

International Regulatory Update

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MiFID2: EU Commission adopts delegated act clarifying definition of systematic internalisers

The EU Commission has adopted a [Delegated Regulation](#) amending the MiFID2 Delegated Regulation (2017/565) as regards the definition of systematic internalisers for the purposes of MiFID2.

The Delegated Regulation is intended to clarify the precise scope of the definition of 'systematic internaliser' to ensure uniform application of this term and avoid circumvention.

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The draft delegated act was published for consultation, which closed on 18 July 2017. In response to concerns raised pertaining to prudential risk management achieved by means of intra-group transactions, the Commission has introduced a new recital and an amendment to Article 16a clarifying the scope of matching arrangements that are considered dealing on own account.

The Commission views it as necessary that the Delegated Regulation enter into force as a matter of urgency. It will enter into force on the day after its publication in the Official Journal.

CRD 4: Commission Implementing Regulation amending Implementing Regulation on benchmarking portfolios and reporting instructions published in Official Journal

A Commission Implementing Regulation (2017/1486) amending Implementing Regulation (EU) 2016/2070 as regards benchmarking portfolios and reporting instructions to enable the European Banking Authority (EBA) and competent authorities to assess the quality of institutions' internal approaches in accordance with Article 78 of the Capital Requirements Directive (CRD 4) has been published in the [Official Journal](#).

The amendments to Implementing Regulation (EU) 2016/2070 are limited in scope and impact. Among other amendments, Annexes I to VI of the Regulation are replaced by Annexes I to VI of Implementing Regulation (EU) 2017/1486.

The Regulation will enter into force on 20 September 2017.

MAR: ESMA publishes compliance table on guidelines on commodity derivatives markets information

The European Securities and Markets Authority (ESMA) has published a [compliance table](#) in relation to guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives under the Market Abuse Regulation (MAR).

The table sets out details of which national competent authorities (NCAs) have informed ESMA that they comply and which NCAs intend to comply with the guidelines, including the date from which those NCAs intend to comply. The table indicates that all EU and EEA NCAs have indicated that they either comply or intend to comply with the guidelines.

ECB amends regulation on reporting of supervisory financial information

The European Central Bank (ECB) has published [amendments](#) to the ECB regulation on reporting of supervisory financial information ([ECB/2017/25](#)).

The amendments reflect changes introduced by the EU Commission that seek to align reporting on financial information with the requirements of the new International Reporting Standard on Financial Instruments (IFRS 9). These include adjustments to the instructions and templates used by banks for reporting financial information.

The amended regulation will come into effect on 1 January 2018. For less significant supervised entities which are established in France or Germany and subject to national accounting frameworks, the date of application will be 1 January 2019.

Basel Committee consults on implications of fintech for banks and supervisors

The Basel Committee on Banking Supervision (BCBS) has launched a [consultation](#) on the implications of fintech for the financial sector.

The consultation assesses how fintech may affect the banking industry and the activities of supervisors in the near to medium term. It considers potential scenarios in the banking industry and case studies focusing on technology developments (such as big data, distributed ledger technology, and cloud computing) and fintech business models (including innovative payment services, lending platforms and neo-banks).

The BCBS makes a number of observations and recommendations on supervisory issues for consideration by banks and bank supervisors.

Comments are due by 31 October 2017.

Legislative decree implementing MiFID2 and adapting national legislation to MiFIR published in Italian Official Gazette

Legislative Decree no. 129 of 3 August 2017, implementing MiFID2 and adapting national legislation to the provisions of MiFIR, has been published in the Italian Official Gazette.

The new legislation replaces the previous legal and regulatory framework introduced by MiFID1 and also regulates new areas not previously covered. The key objective remains the creation of a single market for

financial services in Europe, guaranteeing transparency and protection to investors.

Amongst other things:

- the legislative decree seeks to guarantee proper information for investors, in order to regulate potential conflicts of interest among parties and to ensure adequate checks on clients;
- the European and local authorities will have the power to prevent or limit the distribution of certain financial products, which may affect market stability and integrity, negotiations, and investors' interests; and
- with the transposition of MiFID2 a uniform system of rules relating to whistleblowing in the financial system has been adopted.

The legislative decree came into force the day following its publication in the Official Gazette. However, the majority of the amendments made to Legislative Decree no. 58/1998 (Italian Financial Act) will come into force on 3 January 2018.

Polish Financial Supervision Authority finds no grounds to identify global systemically important institutions

The Polish Financial Supervision Authority (PFSA) has issued a [statement](#) indicating that it has not identified any global systemically important institutions under its supervision. According to the procedure adopted by the PFSA in June 2017, which sets out the method for identifying global systemically important institutions and defining subcategories of global systemically important institutions, further steps are taken when the EUR 200 billion threshold is exceeded through the extent of exposure of an institution operating on the basis of a permit granted in the Republic of Poland. As this criterion is not currently met by any of the Polish institutions subject to supervision by the PFSA as banking supervision authority, there are no grounds for the PFSA to identify any institution under its supervision as a global systemically important institution.

SFC and Hong Kong Police sign MoU to strengthen co-operation in combating financial crime

The Securities and Futures Commission (SFC) and the Hong Kong Police (HKP) have entered into a [memorandum of understanding](#) (MoU) to formalise and further strengthen co-operation in combating financial crime.

The MoU covers a range of matters including referral of cases, joint investigations, exchange and use of information, mutual provision of investigative assistance, and establishes a framework for closer collaboration on policy, operational and training issues.

SFC and DFSA sign fintech cooperation agreement

The SFC and the Dubai Financial Services Authority (DFSA) have signed a [cooperation agreement](#) to establish a framework for mutual assistance to keep abreast of the development and application of financial technology (fintech). The agreement follows the creation of the SFC's Fintech Contact Point in 2016 and the DFSA's regulatory fintech regime in 2017.

Under the agreement, the SFC and the DFSA will cooperate on information sharing, potential innovation projects and referrals of innovative firms seeking to enter their respective markets.

CLIFFORD CHANCE BRIEFINGS

UK Government's watered-down corporate governance reforms

This briefing paper discusses the UK Government's recently published package of corporate governance reforms, providing details on key proposals including those on executive pay and stakeholder engagement.

https://www.cliffordchance.com/briefings/2017/08/government_publisheswatered-downcorporat.html

US imposes new financial sanctions on Venezuela and PDVSA

This briefing paper discusses the new financial sanctions imposed by the US on the Venezuelan government and the state-owned oil and gas company Petroleos de Venezuela, S.A. (PDVSA).

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

Changes to Australia's misuse of market power laws

This briefing paper discusses recent changes to Australia's misuse of market power prohibition under the Competition and Consumer Act 2010 (Cth).

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