

# International Regulatory Update

25 – 29 September 2017

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### **MiFID: EU Commission adopts Delegated Regulation on transactions for data reporting services providers**

The EU Commission has adopted a [Delegated Regulation](#) with regard to regulatory technical standards (RTS) on the authorisation, organisational requirements and the publication of transactions for data reporting services providers (DRSP) under MiFID2.

Data reporting services (DRS) operated by DSPRs are subject to authorisation and supervision under MiFID2. DRSs include the operation of approved reporting mechanisms (ARM), approved publication arrangements (APAs) and consolidated tapes (CT).

MiFID2 provides for the possibility of establishment of a CT for equity and non-equity financial instruments. In September 2015 the European Securities and Markets Authority (ESMA) submitted draft RTS specifying the scope of the equity consolidated tape providers (CTPs) that were adopted by the Commission in Delegated Regulation (EU) 2017/571.

Given the higher complexity for establishing and operating a non-equity tape, ESMA delivered the draft RTS specifying the scope of non-equity CTP, which the Commission has now adopted, after the draft RTS on equity CTP.

The delegated act will enter into force on the twentieth day following that of its publication in the Official Journal and will apply from 3 September 2019.

### **EU Commission adopts Delegated Regulations supplementing Benchmarks Regulation**

The EU Commission has adopted three Delegated Regulations supplementing the Benchmarks Regulation (EU 2016/1011).

In particular, the Delegated Regulations specify:

- how the criteria of Article 20(1)(c)(iii) are to be applied for assessing whether certain events would result in significant and adverse impacts on market integrity, financial stability, consumers, the real economy or the financing of households and businesses in one or more Member States ([C\(2017\) 6469 final](#));
- how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed ([C\(2017\) 6464 final](#)); and
- the technical elements of the definitions laid down in paragraph 1 of Article 3 of the Regulation ([C\(2017\) 6474 final](#)).

### **EMIR II: EU Council Presidency publishes compromise text**

The EU Council Presidency has published a [compromise text](#) for the proposed regulation amending the European Market Infrastructure Regulation (EMIR) as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories.

### **Single Resolution Mechanism: ECON Committee publishes draft report on amending regulation**

The EU Parliament's Economic and Monetary Affairs Committee (ECON) has published its [draft report](#) on the proposed regulation amending the Single Resolution Mechanism Regulation (SRMR) as regards loss-absorbing and recapitalisation capacity for credit institutions and investment firms.

### **Recovery and resolution of CCPs: ECON Committee publishes amendments to legislative proposal**

The ECON Committee has published a [draft report](#) setting out amendments to the proposed regulation on a framework for the recovery and resolution of central counterparties (CCPs).

Amongst other amendments, the draft report aims to improve the legal protection for the resolution authority should a decision be taken to accelerate the move from recovery to resolution. The ECON Committee believes that the resolution authority must have full discretion to use resolution tools, including those in the CCP rulebook, while addressing systemic problems and protecting taxpayers.

### **MiFIR: ESMA publishes final draft RTS on derivatives trading obligation**

The European Securities and Markets Authority (ESMA) has published its [final draft regulatory technical standards](#) (RTS) implementing the trading obligation (TO) for derivatives under MiFIR.

The draft RTS specify the TO for classes of fixed-to-float single currency interest rate swaps (IRS) and index credit default swaps (CDS) to be traded on-venue, and sets out the date from which the TO applies, including a phased-in approach for certain categories of counterparty.

The draft RTS have been submitted to the EU Commission for endorsement, with 3 January 2018 maintained as the expected date of application.

### **MiFID2: ESMA publishes guidelines on management bodies of market operators and data reporting services providers**

ESMA has published [guidelines](#) on assessing the suitability and effectiveness of the management bodies of market operators and data reporting services providers (DRSPs) under MiFID2.

The guidelines seek to develop common standards to be taken into consideration when appointing new or assessing current members of management bodies. Specific matters that should be taken into consideration and form the subject of formal written policies and compliance processes include time commitment, managerial competence, honesty and integrity, conflicts of interest, training, and recruitment and diversity.

The guidelines apply to national competent authorities (NCAs), market operators and DRSPs from 3 January 2018.

### **MiFID2: ESMA and NCAs update work plan for opinions on pre-trade transparency waivers and position limits**

ESMA and NCAs have issued a [public statement](#) on an updated work plan for issuing opinions on pre-trade transparency waivers and position limits under MiFID2 and MiFIR.

The work plan sets out the approach ESMA and NCAs intend to take to avoid processing bottlenecks and ensure the MiFID2/MiFIR waivers and position limits are available for use as of 3 January 2018. To that end:

- equity instrument waivers are being prioritised, with an intention that opinions be finalised by the end of 2017;
- non-equity instrument waivers pending an opinion are to be granted by an NCA subject to its own compliance assessment and certain conditions; and
- NCAs will publish commodity derivative position limits that enter into force on 3 January 2018, which will be modified in accordance with subsequently issued opinions.

The statement includes the assurance that market participants will be given sufficient lead-time where ESMA issues a non-compliant opinion that requires NCAs to amend their initial decision.

### **EBA and ESMA provide guidance on assessing suitability of management body members and key function holders**

The European Banking Authority (EBA) and ESMA have published their [joint guidelines](#) on assessing the suitability of members of management bodies and key function holders.

The guidelines aim to harmonise and improve suitability assessments within EU financial sectors, and to ensure sound governance arrangements in financial institutions in line with the Capital Requirements Directive (CRD 4) and MiFID2. The guidelines highlight the importance for institutions to consider whether candidates have the knowledge, qualification and skills necessary to safeguard proper and prudent management of the institution. The guidelines are also intended to foster more diverse management bodies and contribute to improved risk oversight and resilience of institutions.

The guidelines will apply as of 30 June 2018 to competent authorities across the EU, as well as to institutions on an individual and consolidated basis.

### **EBA and US agencies sign framework cooperation arrangement on bank resolution**

The EBA has signed a [framework cooperation arrangement](#) with several US financial regulatory agencies, laying the foundation for future cooperation arrangements on bank crisis management and resolution between any EU supervisory or resolution authority and any of the participating US agencies. The framework covers a variety of crisis management topics, including early intervention, resolution planning, resolvability assessment and resolution. It is intended to promote resolution planning and cooperation for cross-border institutions.

The US agencies participating are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Securities and Exchange Commission (SEC) and the New York State Department of Financial Services.

### **CRD 4: EBA publishes guidance on internal governance**

The EBA has published its [revised guidelines](#) on internal governance.

The guidelines are intended to further harmonise institutions' internal governance arrangements, processes

and mechanisms across the EU, in line with the new requirements in this area introduced in CRD 4 and also taking into account the proportionality principle.

The guidelines will apply as of 30 June 2018 to competent authorities across the EU, as well as to institutions on an individual and consolidated basis.

### **European Supervisory Authorities publish guidance to prevent terrorist financing and money laundering in electronic fund transfers**

The Joint Committee of the European Supervisory Authorities (EBA, ESMA and EIOPA) has published [guidelines](#) to prevent the abuse of funds transfers for terrorist financing and money laundering purposes.

The joint guidelines aim to set clear, common regulatory expectations of payment service providers' policies and procedures and to pave the way for a more harmonised and effective pan-European approach to anti-money laundering and countering the financing of terrorism in the funds transfer context. The guidelines also explain in practical terms what payment service providers should do to detect missing or incomplete information on the payer or the payee, and what they should do when managing a transfer of funds that lacks the required information or receive transfers of funds from a payment service provider that repeatedly fails to provide the required information.

The guidelines will apply from six months after the date on which they are issued.

### **ECB regulation on reporting of supervisory financial information published in Official Journal**

European Central Bank [Regulation \(EU\) 2017/1538](#) amending Regulation (EU) 2015/534 on reporting of supervisory financial information (ECB/2017/25) has been published in the Official Journal.

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.

Regulation (EU) 2017/1538 will enter into force on 9 October 2017 and apply:

- to supervised entities applying IFRS under Regulation (EC) No 1606/2002, including those that apply IFRS for supervisory reporting pursuant to Article 24(2) of Regulation (EU) No 575/2013, for the first time as at

the first reporting reference date falling within their next financial year after 31 December 2017;

- to significant supervised entities which are subject to national accounting frameworks based on Directive 86/635/EEC from 1 January 2018; and
- to less significant supervised entities which are subject to national accounting frameworks based on Directive 86/635/EEC from 1 January 2018.

The ECB may decide, at the request of a NCA, to apply the Regulation to less significant supervised entities which are subject to national accounting frameworks based on Directive 86/635/EEC and established in the Member State of that NCA from 1 January 2019 if such national accounting framework is not compatible with IFRS.

#### **CPMI consults on proposed strategy to improve security of wholesale payments**

The Committee on Payments and Market Infrastructures (CPMI) has launched a [consultation](#) on its proposed strategy to improve the security and reduce the risk of fraud of wholesale payments that involve banks, financial market infrastructures and other financial institutions. The consultation paper, 'Discussion note – Reducing the risk of wholesale payments fraud related to endpoint security' sets out seven elements aimed at preventing, detecting, responding to and communicating about wholesale payments fraud, which include:

- identifying and understanding the range of risks and endpoint requirements
- promoting adherence to endpoint requirements;
- providing and using information and tools to improve timely prevention and detection of risks; and
- supporting ongoing education, awareness and information-sharing.

Following this consultation the CPMI intends to develop guidance on each of the seven elements to assist operators and participants of payment systems and messaging networks and their supervisors, regulators and overseers in improving endpoint security.

Comments on the proposed strategy are due by 28 November 2017.

#### **Financial Policy Committee reviews risks to financial stability**

The Financial Policy Committee (FPC) has published a [statement](#) from its meeting on 20 September 2017, at which it reviewed its assessment of risks to UK financial stability, including:

- global economic and market risks;
- domestic risks;
- consumer credit;
- Brexit; and
- bank capital.

Among other things, the FPC is continuing to assess the risks of disruption to financial services arising from Brexit, including from:

- discontinuity of cross-border contracts (in particular insurance and derivatives);
- restrictions on sharing of personal data between the EU and the UK; and
- restrictions after Brexit on cross-border banking, central clearing and asset management service provision.

In areas where it would be complex and difficult for firms themselves to mitigate risks fully, such as the continuity of contracts between UK and EU27 counterparties, the FPC is exploring other mitigating actions.

#### **PRA publishes supervisory statement on waiving disclosure requirements on composition of collateral for exposures to counterparty credit risk**

The Prudential Regulation Authority (PRA) has published a [supervisory statement \(SS6/17\)](#) which sets out a waiver for the requirement to disclose the template 'EU CCR5-B – Composition of collateral for exposures to CCR' (CCR5-B) of the EBA's guidelines on disclosure requirements under Part Eight of the Capital Requirements Regulation (CRR). Amongst other things, SS6/17 sets out:

- a quantitative threshold for waiving disclosure of CCR5-B for firms when either collateral received or collateral posted is below the threshold;
- the PRA's expectation on the measure to be used to monitor compliance with the threshold;
- a set of principles for firms to consider when determining whether to exercise discretions on disclosure, including the effectiveness of covert liquidity assistance and the benefits of the lag in disclosure of liquidity assistance; and
- the removal of Supervisory Statement SS11/14 'CRD IV: compliance with the European Banking Authority's Guidelines on disclosure of encumbered and unencumbered assets' when new EBA regulatory technical standards (RTS) on disclosure of encumbered and unencumbered assets come into force.

The PRA intends for SS6/17 to reduce the risk that firms' compliance with the EBA guidelines could enable the use or non-use of liquidity assistance to be deducted. The waiver will apply to disclosures from 31 December 2017, when the EBA guidelines are implemented.

#### **CSSF issues regulation on setting of countercyclical buffer rate**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [new regulation \(17-03\)](#) on the setting of the countercyclical buffer rate for the fourth quarter of 2017.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 5 September 2017 (CRS/2017/004) and maintains a 0% countercyclical buffer rate for relevant exposures located in Luxembourg for the fourth quarter of 2017.

The regulation will enter into force on 1 October 2017.

#### **Polish Council of Ministers approves draft Act Amending Certain Acts to Combat the Use of the Financial Sector to Commit Treasury Fraud**

The Council of Ministers has [approved](#) the draft Act Amending Certain Acts to Combat the Use of the Financial Sector to Commit Treasury Fraud, which will now go to the Sejm.

The Act assumes, amongst other things, that the director of National Fiscal Administration, the Krajowa Administracja Skarbowa (KAS), will conduct an analysis of the risk of entities taking advantage of the operations of banks or cooperative savings and loan societies to commit offences and fiscal offences, i.e. offences related to VAT fraud, including offences based on the issuance of 'empty' invoices. The market analysis will be carried out taking into account the risk index calculated by the clearing house IT system, referred to as STIR.

Amongst other things, this will involve requiring banks and cooperative savings and loan societies to send certain data to STIR, including data constituting a banking secret or professional secret of a cooperative savings and loan society, in order to determine the risk index.

#### **MiFID2: new bill on implementation into Belgian law tabled**

The Belgian government has tabled a [new bill](#) implementing MiFID2 into Belgian law before the Belgian Parliament. The bill covers most aspects of the implementation into Belgian law, although some provisions of MiFID2 and its

delegated acts will also be transposed by way of royal decrees to be published at a later stage.

The Belgian legislator has opted for a faithful transposition of MiFID2 into Belgian law. At this stage, the bill does not contain any new gold-plating provision, but maintains existing local rules which go beyond the requirements of MiFID2 (e.g. the requirement that all directors and managers of an investment firm must be natural persons or powers of the FSMA to ban or restrict the marketing of certain products to retail clients, going beyond the product intervention rules of MiFIR).

#### **Royal decree setting out fees due for registering security interests in new National Pledge Register published**

In July 2013 Belgium adopted a new law on security interests that sought to modernise the legal framework for security interests, and in particular to allow for inventory security to be perfected by registering the security in a National Pledge Register.

The law has not yet entered into force, but a [royal decree](#) has been published setting out the fees that will be due when security interests are registered in the new National Pledge Register. These fees will be proportionate to the underlying secured liabilities but will be capped at EUR 500 per registration. This amount is potentially much lower than the registration duties due with respect to floating charges under the current legal framework (these registration duties amount to approximately 0,6% of the obligations secured by the floating charge).

The royal decree also sets out the fees due with respect to the registration of a release of security and an amendment to the security, and the fees due for each consultation of the register by third parties.

#### **CNMV consults on draft circular on obligations of investment firms in terms of disclosure on their websites**

The Spanish National Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has launched a public [consultation](#) on a draft circular on the obligations of investment firms in terms of disclosure on their websites in relation to corporate governance and remuneration policies.

The proposed circular defines the obligations of investment firms regarding disclosure on their websites related to corporate governance and remuneration established in Article 31 ter of Royal Decree 217/2008 on the legal regime

for investment firms. It states that the information must be complete, clear, comprehensible and up to date as well as being easily accessible from the website's homepage.

The circular sets out the content to be included in the section regarding corporate governance and remuneration policies, which includes articles of association, regulations, organisational structure, risk control procedures, internal control mechanisms, the composition of the board and total remuneration paid. Additionally, it states that the access to such information must be free of charge and it must be possible to download and print the information.

In addition, the proposed circular amends CNMV Circular 7/2008 of 26 November, which covers the accounting standards applicable to investment firms and collective investment scheme management companies, in order to incorporate the new accounting treatment applicable to intangible assets. As a consequence of the proposed amendment, the useful life of such assets becomes definite and, accordingly, they are amortisable. When their useful life cannot be reliably estimated, they will be amortised over a period of 10 years.

Comments are due by 10 October 2017.

#### **German Federal Office of Administration publishes FAQs on transparency register**

The German Federal Office of Administration (Bundesverwaltungsamt) has published a set of [FAQs](#) regarding the transparency register under sections 18 to 26 of the German Anti Money Laundering Act (Geldwäschegesetz, GwG). The purpose of the transparency register is to record and provide information on beneficial ownership.

Notifications to the register have to be made from 1 October 2017. As of 27 December 2017 it will be possible to access the register for information purposes.

#### **KRX implements updated overheated short selling rules**

The Korea Exchange (KRX) has implemented [updated overheated short selling rules and systems](#) with effect from 25 September 2017. The key changes include:

- amending criteria for designating overheated short selling issues to designate such issues in a timely manner; and
- prohibiting short selling of the detected issues on the following day as same as the existing rules.

#### **HKMA issues circular on Global Code of Conduct Standards and Practices for Wholesale Foreign Exchange Market**

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to provide guidance on steps for authorised institutions to follow the Global Code of Conduct Standards and Practices for the Wholesale Foreign Exchange Market (FX Global Code).

The FX Global Code, representing a single set of global principles of good practices for the wholesale FX market, was published on 25 May 2017. It is intended to promote the integrity and effective functioning of the wholesale FX market by providing principle-based guidance covering areas of ethics, governance, execution, information sharing, risk management and compliance, as well as confirmation and settlement. Together with the FX committees in other jurisdictions, the Treasury Markets Association (TMA) has endorsed the FX Global Code, and it has revised the TMA Code of Conduct and Practice (TMA Code) by replacing the FX part in the TMA Code with the FX Global Code.

In accordance with the HKMA Supervisory Policy Manual module CG-6 'Competence and Ethical Behaviour', authorised institutions are advised, among other things, to maintain adequate systems of control to ensure that their staff members observe any codes of conduct or standards issued by professional bodies of which they are members or associates, including the TMA Code. After the incorporation of the FX Global Code into the TMA Code, the HKMA expects all authorised institutions to take appropriate steps to:

- review their practices in light of the FX Global Code and ensure that they maintain adequate systems of control to support their observance of the FX Global Code; and
- demonstrate such status by issuing and providing to the TMA the Statement of Commitment – the TMA will serve as a local register for financial institutions in Hong Kong that have issued and provided the TMA with the Statement of Commitment.

The HKMA encourages authorised institutions to promote the FX Global Code to counterparties and customers to which the FX Global Code should apply.

#### **HKMA revises local implementation timeline of BCBS interest rate risk in banking book standards**

The HKMA has issued a [circular](#) to authorised institutions informing them of the revision to the implementation timeline of new Basel Committee on Banking Supervision

(BCBS) standards on interest rate risk in the banking book (IRRBB) in Hong Kong.

The BCBS standards which were scheduled to be implemented by 1 January 2018 will now be implemented by 1 January 2019, i.e. banks should be ready to measure and report their IRRBB exposures using the proposed standardised framework in 2019, with the first report based on data as at 31 December 2018.

The implementation timeline has been revised in response to the feedback provided by the banking industry during a consultation exercise conducted by the HKMA in June 2017. In particular, the industry highlighted a number of new requirements in the IRRBB standards requiring system changes that would be challenging to implement by 1 January 2018.

#### **SFC issues circular to announce launch of regulatory sandbox**

The Securities and Futures Commission (SFC) has issued a [circular](#) to announce the launch of the SFC Regulatory Sandbox. The Sandbox is intended to provide a confined regulatory environment for qualified firms to operate regulated activities under the Securities and Futures Ordinance (SFO) before financial technology (fintech) is used on a fuller scale.

The SFC recognises that firms utilising innovative technologies and demonstrating a genuine and serious commitment to carry on regulated activities through the use of fintech may increase the range and quality of products and services for investors and benefit the Hong Kong financial services industry. The Sandbox would enable qualified firms, through close dialogue with and supervision by the SFC under the licensing regime, to identify and address any risks or concerns relevant to their regulated activities. The salient features of the Regulatory Sandbox are the following:

- eligibility – the Sandbox is available to both licensed corporations and start-up firms that intend to carry on a regulated activity under the SFO. The qualified firm must be fit and proper, utilise innovative technologies and be able to demonstrate a genuine and serious commitment to carry on regulated activities through the use of fintech;
- licensing conditions – in order to minimise risks to investors during the period when a qualified firm operates in the Sandbox, the SFC may impose licensing conditions;

- closer monitoring and supervision by the SFC – qualified firms may be placed under closer monitoring and supervision by the SFC when they operate in the Sandbox;
- investor protection measures – qualified firms are expected to have adequate investor protection measures in place to address actual or potential risks or concerns identified when they operate in the Sandbox; and
- exit – once a qualified firm has demonstrated that its technology is reliable and fit for purpose, and its internal control procedures have adequately addressed the risks identified, the firm may apply to the SFC for removal or variation of some or all of the licensing conditions imposed, so that it may conduct regulated activities and be subject to supervision by the SFC on the same basis as licensed corporations which operate outside the Sandbox.

The SFC expects the great majority of applicants applying for a corporate licence under the SFO, including firms which make use of fintech in conducting their regulated activities, such as robo-advisors, to go through the normal licence application process without the need to enter the Sandbox.

#### **SFC clarifies 'relevant industry experience' requirement for responsible officers under competence guidelines**

The SFC has issued a [circular](#) to clarify its approach in assessing, under the Guidelines on Competence, the 'relevant industry experience' requirement for an individual applying to be a responsible officer.

The competence guidelines set out the matters that the SFC would normally consider in assessing whether a person is competent to carry on any regulated activity under the SFO. 'Relevant industry experience' is one of the four basic elements that an applicant has to fulfil to become a responsible officer.

In assessing whether a responsible officer applicant has the 'relevant industry experience', the SFC does not take a restrictive or narrow view. An applicant's previous experience may be considered relevant if the substance of such experience is directly relevant or crucial to the regulated activity carried on by his/her new principal and the role that the applicant will undertake. The SFC considers all relevant factors in assessing each responsible officer application, including the new principal's business model, governance structure, and the competence of all its key personnel.



### **SFC issues circular on introduction of six-month application lapse policy for exemption applications under Part XV of SFO**

The SFC has issued a [circular](#) to applicants seeking an exemption under section 309(2) of the SFO from the SFC of the introduction of an application lapse policy to be adopted with effect from 1 October 2017 (effective date).

The circular informs applicants seeking an exemption that all applications for exemption under section 309(2) of the SFO received by the SFC on or after the effective date will be processed as follows:

- if six months have elapsed from the date of receipt of an exemption application by the SFC and the applicant has not provided all relevant information to the SFC, the application will lapse subject to the SFC's right to grant an extension at its sole discretion – the application fee in respect of the lapsed application will not be refunded to the applicant; and
- once an exemption application has lapsed, the applicant will need to make a new application if it wishes to apply for exemption for the same financial product, whereupon it will need to pay the application fee for the new application and repeat the application procedures.

All applications for exemption under section 309(2) of the SFO received by the SFC before the effective date in respect of which no exemption has been granted will be processed as follows:

- the six-month application lapse period will be deemed to have commenced on the effective date;
- if six months have elapsed from the effective date and the applicant has not provided all relevant information to the SFC, the application will lapse subject to the SFC's right to grant an extension at its sole discretion – the application fee in respect of the lapsed application will not be refunded to the applicant; and
- once an exemption application has lapsed, the applicant will need to make a new application if it wishes to apply for exemption for the same financial product, whereupon it will need to pay the application fee for the new application and repeat the application procedures.

The SFC believes that this six-month application lapse policy initiative should encourage applicants to respond to requisitions in a timely fashion.

### **HKEX consults on proposed rule changes relating to capital raisings by listed issuers and its delisting framework**

The Stock Exchange of Hong Kong Limited (SEHK), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has published two consultation papers proposing changes to the listing rules relating to capital raisings by listed issuers and its delisting framework.

Under the [consultation on capital raisings by listed issuers](#), the SEHK proposes to introduce targeted measures in the listing rules to address potential abuses related to large scale deeply discounted capital raising activities. The consultation paper also contains proposals to address specific issues concerning other capital raising and share issuance transactions. The proposals are intended to prohibit market practices that may jeopardise an orderly, fair and informed market for the trading and marketing of securities and to ensure fair and equal treatment of all shareholders.

Under the [consultation on delisting and other rule amendments](#), the SEHK proposes changes to the listing rules to improve the effectiveness of the delisting framework and address the issue of prolonged suspension of trading in issuers' listed securities. This is in the interest of maintaining market quality and reputation.

Comments on the consultation papers are due by 24 November 2017.

### **ASIC issues guidance on initial coin offerings in Australia**

The Australian Securities and Investments Commission (ASIC) has released an [information sheet \(INFO 225\)](#) which provides guidance about the potential application of the Corporations Act 2001 to businesses that are considering raising funds through an initial coin offering (ICO). Key items covered by INFO 225 include:

- what is an ICO and its legal status?
- when could an ICO be an offer of a managed investment scheme?
- when could an ICO be an offer of a share in a company?
- when could an ICO be an offer of a derivative?
- when could an ICO be an offer of a non-cash payment facility?

- when could a platform for offering ICOs become a financial market or crowd-sourced funding platform regulated by ASIC?
- when would laws prohibiting misleading or deceptive conduct apply to an ICO?

ASIC is aware of the global interest in the use of ICOs by businesses to raise funds. A number of international regulators have issued guidance on the application of their securities and financial services laws on ICOs.

ASIC recognises that ICOs have the potential to make an important contribution to the options available to businesses to raise funds and to investment options available to investors, but has cautioned that ICOS must be conducted in a manner that promotes investor trust and confidence, and complies with the relevant laws. Whether the Corporations Act applies to an ICO will depend on the type of ICO offering and what rights attach to the coins from the ICO itself, underlying coins or tokens used in the ICO.

#### **Federal Reserve Board seeks comments on proposal to produce three new reference rates based on overnight repo transactions secured by Treasuries**

The Federal Reserve Board (FRB) has requested public comment concerning a [proposal](#) for the Federal Reserve Bank of New York, in cooperation with the Office of Financial Research, to produce three new reference rates based on overnight repurchase agreement (repo) transactions secured by Treasuries.

The most comprehensive of the rates would be titled the Secured Overnight Financing Rate (SOFR) and would be a broad measure of overnight Treasury financing transactions. It was selected by the Alternative Reference Rates Committee as its recommended alternative to US dollar LIBOR and would include tri-party repo data from Bank of New York Mellon (BNYM) and cleared bilateral and GCF Repo data from the Depository Trust & Clearing Corporation (DTCC).

Another proposed rate, to be called the Tri-party General Collateral Rate (TGCR), would be based solely on triparty repo data from BNYM. The final rate, to be called the Broad General Collateral Rate (BGCR), would be based on the triparty repo data from BNYM and cleared GCF Repo data from DTCC.

Comments on the proposal are requested within 60 days of publication in the Federal Register, which is expected shortly.

#### **Federal banking agencies propose simplification of regulatory capital rules**

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency are requesting comments on a [proposed rule](#) that would simplify several requirements in the agencies' regulatory capital rules. Specifically, the proposed rule simplifies the capital treatment for certain acquisition, development, and construction loans, mortgage servicing assets, certain deferred tax assets, investments in the capital instruments of unconsolidated financial institutions, and minority interest.

Most aspects of the proposed rule would apply only to banking organizations that are not subject to the 'advanced approaches' in the capital rule, which are generally firms with less than USD 250 billion in total consolidated assets and less than USD 10 billion in total foreign exposure.

Comments on this proposal will be accepted for 60 days after publication in the Federal Register, which is expected shortly.

#### **SEC Chairman publishes cybersecurity statement and announces hacking incident**

Securities and Exchange Commission (SEC) Chairman Jay Clayton has issued a [cybersecurity statement](#) discussing the importance of cybersecurity to the agency and market participants, and describing the SEC's approach to cybersecurity as an organization and as a regulatory body.

The SEC has simultaneously acknowledged learning about a 2016 hacking incident related to its Electronic Data Gathering Analysis and Retrieval (EDGAR) corporate filing system.

US companies use the EDGAR system to, among other things, electronically submit annual reports, earnings reports, and similar information for public dissemination and disclosure. The SEC believes that the incident may have resulted in cybercriminals obtaining material non-public information about upcoming company announcements (e.g., financial results), which may have allowed them to profit by trading in a company's stock.

Among other things, the statement provides an overview of the SEC's collection and use of data, highlights key cyber risks faced by the agency, and discusses recent SEC enforcement actions related to cybersecurity.

## RECENT CLIFFORD CHANCE BRIEFINGS

### EU and US sign bilateral agreement on (re)insurance prudential measures

This briefing paper provides an update on the bilateral agreement on prudential measures regarding (re)insurance recently signed by the EU and US.

Amongst other things, the agreement progressively removes collateral requirements for EU reinsurers active in the US and clarifies responsibilities for their supervision, and removes the Solvency II requirements for US groups active in the EU at the ultimate parent undertaking level for non-European activities.

[https://www.cliffordchance.com/briefings/2017/09/update\\_eu\\_and\\_us\\_sign\\_bilateral\\_agreement.html](https://www.cliffordchance.com/briefings/2017/09/update_eu_and_us_sign_bilateral_agreement.html)

### Asia Anti-Bribery and Corruption Update 2017

This briefing paper discusses developments relating to anti-bribery and corruption in Asia.

Jurisdictions covered include Australia, Hong Kong, Japan, Malaysia, China, Singapore, South Korea and actions taken by the US as they relate to Asia. In summary, most jurisdictions are continuing to strengthen their laws and/or increase corporate prosecutions.

[https://www.cliffordchance.com/briefings/2017/09/asia\\_anti\\_bribery\\_and\\_corruption\\_update\\_2017.html](https://www.cliffordchance.com/briefings/2017/09/asia_anti_bribery_and_corruption_update_2017.html)

### Revisions to LMA trading documents effective 25 September 2017

The Loan Market Association (LMA) has published revised versions of its Standard Terms and Conditions for Par and Distressed Trade Transactions (Bank Debt/Claims), Participation Agreements and the LMA Secondary Trading Documentation User Guide. The LMA has also published a summary of changes to the rules governing plans and individual retirement accounts under the US Employee Retirement Income Security Act of 1974 in a document entitled 'ERISA Introduction and Explanation of Recent Changes'.

This briefing paper summarises the main changes and discusses why they are important to the secondary market loan trading community.

[https://www.cliffordchance.com/briefings/2017/09/revisions\\_to\\_lmatradingdocumentseffective2.html](https://www.cliffordchance.com/briefings/2017/09/revisions_to_lmatradingdocumentseffective2.html)

### Criminal Finances Act 2017 – New tax offences enter into force and starting gun fired for financial crime changes

On 30 September, new corporate offences in relation to failure to prevent the facilitation of tax evasion will enter into force. However, the Criminal Finances Act 2017, which introduces them, also contains a raft of other changes to UK financial crime frameworks. When these enter into force (expected to be later in 2017), they will have significant practical implications for financial crime compliance programmes. Their arrival coincides with a period of close scrutiny and strong enforcement activity by authorities worldwide.

This briefing paper examines the new corporate offences and the other imminent changes to financial crime frameworks. It also looks further ahead to measures which governments in the UK and further afield are considering introducing and summarises the approaches being taken by enforcement authorities in some key jurisdictions.

[https://www.cliffordchance.com/briefings/2017/09/criminal\\_finances\\_act\\_2017\\_starting\\_gun\\_fire.html](https://www.cliffordchance.com/briefings/2017/09/criminal_finances_act_2017_starting_gun_fire.html)

### Amendments to the European Union (Withdrawal) Bill – Key trends

The European Union (Withdrawal) Bill is one of the most controversial pieces of draft legislation in recent memory, provoking accusations of executive overreach and resulting in MPs from all the main parties proposing a large number of amendments on a range of issues.

This briefing paper sets out the key trends in the amendments proposed so far.

[https://www.cliffordchance.com/briefings/2017/09/amendments\\_to\\_the\\_european\\_union\\_withdrawal.html](https://www.cliffordchance.com/briefings/2017/09/amendments_to_the_european_union_withdrawal.html)

### Arrest of former UBS trader during US travel reveals DOJ's continued focus on prosecutions of foreign nationals for alleged market abuse

This briefing paper discusses the recent arrest by US authorities of Andre Flotron, a Swiss citizen and former UBS precious metals trader, for commodities fraud and spoofing.

The briefing highlights the substance and extraterritorial scope of US criminal laws, and the US authorities' continued focus on investigating non-US citizens for conduct that impacts US markets.

[https://www.cliffordchance.com/briefings/2017/09/arrest\\_of\\_formerubstraderduringustrave.html](https://www.cliffordchance.com/briefings/2017/09/arrest_of_formerubstraderduringustrave.html)

**Equifax hack, SEC data breach bring issuer disclosure obligations to the forefront**

This briefing paper discusses the recent Equifax data breach and the necessity of adequate disclosure by public companies of material cybersecurity-related events.

[https://www.cliffordchance.com/briefings/2017/09/equifax\\_hack\\_secdatabreachbringissue.html](https://www.cliffordchance.com/briefings/2017/09/equifax_hack_secdatabreachbringissue.html)

**FinCEN warns US financial institutions to be alert to Venezuelan public corruption and money laundering**

This briefing paper discusses the advisory recently issued by the Treasury Department's Financial Crimes Enforcement Network (FinCEN) warning US financial

institutions to apply particular scrutiny on transactions involving Venezuelan government contracts.

[https://www.cliffordchance.com/briefings/2017/09/fincen\\_warns\\_us\\_financialinstitutionstob.html](https://www.cliffordchance.com/briefings/2017/09/fincen_warns_us_financialinstitutionstob.html)

**CFTC updates self-reporting and cooperation guidelines**

This briefing paper discusses an Enforcement Advisory recently updated by the US Commodity Futures Trading Commission (CFTC) outlining the new self-reporting and cooperation program for companies and individuals.

[https://www.cliffordchance.com/briefings/2017/09/cftc\\_updates\\_self-reportingandcooperatio.html](https://www.cliffordchance.com/briefings/2017/09/cftc_updates_self-reportingandcooperatio.html)

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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](http://www.cliffordchance.com)

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