classes established prior to its issuance of UCITS which comply with these principles, should be closed for (i) investment by new investors as of 30 July 2017 and (ii) additional investment by existing investors as of 30 July 2018. However, to take into account the operational difficulties in implementing principles for currency risk hedged unit/share classes, the relevant stakeholders will have to comply with them as of 1 January 2018.

Fintech cooperation agreement between French Prudential Supervision Authority and Monetary Authority of Singapore published

A [cooperation agreement](#) between the Monetary Authority of Singapore (MAS) and the French Autorité de contrôle prudentiel et de résolution (ACPR) on fintech has been published in the French Official Journal. The aim of this cooperation agreement is to enhance fintech cooperation between the two countries. The authorities intend to cooperate in order to encourage or permit innovation within their respective financial services sectors and to assist innovative financial sector companies to comply with the applicable regulations in each jurisdiction. To this end, they have established a specific framework favorable to the fintech sector as well as dedicated functions.

Cooperation agreement between French Prudential Supervision Authority and Financial Services Agency of Japan published

A [cooperation agreement](#) in the area of banking and insurance supervision between the Financial Services Agency of Japan (FSA) and the ACPR has been published in the Official Journal. Under the agreement, the authorities recognise that closer co-operation during the authorisation process of a prospective cross-border institution, as well as sharing of information on the supervision of the cross-border activities afterwards, would be mutually advantageous for the authorities for effective consolidated supervision of supervised institutions.

State Council issues measures to regulate financing security companies

The State Council has issued the '[Administrative Measures for the Supervision of Financing Security Companies](#)', which are intended to regulate the financing security

business in order to facilitate financial inclusion and, in particular, financing for small- and micro-businesses as well as ‘three rurals’ (targeted beneficiaries). The Legislative Affairs Office of the State Council and the China Banking Regulatory Commission (PBoC) have also jointly published a set of [Q&A](#) on the Measures.

The key provisions of the Measures, which will take effect on 1 October 2017, include the following:

- the Measures set out a series of supporting policies to address the financing needs of the targeted beneficiaries, including lowering their fee rates through governmental fiscal support, in addition to setting up risk-sharing mechanisms and cooperation among financial departments, banking institutions and financing security companies;
- the Measures set out the conditions for establishing a financing security company, including that: (i) the shareholder(s) should be reputable and have no record of material violations of laws and regulations; (ii) the registered capital shall be no less than RMB 20 million (which may be raised subject to considerations of the provincial government) and fully paid up; (iii) the proposed director(s), supervisor(s) and senior management shall have the necessary business experience and management capabilities; and (iv) sound internal management systems including business procedures and risk management should be in place. Additional requirements are imposed if a subsidiary or branch is to be set up in another province/autonomous region/municipality;
- the Measures cap the security liability balance at 10 times the net assets of a financing security company, prohibit provision of financing security to its controlling shareholder or actual controller, set asset security and liquidity requirements on its proprietary capital, and outlaw taking deposits directly or indirectly, providing entrusted loans or entrusted investment;
- financing security companies established before promulgation of the Measures which fail to meet the regulatory requirements under the Measures shall rectify this as required in due time; otherwise, no new financing security business may be carried out by such companies; and
- the State Council will establish a Joint Conference among Regulatory Departments on Financing Security Business, led by PBoC, which will be responsible for making regulatory rules, coordinating and supervising

the risk disposal and administration of financing security companies by local authorities.

ASIC extends deadline for disclosure of certain fees and costs of Australian superannuation funds

The Australian Securities and Investments Commission (ASIC) has [announced](#) that, from 30 September 2017, there will be significant changes to the way superannuation and managed investment funds disclose the fees and charges.

ASIC is concerned that there is a significant amount of under-reporting of fees, as well as considerable inconsistency in the way fees and charges are listed by funds. As a result, ASIC has made changes in relation to how fees and costs must be disclosed in product disclosure statements (PDS) and, from later in 2018, very similar requirements will also apply to the information in periodic statements.

ASIC also noted that the fees consumers are being charged may reflect the type of investment, with some higher cost investments also bringing higher returns in the long term. ASIC considers that this change to reporting will also make it easier for consumers to identify when this may be the case.

Following consultation with industry on the introduction of these changes, ASIC has extended deadlines as follows:

- the deadline for disclosure of property operating costs in the investment fee or indirect costs is extended to 30 September 2018; and
- the deadline for certain disclosures in periodic statements that require changes to the internal systems of funds is extended such that these requirements will have effect for annual statements for the year ending 30 June 2018.

Australian government consults on Corporate Collective Investment Vehicle

The Australian government is seeking submissions on draft Asia Region Funds Passport (Passport) and Corporate Collective Investment Vehicle (CCIV) Bills and explanatory materials. The Bills will insert two new chapters into the Corporations Act 2001 establishing a regulatory framework for the Passport and CCIV regimes.

The [exposure drafts](#) do not contain consequential amendments to other parts of the Corporations Act or to other laws. The draft explanatory materials draw out some areas where consequential amendments are likely to

impact on the interpretation of the provisions included in the exposure drafts.

The consultation closes on 21 September 2017.

RECENT CLIFFORD CHANCE BRIEFINGS

Clifford Chance EU financial services horizon scanner

Clifford Chance has prepared a financial services horizon scanner, providing a high level overview of ongoing and expected EU legislative initiatives that are likely to impact firms providing financial services in the EU. The horizon scanner also sets out projected timelines for the finalisation and implementation of relevant requirements, covering approximately the next 18 months.

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

Brexit – the way forward for applicable law and civil jurisdiction and judgments?

This briefing paper considers the EU's and UK's positions on judicial cooperation in civil and commercial matters. The

briefing follows the publication of the UK's position paper on cross-border civil cooperation on 22 August 2017, which it compares with the position of the EU as set out in a paper published in July. This comparison provides insight into what a withdrawal deal might look like, and guidance as to how parties contracting now can safeguard their positions.

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

US targets foreign financial facilitators for supporting North Korea

This briefing paper discusses recent US designation and asset forfeiture actions targeting entities and individuals providing support to North Korea in contravention of US and UN sanctions.

https://www.cliffordchance.com/briefings/2017/08/us_target_s_foreignfinancialfacilitatorsfo.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.

www.cliffordchance.com

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

© Clifford Chance 2017

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.