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Briefing note

International Regulatory Update

4 – 8 September 2017

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BRRD: EBA publishes final draft ITS on reporting of MREL decisions by resolution authorities

The European Banking Authority (EBA) has published final draft implementing technical standards (ITS) on the reporting of decisions on the minimum requirement for own funds and liabilities eligible for bail-in (MREL) under the Bank Recovery and Resolution Directive (BRRD). The final draft ITS set out uniform formats, templates and definitions that resolution authorities must use to report the overall amount of MREL required from an institution, as well as each of the components of the MREL decision as laid down in the regulatory technical standards (RTS) on MREL (Commission Delegated Regulation (EU) 2016/1450). Reporting by institutions to resolution authorities falls outside of the scope of the ITS.

In line with the principle of proportionality, the ITS provide for simplified reporting for certain categories of institutions for which liquidations, rather than resolution, will be the preferred strategy. In those cases, MREL will only be made of a loss absorption amount.

The final draft ITS will be submitted to the EU Commission for endorsement.

CRR: EU Commission adopts RTS for asset encumbrance disclosure

The EU Commission has adopted a Delegated Regulation supplementing the Capital Requirements Regulation (CRR) with regard to RTS for the disclosure of encumbered and unencumbered assets.

Based on the technical standards drafted by the EBA and building on the EBA disclosure guidelines, the Delegated Regulation sets out the data required for asset encumbrance disclosure, which includes:

- the amount of encumbered and unencumbered assets under the applicable accounting framework by asset type;
- the collateral received by asset type;
- the liabilities associated with encumbered assets and collateral received; and
- narrative information relating to the impact of the business model on the level and importance of encumbrance.

The format disclosure should take is provided for in templates annexed to the Delegated Regulation.

The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal. The application of additional disclosure requirements concerning asset quality indicators has been deferred by one year so that institutions can develop necessary IT systems.

MAR: ESMA updates Q&A

The European Securities and Markets Authority (ESMA) has updated its questions and answers document (Q&A) on the Market Abuse Regulation (MAR). The Q&A is aimed at competent authorities to ensure converging supervisory activities but is also intended to help investors and other market participants by providing clarity on MAR requirements.

The Q&A has been updated with four new answers relating to the prevention and detection of market abuse, market soundings, and insider lists.

German Federal Financial Supervisory Authority publishes draft revised ICAAP guidelines

The German Federal Financial Supervisory Authority, the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) has published a discussion paper on its draft revised guidelines on the supervisory evaluation of banks' internal concepts for risk bearing capacity (bankinterne Risikotragfähigkeitskonzepte) and the internal capital adequacy assessment process (ICAAP). The revised guidelines are intended to replace the current BaFin guidelines of 2011. The revision has been made against the background of significant changes to the supervisory structure and practice as a result of the Single Supervisory Mechanism (SSM) and the Supervisory Review and Evaluation Process (SREP).

Comments are due by 17 October 2017.

MIFID2: Decree on separation between legal regimes for asset management companies and investment firms published

As part of the framework for the implementation of MIFID2 in France, a Decree of 6 September 2017 and a Ministerial Order have been published in the Official Journal dated 8 September 2017. The aim of the Decree is to separate the legal regime for investment management companies from that of investment firms.

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

PSD2: French implementing decrees published

Two decrees regarding payment services in the internal market have been published in the French Official Journal. The aim of these decrees is to make the necessary

regulatory amendments pursuant to the Ordinance implementing the revised Payment Services Directive (PSD2).

The provisions of these decrees will enter into force on 13 January 2018.

Two Ministerial Orders on prudential regulation of electronic money institutions and payment institutions published

Two Ministerial Orders on the prudential regulation of electronic money institutions and payment institutions, both dated 31 August 2017, have been published in the Official Journal.

The first Ministerial Order amends the Ministerial Order of 2 May 2013 on the prudential regulation of electronic money institutions. It sets out the terms and conditions for the approval of electronic money institutions and the simplified authorisation procedures in application of Articles L. 526-7 and L. 526-19 of the Monetary and Financial Code.

The second text amends the Ministerial Order of 29 October 2009 on the prudential regulation of payment institutions. It clarifies the terms and conditions for the approval of payment institutions and the simplified authorisation procedures in application of Articles L. 522-6 and L. 522-11-1 of the Monetary and Financial Code.

The Ministerial Orders will enter into force on 13 January 2018.

Ministerial Order on relationship between payment service providers and their customers regarding information obligations of users of payment services published

A Ministerial Order dated 31 August 2017, amending the Ministerial Order of 29 July 2009 on the relationship between payment service providers and their customers in terms of information obligations of payment service users and specifying the main provisions to be included in deposit account agreements and payment service framework contracts, has been published in the Official Journal.

The Ministerial Order will come into force on 13 January 2018.

Ministerial Order on internal control of companies under control of ACPR published

A Ministerial Order of 31 August 2017 amending the Ministerial Order of 3 November 2014 on the internal control of companies in the banking, payment services and investment services sectors subject to the supervision of the French Prudential Supervision and Resolution Authority, the Autorité de contrôle prudentiel et de resolution (ACPR), has been published in the Official Journal.

The Ministerial Order will enter into force on 13 January 2018.

FINMA amends ordinance on data processing

The Swiss Financial Market Supervisory Authority (FINMA) is amending its ordinance on data processing. In the ordinance FINMA defines how it collects information to assess an individual's compliance with proper business conduct requirements.

Under the provisions of financial market legislation and the Financial Market Supervisory Act, FINMA is permitted to collect and process personal data. This includes information for assessing personal compliance with the proper business conduct requirements, also referred to as the watch list. The data collected is used to ensure that supervised institutions only entrust board and executive management to individuals demonstrating proper business conduct, particularly so that past cases of non-compliance with these requirements are not repeated at another company.

The ordinance on data processing, in which FINMA establishes its rules on data collection, has been revised to specify which personal data can be collected. The revised ordinance implements the Federal Supreme Court decision of 22 March 2017, which held that FINMA is authorised to collect data for assessing compliance with proper business conduct requirements. The Court also gave its opinion on data quality standards, especially concerning those categories of data which may be collected and stored.

Furthermore, FINMA's current practice of informing individuals who have been placed on the watch list is clearly specified in the revised ordinance. Any existing data collection entries which do not meet the requirements of the revised data ordinance will be deleted.

The revised version of the ordinance enters into force on 15 September 2017.

FINMA launches consultation on amendments to AMLO-FINMA

FINMA has launched a consultation on its new draft of the FINMA Anti-Money Laundering Ordinance. Amendments include follow-up measures formulated in response to the Financial Action Task Force's (FATF's) mutual evaluation

report on Switzerland. Under the proposals, the verification of information on beneficial ownership and the regular updating of client information will become mandatory.

In particular:

- financial intermediaries will in future have a duty to verify information on beneficial ownership for all clients, including low-risk clients;
- regular updates of client information will become mandatory;
- the amended ordinance will specify the obligations for financial intermediaries with foreign branches or subsidiaries to monitor legal and reputational risks on a worldwide basis;
- financial intermediaries must make special provision for additional due diligence measures in cases where domiciliary companies or complex structures are used or where there are links to high-risk countries; and
- for cash transactions and subscriptions to unlisted collective investment schemes, FINMA intends to lower the threshold at which it becomes mandatory to identify clients and beneficial owners from CHF 25,000 to the FATF's recommended CHF 15,000.

FINMA proposes to amend its circular in relation to settlement accounts subject to sandbox for fintech firms

FINMA is proposing to specify its supervisory practice in connection with the Federal Council's new fintech regulations regarding the sandbox and the timeframe for settlement accounts, which are set out in the Federal Council's revision of the Banking Ordinance dated 5 July 2017 and aim to reduce unnecessary regulatory obstacles for innovative business models. As a result of the amendments to the Banking Ordinance, FINMA proposes to amend its Circular 2008/3 'Public deposits with non-banks'.

The new sandbox concept defined in the revised Banking Ordinance allows for public deposits to be accepted without a licence up to a limit of CHF 1 million, provided that they are not invested and do not bear interest, even if such deposits come from more than 20 depositors. The Federal Council has set the maximum period for which deposits may be held in settlement accounts at 60 days. Until now, FINMA has applied a timeframe of seven working days in accordance with the old legal provisions. FINMA proposes to set these points out in its amended circular and to adopt the new timeframe for settlement accounts.

The consultation on the amendment of the circular ends on 16 October 2017.

CBRC issues trust registration measures

The China Banking Regulatory Commission (CBRC) has issued the 'Administrative Measures for Trust Registration', aiming to establish a unified trust registration system in terms of the registration procedures, account management, registration information management and relevant regulatory requirements in order to further enhance the supervision of the trust industry.

Among other things, the following key aspects of the measures are worth noting:

- the China Trust Registration Co., Ltd. (the Trust Registration Company) is responsible for the registration and administration of trust products, trust beneficiary rights and trust beneficiary accounts;
- the registration, including pre-registration, initial registration, amendment registration, termination registration and correction registration and opening of trust beneficiary accounts shall be handled with the Trust Registration Company through an online system;
- the Trust Registration Company shall ensure the safety, completeness and confidentiality of the trust registration information. Subject to applicable information disclosure requirements (such as those for collective fund trust plans and property right trusts), trust registration information is generally not available to the public, and the Trust Registration Company only accepts inquiries from the stakeholders of the trust plan at issue;
- the effective date of the measures is 1 September 2017. There will be a transitional period of three months as from the effective date of the measures, during which trust companies are required to complete both the trust registration under the measures and the product reporting to the CBRC. After the transitional period, only the registration under the measures is required; and
- for a trust product that was established or took effect prior to 1 September 2017, it is not required to make up the trust registration if it will be terminated before 30 June 2018. Otherwise, it shall complete the required registration before 1 July 2018.

China bans fundraising through ICOs

A cross-agency working committee led by the People's Bank of China, and including the Cyberspace Administration of China, the Ministry of Industry and

Information Technology, the State Administration of Industry and Commerce, the China Banking Regulatory Commission, the China Securities Regulatory Commission and the China Insurance Regulatory Commission, has issued the 'Circular on Preventing Risks related to Initial Coin Offerings'. This is the first time that Chinese regulators have set out their stance in respect of initial coin offerings (ICOs) in China.

Among other things, the following key aspects of the circular are worth noting:

- ICOs are reiterated as an unauthorised and illegal public fundraising activity in nature, and may constitute a number of crimes such as illegal quasi-currency instruments offering, illegal securities offering, illegal fundraising, financial fraud and pyramid selling schemes. The digital tokens used in ICOs are not currencies issued by competent authorities and may not be circulated or used as currency on the market;
- all ICOs in China should be halted immediately, and issuers that have completed ICOs should provide refunds to investors;
- digital token financing/trading platforms (including websites and APPs) are prohibited from (i) providing conversion services between the tokens and lawful currencies, (ii) selling/purchasing (as the central counterparty or otherwise) the tokens or other virtual currencies, or (iii) providing pricing or information/data intermediary services in relation to the tokens. The relevant platforms may be closed or barred from operating, and the business licenses of entities running such platforms may be revoked;
- financial institutions and non-banking payment institutions are prohibited from directly or indirectly providing any ICOs-related services (such as account opening, registration, trading, settlement, clearing, and ICOs-related insurance); and
- investors are also required to be wary of the multiple-layer risks inherent in ICOs, refrain from participating in ICOs and report any crimes to the police.

SFC issues statement on initial coin offerings

The Securities and Futures Commission (SFC) has issued a statement on existing regulations which could be applicable to initial coin offerings (ICOs). The statement explains that depending on the facts and circumstances of an ICO, digital tokens that are offered or sold may be 'securities' as defined in the Securities and Futures Ordinance (SFO), and accordingly subject to the securities laws of Hong Kong.

The SFC notes that ICOs typically involve the issuance of digital tokens, created and disseminated using distributed ledger or blockchain technology. Whilst digital tokens offered in typical ICOs are usually characterised as a 'virtual commodity', the SFC has observed that certain ICOs have terms and features that may mean that the digital tokens are 'securities'.

Where the digital tokens involved in an ICO fall under the definition of 'securities', dealing in or advising on such digital tokens, or managing or marketing a fund investing in them, may constitute a regulated activity. Parties engaging in a regulated activity targeting the Hong Kong public are required to be licensed by or registered with the SFC, irrespective of where they are located.

The SFC has urged investors to be mindful of potential scams as well as the investment risks involved in ICOs, noting that because ICOs operate online and may not have a presence in Hong Kong, investors may be exposed to heightened risks of fraud.

Monetary Authority of Singapore publishes MAS (Sanctions and Freezing of Assets of Persons – Democratic People's Republic of Korea) (Amendment) Regulations 2017

The Monetary Authority of Singapore (MAS) has published the MAS (Sanctions and Freezing of Assets of Persons – Democratic People's Republic of Korea) (Amendment) Regulations 2017, which amend the MAS (Sanctions and Freezing of Assets of Persons – Democratic People's Republic of Korea) Regulations 2016.

Amongst other things, the amendments relate to the following:

- giving effect to Resolutions 2321 (2016) and 2356 (2017) of the Security Council of the United Nations;
- a prohibition against entering into financial transactions or providing financial assistance or services in relation to designated vessels;
- a prohibition against entering into financial transactions or providing financial assistance or services in relation to trade with the Democratic People's Republic of Korea or any person in, or national of, the Democratic People's Republic of Korea;
- designated vessels to be subject to asset freeze; and

- a prohibition against opening or maintaining bank accounts for or on behalf of any Democratic People's Republic of Korea's diplomatic or consular office.

The Regulations are effective from 31 August 2017.