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Briefing note

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EBA publishes methodology for 2018 EU-wide stress test

The European Banking Authority (EBA) has published its methodology for the 2018 EU-wide stress test. The stress test will be launched in January 2018, but the EBA has published the methodology ahead of the formal launch to provide banks with sufficient time to prepare for the 2018 exercise.

The EU-wide stress test is intended to provide supervisors, banks and other market participants with a common analytical framework to compare and assess the resilience of EU banks and the EU banking system to shocks. Banks will be required to stress a common set of risks, project the effect of the scenario on net interest income and stress P&L and capital items not covered by other risk types.

The methodology document sets out all of the relevant risk areas and, for the first time, incorporates IFRS 9 accounting standards. Among other things, the methodology defines how banks should calculate the stress impact of the common scenarios, provides guidance on performing the stress-test, and templates for collecting data as well as for publicly disclosing the outcome of the exercise.

ESAs Joint Committee publishes 2018 work programme

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the EBA, the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), has published its work programme for 2018.

Next year, under ESMA's chairmanship, the Joint Committee intends to focus on:

- consumer protection, including the implementation of PRIIPS, the adequacy of cross-border supervision and fintech developments;
- cross-sectoral risk analysis and assessment;
- the anti-money laundering regime;
- supplementary supervision of financial conglomerates; and
- the revised Securitisation Regulation, which amends the European Market Infrastructure Regulation (EMIR).

The Joint Committee also expects to continue its cross-sectoral work relating to Brexit, corporate reporting according to new IFRS standards and the performance of retail investment products.

BRRD: EU Commission adopts remaining RTS

The EU Commission has adopted two Delegated Regulations with regard to regulatory technical standards (RTS) under the Bank Recovery and Resolution Directive (BRRD).

The RTS under Article 74 BRRD further specify criteria relating to the methodology for the valuation of the difference between the treatment that shareholders or creditors of an institution under resolution receive and the treatment that they would have received had the institution entered normal insolvency proceedings. Among other things, the RTS specify the reference date for the valuation, requirements on the use of discounting and the use of information which becomes available only after the date of valuation, and set out that a first step to assessing the difference in treatment must be to establish an inventory of claims and assets.

The RTS on valuation under Article 36(15) BRRD further specify:

- the methodology for assessing the value of the assets and liabilities of an institution in a resolution scenario;
- the separation of the valuations under Articles 36 and 74 BRRD; and

- the methodology for calculating and including a buffer for additional losses in the provisional valuation.

Both sets of RTS will enter into force on the twentieth day after their publication in the Official Journal.

EU Council endorses agreement on proposed Directive on bank creditor hierarchy and Regulation on IFRS 9 and large exposures

The Permanent Representatives Committee (COREPER) has, on behalf of the EU Council, approved an agreement with the EU Parliament on the proposed Directive amending the BRRD as regards bank creditor hierarchy and the draft Regulation on transitional arrangements to phase in the regulatory capital impact of IFRS 9, which will amend the Capital Requirements Regulation (CRR).

The proposal to amend the BRRD relates to the ranking of unsecured debt instruments in insolvency proceedings and would establish a new class of 'non-preferred' senior debt, eligible to meet the subordination requirement of the total-loss absorbing capacity (TLAC) standard.

The proposed Regulation is intended to establish a transitional period in order to mitigate the impact on own funds of the introduction of International Financial Reporting Standard (IFRS) 9, which should be used by EU banks in their financial statements for financial years starting on or after 1 January 2018. Among other things, the text approved by COREPER will:

- allow banks to add back to their Common Equity Tier 1 (CET1) capital a portion of the increased expected credit loss (ECL) provisions as extra capital during a five-year transitional period; and
- provide a three year phase-out of an exemption from the large exposure limit for banks' exposures to public sector debt denominated in the currency of any other Member State.

Provisional agreement with the EU Parliament was reached on 25 October 2017. The Parliament is now expected to approve the Regulation at first reading and the text will then be submitted to the Council for formal adoption.

CRR: EBA publishes guidelines on treatment of connected clients

The EBA has published final guidelines on the treatment of connected clients under the CRR. The guidelines are intended to support financial institutions in identifying all possible connections among their clients and cover the two types of connection that lead to clients being regarded as a single risk: control relationships and economic dependencies.

The guidelines indicate that institutions should use their clients' consolidated financial statements when assessing the existence of control and provide a list of indicators of control to use when assessing clients to which EU accounting rules do not apply. In relation to economic dependencies, the guidelines confirm the requirement to consider two or more clients a single risk when funding or repayment difficulties of one client are likely to affect (an)other client(s). To this end, the guidelines provide a list of situations that should be considered when assessing economic dependencies.

Finally, although the guidelines expect institutions to identify all control relationships and economic dependencies among their clients, the EBA recognises the difficulty of this task and requires that institutions take a proportionate approach and investigate more thoroughly in cases where the sum of all exposures to one individual client exceeds 5% of Tier 1 capital.

EU Commission requests EBA advice on measures to address insufficient provisioning for newly originated loans that turn non-performing

The EU Commission has requested technical advice from the EBA on the potential impact for EU banks from adopting statutory prudential backstops in the form of compulsory and time-bound prudential deductions of non-performing loans (NPLs) from own funds. These proposed backstops are intended to address potential under-provisioning of new loans that turn non-performing and thereby prevent the future build-up of NPL stocks without sufficient coverage across Member States and banks.

In particular, the EU Commission is inviting the EBA to:

- provide country-by-country estimates on additional and/or accelerated capital needs of EU banks caused by the backstops;
- assess the impact under the EU Commission's two proposals for the backstops' design and calibration;
- carry out a sensitivity analysis for the key parameters of the backstops;
- assess the potential impact of the backstops on EU banks' profitability;
- assess the potential impact of the backstops if applied in an adverse economic scenario; and

- highlight any technical aspects relevant to the functioning, scope, design and calibration of the backstops.

The deadline for the EBA to submit its technical advice is 27 November 2017. Due to this short timeframe, the EU Commission has stated it is not expecting the EBA to collect new data or publicly consult on its findings.

MiFIR: EU Commission adopts RTS on the trading obligation for derivatives

The EU Commission has adopted a Delegated Regulation with regard to RTS on the trading obligation for certain derivatives under MiFIR.

The RTS set out which derivatives should only be traded on an EU trading venue or a non-EU trading venue covered by a Commission equivalence decision. EU trading venues include regulated markets, multilateral trading facilities (MTFs), and organised trading facilities (OTFs). Specifically, the RTS identify certain fixed-to-float IRS denominated in EUR, GBP and USD and two Index CDS that should be subject to the trading obligation.

The RTS are subject to scrutiny by the EU Parliament and EU Council.

EMIR: ESMA consults on draft guidelines on the calculation of derivative positions by trade repositories

ESMA has launched a consultation on draft guidelines under EMIR on the calculation of derivative positions by trade repositories (TRs).

The draft guidelines aim to provide specific information on the aggregation of certain data fields and how those should be calculated by TRs before submitting the data to relevant authorities. The draft guidelines aim to ensure consistency of position calculations across TRs, in relation:

- to the time of calculations;
- the scope of the data to be used in calculations; and
- calculation methodologies.

The guidelines have also been designed to ensure that a consistent methodology is used to calculate collateral relating to positions.

Comments to the consultation are due by 15 January 2018. ESMA expects to publish a final report of the guidelines during the first half of 2018.

EMIR review: EU Council publishes compromise text

The EU Council Presidency has published a compromise text on the proposed regulation amending 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 (REFIT proposal).

SFTR: EU Commission consults on draft delegated regulation on fees charged to trade repositories by ESMA

The EU Commission has launched a consultation on a draft Delegated Regulation under the Regulation on Securities Financing Transactions (SFTR) with regard to fees charged by ESMA to trade repositories (TRs).

Under Article 11(1) of the SFTR, ESMA shall charge fees to TRs that fully cover ESMA's necessary expenditure relating to the registration, recognition and supervision of TRs.

Amongst other things, the draft delegated regulation sets out:

- the costs to be covered by the fees;
- the types of fees to be charged to TRs under EMIR; and
- the payment modalities and possible reimbursement of fees.

Comments are due by 14 December 2017.

MMF Regulation: ESMA publishes final report on money market funds rules

ESMA has published its final report on technical advice, draft implementing technical standards (ITS) and guidelines on stress test scenarios carried out by money market fund (MMF) managers under the Money Market Funds Regulation (MMF Regulation). The final report relates to asset liquidity and credit quality, the establishment of a reporting templates and stress test scenarios carried out by MMF managers.

The package of measures includes:

- technical advice on:
  - liquidity and credit quality requirements applicable to assets received as part of a reverse repurchase agreement; and
  - the criteria for the validation of credit quality assessment methodologies and the criteria for quantification of the credit risk and the relative risk of default of an issuer and of the instrument in which the MMF invests, as well as the criteria to

establish qualitative indicators on the issuer of the instrument;

- ITS on a reporting template containing all the information managers of MMFs are required to send to the competent authority of the MMF; and
- guidelines on establishing common reference parameters of the stress test scenarios to be included in the stress tests that managers of MMFs are required to conduct.

ESMA has transmitted the technical advice to the EU Commission, alongside the ITS which have been submitted to the Commission for endorsement. ESMA plans to work on guidelines and IT guidance for the information information included in the ITS, so that managers will have the necessary information to complete the reporting template.

ESMA expects to further calibrate its guidelines on stress test scenarios and publish an update to coincide with the publication of the guidelines and IT guidance accompanying the information included in the ITS.

EU Commission consults on institutional investors and asset managers' duties regarding sustainability

The EU Commission has published a consultation paper on how asset managers and institutional investors could include environmental, social and governance factors when taking decisions.

In 2016 the Commission appointed a high-level expert group (HLEG) to support the development of an overarching and comprehensive EU strategy on sustainable finance. In July 2017 the HLEG's interim report proposed eight early recommendations for policy action. Amongst other recommendations, the HLEG suggested clarifying that the duties of institutional investors and asset managers explicitly integrate material environmental, social and governance (ESG) factors and long-term sustainability.

The consultation aims to gather and analyse the necessary evidence to assist the Commission in determining possible action to improve the assessment and integration of sustainability factors in the relevant entities' decision-making process.

Comments are due by 22 January 2018.

Credit ratings agencies: ESMA reports on endorsement regime and publishes technical advice on equivalence

ESMA has published final guidance on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies (CRA) Regulation.

The guidance focuses on:

- the obligations of the endorsing CRA, in particular that an EU CRA endorsing a credit rating must be able to demonstrate that the conduct of the third-country CRA that elaborated the credit rating fulfils requirements that are at least as stringent as EU requirements;
- ESMA's supervisory powers, clarifying the power to request periodical information directly from an endorsing EU CRA about an endorsed credit rating and the conduct of the third-country CRA; and
- the requirement for endorsing CRAs to have an objective reason for elaborating a rating outside of the EU.

The guidelines will come into force on 1 January 2019.

ESMA has also published technical advice to the EU Commission on regulatory equivalence under the CRA Regulation. The technical advice assesses the legal and supervisory framework of the nine jurisdictions that are currently eligible for equivalence and endorsement: Argentina, Australia, Brazil, Canada, Hong Kong, Japan, Mexico, Singapore and the United States. ESMA has assessed that the supervisory frameworks in Argentina, Australia, Brazil and Singapore did not fully meet the requirements, but has invited the Commission to consider the possibility of granting a transitional period to allow the relevant authorities to further develop their regulatory regimes. A final determination on equivalence will be made by the EU Commission.

Fintech: ESMA publishes statements on ICOs

ESMA has published two statements on initial coin offerings (ICOs); one on risks of ICOs for investors and one on the rules applicable to firms involved in ICOs.

ESMA's first statement warns investors that ICOs are risky and highly speculative investments because the price of the coin or token is typically extremely volatile, and ICOs are also vulnerable to the risk of fraud or money laundering. Additionally, the statement notes that ICOs may fall outside of the scope of EU laws and regulations depending on how they are structured, so investors may not be able to benefit from the protection that these laws and regulations provide.

ESMA's second statement alerts firms involved in ICOs to the need to meet relevant regulatory requirements. The statement notes that where ICOs qualify as financial instruments, it is likely that firms involved in ICOs conduct regulated investment activities, in which case they need to comply with the relevant legislation, including:

- the Prospectus Directive;
- the Markets in Financial Instruments Directive (MiFID);
- the Alternative Investment Fund Managers Directive (AIFMD); and
- the Fourth Anti-Money Laundering Directive.

ESMA stresses that firms involved in ICOs should give careful consideration as to whether their activities constitute regulated activities.

PSD2: RTS on passport notifications published in Official Journal

Commission Delegated Regulation (EU) 2017/2055 setting out RTS for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions has been published in the Official Journal.

The RTS specify the framework for passporting under the recast Payment Services Directive (PSD2) and set out, amongst other things, the method, means and details of cooperation between competent authorities and, in particular, the scope and treatment of information to be submitted, including common terminology and standard notification templates.

The Regulation will enter into force on 1 December 2017.

ECB Regulations and Decisions amending SIPS oversight framework published in Official Journal

Regulations and Decisions of the European Central Bank (ECB) relating to oversight of systemically important payment systems (SIPS) have been published in the Official Journal.

Regulation (EU) 2017/2095 amends Regulation (EC) No 2157/1999 on the powers of the ECB to impose sanctions in its various fields of competence with respect to the oversight of SIPS and ensure that sanctions can be effectively imposed for oversight infringements. The amendments have been developed following the first comprehensive assessment under Regulation (EU) No 795/2014 on the oversight requirements for SIPS.

Regulation (EU) 2017/2094 amends Regulation 795/2014 to update the oversight framework in view of the findings of the assessment and to implement the guidance of the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) on the Principles for financial market infrastructures insofar as the guidance relates to SIPS. Two ECB Decisions have also been published in the Official Journal:

- Decision (EU) 2017/2098 specifies detailed rules and procedures for the imposition of corrective measures, which are not laid down in Regulation 795/2014; and
- Decision (EU) 2017/2097 sets out the methodology for calculating sanctions for infringements of the oversight requirements for SIPS, which has been drafted under the empowerments in Regulation 795/2014.

The Regulations and Decisions will enter into force on 6 December 2017.

FCA consults on regulatory fees and levies for 2018/19

The Financial Conduct Authority (FCA) has published a consultation paper (CP17/38) on regulatory fees and levies for 2018/19. In particular, the FCA is proposing changes to:

- the tariff data used to calculate insurers' FCA periodic fees and the Financial Ombudsman Service annual levies;
- the scope of the financial penalty scheme (FPS);
- the definition of credit-related income, which is the basis for calculating consumer credit fees;
- fees for Northern Ireland credit unions, co-operatives and community benefit societies which will fall in scope of the FCA fees structure in 2018;
- administration costs, by charging firms which require paper invoices instead of using the automated invoicing system; and
- the methodology for calculating the levy which funds the debt advice work of the Money Advice Service.

Comments are due by 15 January 2018.

BaFin publishes consumer warning regarding risks of initial coin offerings

The German Federal Financial Supervisory Authority (BaFin) has published a warning for consumers that the acquisition of crypto currency coins as part of initial coin offerings (ICOs) may result in substantial risks for investors.

In particular, BaFin's warning addresses the insufficient information provided compared to regulated prospectuses

and the systemic vulnerability of ICOs to fraud, money laundering and terrorist financing.

BaFin holds administrative hearing on general decree regarding waiver of quoting obligation for systematic internalisers

BaFin has published a draft general decree providing for a waiver of the quoting obligation for systematic internalisers pursuant to Art. 18 paragraph 2 sentence 2 in connection with Art. 9 paragraph 1 MiFIR.

With MiFIR coming into force on 3 January 2018, systematic internalisers are generally required to provide quotes to their clients upon request. This also applies in relation to certain illiquid products set out in Art. 18 paragraph 2 sentence 1 MiFIR. BaFin has chosen to issue a waiver of this obligation for bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market.

Feedback on the draft general decree may be provided until 1 December 2017. The final general decree will be issued shortly thereafter.

Bank of Spain publishes draft guidelines on capital and liquidity self-assessment processes

The Bank of Spain has published a draft of its new guidelines on capital and liquidity self-assessment processes.

The new guidelines would amend the guidelines of the Bank of Spain on the capital assessment process of credit entities of 25 June 2008 in order to adapt them to the European Banking Authority (EBA) guidelines on ICAAP and ILAAP information collected for SREP purposes dated 10 February 2017. The main amendments are an update of the structural interest rate valuation, the introduction of a risk appetite framework, the development of the liquidity self-assessment process and the recommendation of enclosing an audit report on the design and consistency of the capital and liquidity self-assessment processes.

The new Bank of Spain guidelines would be applicable to the capital and liquidity self-assessment report (IACL) as of 31 December 2017, to be submitted before 30 April 2018, of non-material entities under the direct supervision of the Bank of Spain.

The draft guidelines have been sent to the relevant associations and bodies so they can send comments by 1 December 2017.

CNMV issues communication on ESMA guidelines on transaction reporting, order record keeping and clock synchronisation under MIFID2 and MIFIR

The Spanish National Securities Market Commission, the (Comisión Nacional del Mercado de Valores) (CNMV), has published a communication regarding the ESMA guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID2 and MIFIR.

Article 50 of MiFID2 regulates clock synchronisation. This obligation has subsequently been developed by Delegated Regulation (EU) 2017/574, which supplements MiFID2 with regard to regulatory technical standards (RTS) relating to the level of accuracy of commercial clocks.

Article 26 of MiFIR regulates the obligation to report transactions, the development of which is included in Delegated Regulation (EU) 2017/590, which supplements MiFIR regarding RTS with respect to reporting transactions to competent authorities.

ESMA's guidelines are intended to develop common standards on the reporting obligations to be taken into account by investment firms, trading venues and authorised reporting mechanisms (ARMs) and, in general, ensure the consistent application of the provisions set out in Article 50 of MiFID2 and in Articles 25(2) and 26 of MiFIR.

The CNMV has indicated its intention to comply with the ESMA guidelines. The guidelines will be applicable as of 3 January 2018, coinciding with the entry into force of MiFID2 and MiFIR, and will be taken into account by the CNMV in the exercise of its securities markets supervisory tasks.

CNMV authorises applicable regime for deferred publication of details of transactions in non-equity instruments

The CNMV has, in accordance with Articles 11 and 21(4) of MiFIR, authorised the following regime for the deferred publication of the details of transactions in non-equity instruments:

- allowing the standard deferral (D+2) for the following types of transactions: (a) those which are large in scale compared with the normal market size for the instrument or category of instrument; (b) in instruments for which there is not a liquid market; and (c) those which are larger than the specific volume of the instrument, or category of instruments, which would expose liquidity providers to undue risk and take into account whether the relevant market participants are retail or wholesale investors;

- allowing the omission of the publication of the volume during an extended deferral period of four weeks; and
- for sovereign debt instruments, allowing the omission of the publication of the volume during an extended deferral period of four weeks and, after this period elapses, publishing aggregated transactions for an indefinite period of time.

Prior to its application, market operators and investment firms operating a trading venue shall notify CNMV of the details of the regime which they have decided to apply.

The deferred publication regime is also applicable to investment firms that conclude OTC transactions.

Polish Financial Supervision Authority issues communiqué on permission for banks to use their own models for valuation of options to calculate delta where options are secured back-to-back

The Polish Financial Supervision Authority (PFSA) has issued a communiqué highlighting the interpretation of Article 329(1) of the Capital Requirements Regulation (CRR) issued by the European Banking Authority, relating to the requirement to obtain permission to use own models of valuation of options to calculate delta in the case of options offered over the counter and on exchanges which do not publish the value of these ratios.

The PFSA notes that the interpretation unequivocally excludes options offered over the counter and concluded on exchanges which do not publish the values of delta ratios from the obligation to obtain the above-mentioned permission, if the bank is able to prove that these transactions are perfectly matching (i.e. back-to-back transactions).

MiFID2: Belgian Parliament adopts implementing law

The Belgian Parliament has adopted the law implementing MiFID2 into Belgian law.

The new law covers most aspects of MiFID2 and of its delegated acts, but certain features of MiFID2 will be transposed by way of royal decrees to be published at a later stage. Generally, the Belgian legislator has opted for a faithful transposition of MiFID2 into Belgian law.

The law amends the regime applicable to third country firms providing services in Belgium on a cross-border basis. In particular, the law expands the categories of persons to whom services may be rendered on a cross-border basis without triggering licensing requirements in Belgium. Pursuant to the new law, the cross-border regime will be available for the provision of services to all Belgian per se professional clients and eligible counterparties, and to certain expatriates. This national cross-border regime remains subject to prior notification to the FSMA and firms acting in Belgium under this regime must comply with Belgian rules of conduct.

The law provides that this national regime applies without prejudice to Articles 46 to 49 of MiFIR. If a third country firm is registered by ESMA in accordance with those provisions, then it will not have to comply with the specific Belgian formalities of the national cross-border regime. If the firm is not (yet) registered with ESMA, then the national regime will continue to be available.

The law should shortly be published in the Moniteur Belge. Most of the provisions of the law will enter into force on 3 January 2018.

PRIIPs Regulation: Luxembourg implementing bill published

A new bill (no. 7199) implementing Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation) has been lodged with the Luxembourg parliament.

The bill is intended to make the PRIIPs Regulation operational in Luxembourg by introducing into the Luxembourg legal framework provisions in relation to:

- the appointment of the Luxembourg financial sector regulator Commission de Surveillance du Secteur Financier (CSSF) (for CSSF supervised entities and other persons or entities (other than those that are CAA supervised)) and the Luxembourg insurance sector regulator Commissariat aux Assurances (CAA) (for CAA supervised entities only), as competent authorities to ensure compliance with the PRIIPs Regulation in Luxembourg;
- control and investigation powers of the CSSF and the CAA necessary for the exercise of their competences as well as a sanctions regime; and
- the implementation of the national discretion option under Article 32(2) of the PRIIPs Regulation, allowing SICARs (sociétés d'investissement en capital à risque) and undertakings for collective investment other than UCITS to establish a key investor information document in a form similar to the one for UCITS, rather than an information document in accordance with the PRIIPs Regulation.

SFC publishes conclusions on asset management regulation and point-of-sale transparency alongside further consultation on disclosure requirements for discretionary accounts

The Securities and Futures Commission (SFC) has published conclusions from its November 2016 consultation on proposals to enhance asset management regulation and point-of-sale transparency, and launched a further consultation on disclosure requirements for discretionary accounts.

Overall, the conclusions set out that the SFC will implement the enhancements to the Fund Manager Code of Conduct (FMCC) with certain modifications and clarifications. The key enhancements under the FMCC are in respect of securities lending and repurchase agreements, custody of fund assets, liquidity risk management and disclosure of leverage by fund managers.

To address conflicts of interest in the sale of investment products, the SFC will also implement its proposed approach to govern the use of the term 'independent' by intermediaries and to enhance the disclosure of trailer fees, commissions and other monetary benefits. Enhancements to the Code of Conduct for Persons Licensed by or Registered with the SFC are intended to address conflicts of interest in the sale of investment products and enhance disclosure at the point-of-sale by:

- restricting an intermediary from representing itself as 'independent' or using any term(s) with a similar inference when distributing an investment product if the intermediary receives:
  - commission or other monetary benefits in relation to distributing such investment product; or
  - any non-monetary benefits from any party or has close links or other legal or economic relationships with product issuers which are likely to impair its independence; and
- requiring an intermediary to disclose the maximum percentage of any monetary benefits received or receivable that are not quantifiable prior to or at the point of sale.

The revised FMCC and the amendments to the Code of Conduct for Persons Licensed by or Registered with the SFC will be gazetted on 17 November 2017. The revised FMCC will become effective twelve months later and the Code of Conduct amendments will become effective nine months later. The SFC intends to publish frequently asked questions to provide further guidance to the industry on the implementation of its proposals.

The SFC has also launched a two-month consultation on proposed requirements for disclosure of monetary and non-monetary benefits by licensed or registered persons to discretionary account clients. The consultation sets out draft amendments to the Code of Conduct to give effect to the proposals are set out in Appendix C to the conclusions paper.

Comments on the consultation are due by 15 January 2018.

Mainland individual investors to continue to benefit from trading gain tax exemption under Shanghai-Hong Kong Stock Connect

The Ministry of Finance (MoF), the State Administration of Taxation (SAT) and the China Securities Regulatory Commission (CSRC) have jointly issued the 'Circular on Continuing to Implement the Individual Income Tax (IIT) Policies for the Shanghai-Hong Kong Stock Connect Programme'. Under the circular, Mainland individual investors will continue to enjoy the exemption from IIT on gains of transfer price difference from trading the relevant shares listed on the Hong Kong Stock Exchange from 17 November 2017 to 4 December 2019.

MAS publishes guide to digital token offerings

The Monetary Authority of Singapore (MAS) has published a guide on the application of the securities laws administered by the MAS in relation to offers or issues of digital tokens in Singapore.

The publication of the guide follows the MAS' clarification on 1 August 2017 that if a digital token constitutes a product regulated under the securities laws administered by the MAS, the offer or issue of digital tokens must comply with the applicable securities laws.

Amongst other things, the guide sets out the following:

- that offers or issues of digital tokens may be regulated by the MAS if the digital tokens are a type of capital markets product under the Securities and Futures Act;
- that intermediaries that facilitate offers of issues of digital tokens may be subject to licensing requirements under the Securities and Futures Act;
- that the MAS Notices on Prevention of Money Laundering and Countering the Financing of Terrorism may apply to digital tokens;
- that digital tokens that perform functions which are not within the MAS' regulatory purview may be subject to

other legislation for combating money laundering and terrorism financing, such as the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, the Terrorism (Suppression of Financing) Act and various regulations giving effect to the United Nations Security Council Resolutions;

- various case studies illustrating how securities laws administered by the MAS may apply to offers or issues of digital tokens; and
- that any firm that is looking to apply technology in an innovative way to provide new financial services that are or are likely to be regulated by the MAS can apply for the regulatory sandbox.