

# International Regulatory Update

30 October – 03 November 2017

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

### International Regulatory Group Contacts

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

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

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

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

[Paul Landless](#) +65 6410 2235

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

### International Regulatory Update Editor

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

To email one of the above, please use [firstname.lastname@cliffordchance.com](mailto:firstname.lastname@cliffordchance.com)

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

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

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### EU Commission consults on legislative proposal for EU framework on crowdfunding

The EU Commission has published an [impact assessment](#) on its legislative proposal for an EU framework on crowd and peer to peer (P2P) finance.

The proposal sets out to enable crowdfunding activity to grow by making better use of the Single Market potential, specifically by:

- enabling platforms to scale cross-border, creating the required conditions such as licensing regimes that can be used across the EU without requiring further authorisation in each EU country; and
- providing platforms with a proportionate and effective risk management framework.

This initiative would contribute to meeting the Capital Market Union's objectives, particularly regarding making it easier for start-ups, scale-ups and other SMEs to access alternative finance.

The document is intended to provide a preliminary assessment of expected impacts of the legislative proposal

and has been published for consultation. A full impact assessment is currently being prepared to support the preparation of the initiative and to inform the EU Commission's decision.

Comments are due by 27 November 2017.

### Recovery and resolution of CCPs: ECB opinion on legislative proposal published in Official Journal

The European Central Bank's (ECB) opinion on the proposed regulation on a framework for the recovery and resolution of central counterparties (CCPs), which was issued on 20 September 2017, has been published in the Official Journal.

Overall, the ECB supports the Commission's initiative but [the opinion](#) sets out four areas where the ECB believes the proposal could be enhanced:

- providing resolution authorities with sufficient flexibility to balance the needs of clearing participants to estimate and manage their potential exposures under the proposed regulation against the market events leading to CCP recovery and resolution that are impossible to foresee by:
  - prioritising clearly measureable loss allocation tools in recovery; and
  - providing greater ex ante transparency regarding resolution authorities' general approaches and decision-making processes when using their discretion in key areas of resolution;
- strengthening safeguards against public sector support by:
  - assessing the size and credibility of CCP funding arrangements with specific regard to scenarios going beyond 'extreme but plausible' events and on the basis of a common criteria-based approach;
  - ensuring any use of government stabilisation tools should be coupled with comprehensive arrangements to recover the temporary funding in a timely manner; and
  - applying realistic assumptions regarding the value of business continuity when implementing the 'no creditor worse off' principles to ensure that no clearing participant, CCP shareholder or creditor bears greater losses in resolution than would have been incurred under insolvency proceedings;
- ensuring arrangements for CCP recovery and resolution on a standalone basis are complemented by

horizontal cooperation to ensure their consistency and effective interaction; and

enhancing the proposed regulation by better aligning the content of recovery and resolution plans for EU CCPs with standards that have already been agreed or are under development at the international level.

### **EBA publishes guidelines on supervision of significant branches**

The EBA has published its [final guidelines](#) on the supervision of significant branches of EU institutions established in another Member State, particularly the largest and systemically important branches, so called 'significant-plus' branches.

The guidelines set out the framework for identifying and supervising 'significant-plus' branches, and outline a set of principles that competent authorities should comply with when performing risk assessments of institutions with 'significant-plus' branches. The principles relate to:

- exchanging supervisory intelligence and information;
- planning supervisory activities;
- carrying out inspections;
- applying supervisory and precautionary measures; and allocating tasks between authorities.

### **EBA publishes recommendation on coverage of group recovery plans**

The EBA has published its [final recommendation](#) on the coverage of legal entities and branches in group recovery plans. The recommendation is intended to ensure that the level of coverage of each legal entity and branch in the group recovery plan is adequate to avoid a fragmented approach to collecting information on groups, by setting out a common framework for achieving the necessary level of information on all group entities in the group recovery plan. Overall, the EBA recommends that the coverage of entities in a group recovery plan should be proportional to the relevance of the entities.

The recommendation elaborates on the existing legal frameworks established by the Capital Requirements Directive (CRD4), the Bank Recovery and Resolution Directive (BRRD) and the EU Commission Delegated Regulation 1075/2016 by providing specific guidance on:

- how the EU parent undertaking should identify all relevant group entities, i.e. by categorising each entity as either 'group-relevant', 'locally relevant' or 'not relevant';

- the scope of coverage required for each category; and
- the process for monitoring the coverage of group entities.

The recommendation will apply from 1 January 2018.

### **EBA announces timeline for 2018 EU-wide stress test**

The European Banking Authority (EBA) has [announced](#) the timeline for the forthcoming EU-wide stress test exercise, which will be launched in January 2018.

Following discussions on its draft methodology, the EBA has decided to extend the overall timeline for the stress test to take into account the challenges posed by the implementation of IFRS 9. The EBA is currently finalising the methodology and templates with competent authorities.

The EBA expects the results of the exercise to be published on 2 November 2018.

### **EBA launches consultations on revised common procedures and methodologies for SREP and supervisory stress testing**

The EBA has published three consultations on three sets of draft guidelines aimed at enhancing institutions' risk management and supervisory convergence in the supervisory review and examination process (SREP). The proposed revisions relate to stress testing, particularly in its use in setting Pillar 2 capital guidance, and to amendments to the interest rate risk in the banking book (IRRBB) intended to act as bridge to future requirements which will be incorporated into the Capital Requirements Directive (CRD) V/Capital Requirements Regulation (CRR) 2 framework.

The consultation paper on draft guidelines on common procedures and methodologies for SREP and supervisory stress testing ([EBA/CP/2017/18](#)) relates to:

- Pillar 2 capital guidance (P2G) and supervisory stress testing;
- supervisory assessment of institutions' stress testing;
- alignment of supervisory assessment of interest rate risk arising from non-trading book activities (IRRBB);
- a scoring framework;
- interaction between SREP elements;
- articulation of total SREP capital requirements (TSCAR) and overall capital requirements (OCR), and communication of supervisory capital expectations to institutions; and

- ensuring consistency with recently published legislation on internal governance.

The consultation on draft guidelines on the management of IRRBB ([EBA/CP/2017/19](#)), is intended to build on previous guidelines published in 2015 and takes account of existing supervisory expectations and practices, including the IRRBB standards published by the Basel Committee on Banking Supervision (BCBS) in 2016.

Alongside these consultations, a consultation paper on institutions' stress testing ([EBA/CP/2017/17](#)) sets out draft guidelines that would repeal and replace the EBA's 2010 stress testing guidelines. The new guidelines are intended to:

- establish and develop the taxonomy of stress testing, the description of types of stress test exercises, and the reverse stress testing process for both regular and recovery planning; and
- incorporate and properly define:
  - conduct risk and litigation costs;
  - foreign exchange lending risk;
  - the interaction between solvency and liquidity stress tests;
  - business models; and
  - data aggregation.

Comments on all three consultations are due by 31 January 2018. These three guidelines are being consulted on simultaneously in accordance with the Pillar 2 roadmap and are expected to be implemented by 1 January 2019.

#### **ESMA updates Q&A on alternative performance measures guidelines**

The European Securities and Markets Authority (ESMA) has updated its [questions and answers \(Q&A\)](#) document on its guidelines on alternative performance measures (APMs), which is intended to promote the usefulness and transparency of APMs included in prospectuses and regulated information. ESMA's guidelines, issued in October 2015, were based on the objectives and principles under the Transparency Directive (TD) to ensure consistent, efficient and effective supervisory practices and uniform and consistent application of the TD, and by extension the Market Abuse Regulation (MAR).

The updated Q&A provides information on:

- the definition of APMs;
- the scope of the APM guidelines;
- application of the scope exemption;

- definition of the APM 'organic growth';
- how to carry out reconciliation; and
- how to apply the fair review principle.

#### **IOSCO updates peer reviews on regulation of money market funds and securitisation**

The International Organization of Securities Commissions (IOSCO) has published [two reports](#) on the implementation of reforms for money market funds (MMFs) and securitisation.

The reports address progress by IOSCO members in Financial Stability Board (FSB) jurisdictions in adopting legislation, regulation and other policies in the G20 priority areas covering MMFs and securitisation. Both reports update peer reviews published by IOSCO in September 2015.

The MMF report gives an update of progress in implementing three reform areas:

- valuation practices of MMFs;
- liquidity management for MMFs; and
- MMFs that offer a stable net asset value (NAV).

As of February 2017, IOSCO reports that 21 jurisdictions had final implementation measures in force in the area of valuation, eight jurisdictions had final implementation measures in force for liquidity management and, of the jurisdictions that allowed MMFs that offered a stable NAV, five had final implementation measures in force.

The securitisation report updates on the progress of implementation of reforms on:

- evaluating incentives across the securitisation value chain, and formulating and implementing approaches to incentive alignment; and
- setting out the elements of the incentive alignment approach, including risk retention.

IOSCO found that progress remained mixed across participating jurisdictions in implementing the recommendations for incentive alignment for securitisation. Among other things, EU member jurisdictions have reported minimal progress in 2017 but the report has noted that the ongoing reforms for the Securitisation Regulation will contribute towards more complete implementation of IOSCO's recommendations in the two reform areas.

#### **BoE's Monetary Policy Committee publishes minutes**

The Monetary Policy Committee (MPC) of the Bank of England (BoE) has published [the minutes](#) of its meeting

ending 1 November 2017. Among other things, the MPC identified considerable risks to the economic outlook and stands ready to respond to changes as they unfold to ensure a sustainable return of inflation to the 2% target.

At the meeting the MPC voted to:

- increase the Bank Rate by 25 basis points to 0.50%;
- maintain the stock of sterling non-financial investment-grade corporate bond purchases, financed by the issuance of central bank reserves, at GBP 10 billion; and
- maintain the stock of UK government bond purchases, financed by the issuance of central bank reserves, at GBP 435 billion.

The BoE has also published its latest [Inflation Report](#) alongside the MPC minutes.

#### **FCA and PRA publish policy statements on insurance linked securities and insurance special purpose vehicles**

The Financial Conduct Authority (FCA) has published a policy statement ([PS17/24](#)) on changes to the FCA Handbook relating to insurance linked securities (ILS), and the Prudential Regulatory Authority (PRA) has published a policy statement ([PS26/17](#)) and supervisory statement ([SS8/17](#)) on its approach to the authorisation and supervision of Insurance Special Purpose Vehicles (ISPVs). ILS are financial instruments where the value of the security is linked to an insurable loss event and provide an alternative form of risk mitigation for insurance and reinsurance firms, offering a means for them to transfer risk to the capital markets through ISPVs.

The FCA policy statement addresses feedback received to its consultations (CP16/34 and CP17/3) and sets out:

- a near-final statement on authorising and supervising ISPVs; and
- near-final rules that incorporate the new regulated activity of insurance risk transformation.

The PRA policy statement provides feedback on responses to its consultation (CP42/16) and the supervisory statement sets out the PRA's approach and expectations in relation to the authorisation and supervision of ISPVs. It confirms a new safeguard which removes the need for a multi-arrangement ISPV (MISPV) to notify supervisors of a proposal to assume new risks before it takes effect, along with providing additional guidance on:

- the fully funded requirement;

- the Senior Insurance Managers Regime (SIMR);
- the fit and proper assessment of shareholders with a qualifying holding; and
- circumstances in which ISPVs may be authorised prior to receiving funding.

HM Treasury (HMT) laid the Risk Transformation Regulations 2017 before Parliament on 12 October 2017. Once the parliamentary process for the Regulations is complete, the FCA will finalise its rules and the PRA will formally adopt its supervisory statement.

#### **FCA consults on supervising adherence to proper standards of market conduct for unregulated markets and activities**

The FCA has launched a consultation ([CP17/37](#)) on a proposed approach to supervising and enforcing the Senior Managers & Certification Regime (SM&CR) rules for authorised firms' unregulated activities.

The consultation takes forward the recommendation of the Fair and Effective Markets Review (FEMR) that fixed-income, currency and commodity (FICC) market conduct should be managed under the SM&CR. As such, the FCA's proposed approach sets out an expectation that firms and their senior managers should consider market codes in determining the 'proper standard of market conduct' as part of the SM&CR requirements and obligations, including where the FCA does not have a framework of rules. The FCA is also proposing to recognise particular industry codes of conduct that set out, in the FCA's view, proper standards of market conduct for unregulated markets and activities.

The consultation also seeks views from stakeholders on extending the principle that a firm must observe proper standards of market conduct (Principle for Business 5) to unregulated activities.

Comments on the consultation are due by 5 February 2018.

#### **FCA publishes final rules and further consultation on FSCS funding**

The FCA has published final rules as part of its ongoing review of the Financial Services Compensation Scheme (FSCS), alongside further consultation ([CP17/36](#)).

The final rules, which follow the FCA's consultation in December 2016 (CP16/42), are intended to change the scope and operation of the FSCS by:

- extending FSCS coverage for some aspects of fund management and introducing it for certain debt

management activities and structured deposit intermediation;

- requiring Lloyd's of London to contribute to the retail pool where costs in a particular funding class breach the affordability threshold;
- setting additional reporting requirements, with may become subject to risk-based levies (RBLs) in the future; and
- amending payment arrangements to allow some firms to pay a proportion of the levy on account and removing firms' ability to pay by direct debit.

The rules will mostly come into effect on 1 April 2018.

The proposals published for further consultation broadly relate to reforming funding classes, provider contributions and compensation limits, such as:

- merging the Life and Pensions, and Investment Intermediation funding classes, and moving pure protection intermediation from the Life and Pensions intermediation funding class to the General Insurance Distribution funding class;
- requiring product providers to contribute 25% of the compensation costs falling to the intermediation classes;
- increasing the FSCS compensation limit for investment provision, investment intermediation, home finance intermediation and debt management claims to GBP 85,000; and
- changing the limit for claims in relation to the intermediation of long-term care insurance to 100%.

Views are also sought on whether certain Personal Investment Firms (PIFs), particularly those with exclusions on their Professional Indemnity Insurance (PII) policy, should to pay into a trust account or purchase a bond to ensure more claims are paid for by firms or their insurers.

The consultation closes on 30 January 2018.

#### **MAR: Law Society and CLLS joint working parties update Q&A**

The City of London Law Society (CLLS) and Law Society Company Law Committees' Joint Working Parties on Market Abuse, Share Plans and Takeovers Code have updated their [Q&A on the Market Abuse Regulation \(MAR\)](#).

The Q&A has been updated in light of the version of the European Securities and Markets Authority (ESMA) Q&A on MAR published on 6 July 2017.

The Q&A is not intended to be relied upon as legal or regulatory advice but sets out how, in the view of the joint working parties, MAR should apply to certain practical situations.

#### **AMF consults on changes to its General Regulation in preparation for MiFID2**

The French *Autorité des marchés financiers* (AMF) has launched a [consultation](#) on changes to Books III and V of its General Regulation, which deal with investment services providers and market infrastructures respectively.

The consultation marks the final stage before implementation of MiFID2 on 3 January 2018. Among other things, the AMF is consulting on:

- introducing a number of provisions to the General Regulation, including provisions for operators of organised trading facilities (OTFs) and provisions for data services providers;
- proposed amendments to delete a number of directly applicable provisions in the MiFID2 Delegated Regulation (2017/565) and MIFIR;
- removing the provisions transposed into the Monetary and Financial Code by Executive Order 2017-1107 of 22 June 2017, in particular those relating to client categorisation; and
- the regime for crowdfunding investment advisers and financial investment advisers.

Comments on the consultation are due by 1 December 2017.

#### **AMF publishes discussion paper on initial coin offerings**

The AMF has published a [discussion paper on initial coin offerings \(ICOs\)](#).

The paper sets out:

- a description of ICOs;
- the potential risks associated with ICOs;
- a legal analysis of ICOs with respect to the rules that fall under the remit of the AMF to enforce; and
- three options for future regulation of ICOs.

Comments on the consultation are due by 22 December 2017.

The AMF has also [launched](#) a programme involving the support and analysis of all new fundraising activity based on cryptocurrencies and blockchain technology, called the 'Universal Node to ICO's Research and Network'

(UNICORN). In light of the absence of specific regulations governing new fundraising activity based on these technologies, the AMF wishes to gather the views of stakeholders on the different means of supervision.

discussion paper on initial coin offerings (ICOs)

### ACPR publishes position on notions of “limited network of acceptors” and “limited range of goods and services”

The French *Autorité de Contrôle Prudentiel et de Résolution* (ACPR) has published a [position \(2017-P-01\)](#) on the notions of ‘limited network of acceptors’ and ‘limited range of goods and services’.

The document is intended to clarify the criteria for assessing whether any license is required or not (*agrément*) for payment institutions or electronic money institutions for the provision of means of payment used within a limited network of acceptors or for the acquisition of a limited range of goods or services, as provided for in Articles L. 521-3, L. 525-5 and L. 525-6 of the Monetary and Financial Code.

It also sets out the derogation from the prohibition on the charging of cash in an electronic money support provided for in point 5 of Article R.561-16 of the French Monetary and Financial Code, where it is used for the acquisition of goods and services in a limited network of acceptors, or for a limited range of goods and services, for the purpose of exempting certain anti-money laundering and terrorist financing (AML-CFT) due diligence requirements.

### BaFin consults on revised version of MaComp

Due to the implementation of the MiFID2 regime, the German Federal Financial Supervisory Authority (BaFin) has launched a [consultation](#) for a revised version of the Minimum Requirements for the Compliance Function and Additional Requirements Governing Rules of Conduct, Organisation and Transparency (MaComp) for investment services firms (Wertpapierdienstleistungsunternehmen).

The revised version contains amended instructions beyond the scope of the MiFID2 Delegated Regulation (2017/565), in particular in the following modules:

- Module AT 3.1: more detailed description of rules under MaComp applicable to branches of investment services firms;
- Module BT 2: revised rules on personal trades (persönliche Geschäfte) of employees of investment services firms;

- Module BT 6: revised rules on the suitability report (Geeignetheitserklärung) pursuant to section 64 of the German Securities Trading Act (WpHG);
- Module BT 9: new rules on conflicts of interest in connection with tiered commissions (Staffelprovisionen);
- Module BT 10: new rules on inducements (Zuwendungen) pursuant to section 70 WpHG; and
- Module BT 12: new rules on complaints handling further specifying the requirements pursuant to Art. 26 of the MiFID2 Delegated Regulation introducing a form for the complaints report pursuant to Art. 26 para 6 of the MiFID2 Delegated Regulation.

Comments on the draft MaComp are due by 30 November 2017.

### Italian Parliament authorises reform of bankruptcy and insolvency framework

On 19 October 2017 the Italian Parliament adopted [law no. 155/2017](#), mandating the Government to reform the legal framework for bankruptcy and insolvency. The law has been published in the Official Gazette of the Italian Republic (Gazzetta Ufficiale della Repubblica Italiana).

The Government should adopt one or more acts within 12 months, in accordance with the guidelines given by the Parliament, in particular to amend the legislative framework for:

- bankruptcy proceedings;
- resolution of debt crisis; and
- liens and security.

### Bank of Spain publishes amendment to Circular 2/2014 on supervision under CRR

The Bank of Spain, Banco de España, has published a circular to modify Circular 2/2014 which, in accordance with the Capital Requirements Regulation (CRR), grants certain supervisory capacities to the domestic supervisory authorities.

The Capital Requirements Directive (CRD 4) was partially implemented into Spanish law through Royal Decree Law 14/2013, which allows the Bank of Spain to exercise the application of options available to domestic supervisory authorities under the CRR. Additionally, Council Regulation (EU) No 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions, conferred specific supervisory tasks to the ECB over those entities categorised as significant, or to

the local supervisory authority over those entities categorised as less significant.

As such, [Circular 3/2017](#) will amend Circular 2/2014 in order to:

- set the scope of application of Circular 2/2014, which applies to less significant entities;
- specify that Bank of Spain can apply the regulatory options provided for under CRR over less significant entities; and
- adapt the content of Circular 2/2014 to the guidelines issued by ECB.

The Circular will enter into force on 1 January 2018.

### **Basel III: FINMA revises circulars for national implementation**

The Swiss Financial Market Supervisory Authority (FINMA) has launched a [consultation](#) on amendments to several bank-related circulars in accordance with changes under Basel III rules and international financial reporting standards.

Under Basel III, key changes coming into effect in 2018 comprise new standards governing interest rate risk in the banking book and standards on disclosure. Concurrently, the revised international financial reporting standards (IFRS) 9 will also enter into force, which banks will need to take into account when calculating their eligible capital. The changes are now being adopted into national Swiss regulations, requiring FINMA to revise its corresponding circulars. FINMA is consulting on the changes and expects the final amendments to become effective on 1 January 2019, one year later than under the international implementation schedule.

The proposed changes include:

- a full revision of FINMA circular 2008/6, due to the latest Basel standards on interest rate risks in the banking book. No minimum capital will be prescribed for interest rate risks under the Pillar 1 approach. When measuring and disclosing interest rate risk, financial institutions will be required to account for shifts in interest rates more realistically than is presently the case. In that respect, FINMA has followed the suggestion of supervised institutions not to apply the optional standardised framework according to Basel standards. Instead, acting upon an industry proposal, it will broaden the scope of existing interest rate reporting arrangements and envisage more

comprehensive and meaningful disclosure rules than under the Basel standards;

- amendments to FINMA Circular 2016/1 ('Disclosure – banks') to adopt new disclosure tables on key metrics and interest rate risks, which apply to all banks, in accordance with Basel III. Additional tables planned by FINMA, for example in connection with requirements on total loss-absorbing capacity (TLAC), remuneration and value adjustments, will primarily concern global systemically important banks (G-SIBs). Small banks will continue to benefit from less extensive disclosure requirements;
- amendments to FINMA Circular 2013/1 ('Eligible capital – banks') to make the necessary technical adaptations for the new requirement for the value adjustments of expected losses in IFRS 9; and
- selective revisions to FINMA circulars 2011/2 ('Capital buffer and capital planning – banks') and 2017/7 ('Credit risks – banks'), including the cancellation of provisions on bank categories and capital buffers in Circular 2011/2 as these considerations are now determined under Federal Council ordinances.

Comments on the consultation are due by the end of January 2018.

### **HKMA revises supervisory policy manual module on internal audit function**

The Hong Kong Monetary Authority (HKMA) has [issued](#) a revised supervisory policy manual (SPM) module entitled 'IC-2: Guideline on Internal Audit Function'.

The SPM module has been revised to incorporate the relevant guidelines issued by the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB). Among other things, the revised SPM provides enhanced guidance on the roles and responsibilities expected of an authorised institution's internal audit function and Audit Committee. It also sets out the supervisory actions that may be taken if the HKMA becomes aware of deficiencies in an authorised institution's internal audit function.

The HKMA expects authorised institutions to implement the requirements set out in the revised SPM module with effect from 1 January 2018.

### **SFC commences thematic review on prime services and related equity derivatives activities**

The Securities and Futures Commission (SFC) has commenced a [thematic review](#) of 'prime services' and



related equity derivatives activities in Hong Kong. The thematic review is intended to identify potential conduct issues arising from practices adopted by prime brokers, to assess the internal controls in place, and to provide guidance on how the risks are managed.

The thematic review will focus on:

- the industry landscape, including market dynamics, market trends, services provided by prime brokers, key concerns and issues faced by prime brokers and their clients, market developments and the impact on prime services;
- business structures of prime brokers, which include front-to-back business processes, features of different services and products and their respective revenue drivers;
- interaction between prime services and related equity derivatives activities, including revenue allocations, cross-departmental governance and conflicts of interest management; and
- key risks and controls for prime services and related equity derivatives activities, such as asset segregation and rehypothecation, client on-boarding, risk management, governance, compliance with existing regulations and areas for future regulatory focus.

As the operating model of prime services is unique, the SFC has engaged an external consultant to assist in conducting the thematic review. The thematic review will be conducted through a combination of industry surveys, meetings and on-site inspections.

The findings of the review may form the basis for the SFC to issue further guidance to the market. The SFC will also share the findings of the thematic review with the industry, where appropriate.

#### **SFC and HKMA address hacking risks associated with internet trading**

The SFC has issued a [new set of guidelines](#) on proposals to reduce and mitigate hacking risk associated with internet trading, following a public consultation launched by the SFC in May 2017.

The guidelines set out 20 baseline requirements that the SFC will require all licensed or registered persons engaged in internet trading to implement, in order to enhance their cybersecurity resilience and to reduce and mitigate hacking risks. The requirements relate to:

- protection of clients' internet trading accounts;

- infrastructure security management; and
- cybersecurity management and supervision.

One key control, the implementation of two-factor authentication for clients to login to their internet trading accounts, will take effect on 27 April 2018, while all other requirements will take effect on 27 July 2018.

The HKMA has also issued a [circular](#) to registered institutions requiring them to enhance the security of their internet trading services having regard to the requirements set out in the SFC's guidelines. The HKMA will incorporate the requirements of the guidelines in the Supervisory Policy Manual module TM-E-1 on 'Risk Management of E-banking' in due course.

#### **MPFA issues circular on Mandatory Provident Fund Schemes (Fees) (Amendment) Regulation 2017**

The Mandatory Provident Fund Schemes Authority (MPFA) has issued a [circular](#) to all registered intermediaries on the Mandatory Provident Fund Schemes (Fees) (Amendment) Regulation 2017. The Amendment Regulation, gazetted on 2 June 2017, introduces application fees and annual fees in relation to mandatory provident fund (MPF) intermediaries under the Mandatory Provident Fund Schemes Ordinance. Previously, there was no application or annual fees for MPF intermediaries. The fees will apply to applications received by the MPFA's office on or after 1 January 2018.

Among other things, the circular reminds registered intermediaries to:

- put in place necessary controls and procedures to ensure compliance with the new requirement; and
- provide updated contact details including email addresses, if not done so already, and report changes, if any, to the MPFA within seven working days of such occurrence.

The MPFA has advised principal intermediaries to disseminate the information to their subsidiary intermediaries.

#### **MAS consults on proposed liquidity risk management framework for fund management companies**

The Monetary Authority of Singapore (MAS) has launched a [consultation](#) on proposals to introduce a liquidity risk management framework for fund management companies (FMCs) with respect to collective investment schemes (CIS). The framework is intended to provide guidance on sound practices in liquidity risk management of CIS, and to address the risks to investors from potential liquidity

mismatches between the CIS' portfolio liquidity and redemption terms.

The MAS intends to introduce the framework in the form of guidelines to accord proportionality to FMCs in implementing liquidity risk management practices in line with their roles in managing CIS, their business models and fund structures. The MAS is also proposing to amend the Code on Collective Investment Schemes (CIS Code) to impose additional portfolio requirements for money market funds (MMFs), due to their systemic relevance in the event of a crisis, including a requirement to assess and adopt the proposed liquidity risk management guidelines.

The final guidelines and amendments to the CIS Code are expected in the first quarter of 2018, but the MAS proposes to provide a transitional period of three months for FMCs to assess and adopt the sound practices in the guidelines, where appropriate, and for MMFs to comply with the revised CIS Code.

Comments on the consultation are due by 27 November 2017.

#### **Central Provident Fund (Lifelong Income Scheme) (Amendment No. 2) Regulations 2017 gazetted**

The Ministry of Manpower (MOM) has gazetted the [Central Provident Fund \(Lifelong Income Scheme\) \(Amendment No. 2\) Regulations 2017](#) which amend the Central Provident Fund (Lifelong Income Scheme) Regulations 2009 (Principal Regulations).

Among other things, the Regulations make amendments to:

- the definition of 'applicable age' by deleting the words 'his age when the annuity plan is issued' in paragraphs (a) and (b)(ii) and (iii) of the definition and substituting in each case the words 'the relevant member's age on the last day of the month in which the annuity plan is issued'; and
- 'regulation 6' of the Principal Regulations by deleting paragraph (8) and substituting the following:
  - the Central Provident Fund Board (Board) must permit a relevant member to terminate the annuity plan and every additional annuity plan, if any, issued to him if the relevant member satisfies the conditions in paragraph (9)(a) and (b), and in any other case, may permit a relevant member to terminate the annuity plan or any additional annuity plan issued to him, if, the relevant member applies in writing to the Board to do so, and the

relevant member satisfies such terms and conditions as the Board may impose; and

- where a relevant member, applies before 1 January 2019 to replace the relevant member's annuity plan and every additional annuity plan, if any, with a 'LIFE Escalating Plan' mentioned in item 7 of the Schedule to the Principal Regulations, and satisfies such terms and conditions as the Board may impose, the Board must, on or after 1 January 2018, upon the termination of all those annuity plans under paragraph (8) (a), issue a 'LIFE Escalating Plan' to the relevant member.

The amendment Regulations are effective from 16 October 2017.

#### **Act on External Audit of Stock Companies revised**

The Financial Services Commission (FSC) has [announced](#) that the revision to the Act on External Audit of Stock Companies was passed by the National Assembly on 28 September 2017.

The revised Act contains changes in a wide range of issues to deter a repeat of major accounting scandals, including on external auditor independence, corporate accountability, and penalties against wrongful acts. The changes are intended to set higher standards for all stakeholders in their role, including companies, auditors and financial regulators, to further advance Korea's accounting reform efforts.

Among other things, the revised Act specifies that:

- the scope of companies subject to external audit, currently limited to 'stock companies', will be expanded to include limited liability companies (LLCs);
- the right to appoint an external auditor, currently exercised by the company's management, will be transferred to internal audit organisations such as the 'statutory auditor' or the 'audit committee';
- unlisted large companies and financial institutions will be subject to the same levels of accounting regulations as listed companies;
- designation of an external auditor by the Securities and Futures Commission (SFC) will be expanded into a wider range of companies as a supervisory tool to ensure fair accounting practices;
- non-audit service restrictions on external auditors will be tightened;
- registration will be required for an external auditor of a listed company;

- standards for appropriate audit hours will be set for the assurance of audit quality;
- a company will be required to appoint an external auditor within 45 days from the commencement of each business year, shortened from the current period of four months;
- there will be tougher penalties relating to accounting fraud for companies and external auditors; and
- protection for the whistleblowers will be enhanced.

The revised Act will take effect on 1 November 2018, one year after the date of its promulgation.

#### **ASIC updates work on fee transparency for super and managed investment schemes**

The Australian Securities and Investments Commission (ASIC) has published an update on its work to address the industry feedback it received on Regulatory Guide 97 on disclosing fees and costs in product disclosure statements (PDSs) and periodic statements ([RG 97](#)), which is intended to improve the transparency and comparability of fees and costs for managed investment and superannuation funds.

ASIC has announced:

- an extension beyond 30 September of its facilitative compliance approach to fee and cost disclosure, focusing on the key aim of ensuring that consumers are not misled; and
- that it will work with an external expert to conduct a review of the fees and costs disclosure under RG 97 to ensure that it meets the objective of greater transparency for consumers.

ASIC is undertaking these actions in response to feedback from across the industry in relation to challenges with the practical implementation of RG 97. ASIC has noted that funds have been investing in improving fee disclosure, but recognises that accurate fee and cost disclosure is complex to implement and that implementation will take time.

The external expert to be appointed by ASIC will consider the impact of the reforms set out in RG 97 and liaise with industry to produce any necessary recommendations on how to achieve better transparency and comparability of fees and costs. ASIC anticipates that this process will be concluded in the first half of 2018.

#### **CFTC issues order extending current swap dealer registration threshold**

The Commodity Futures Trading Commission (CFTC) has issued [an order](#) that will maintain the *de minimis* threshold

for swap dealer registration at USD 8 billion until December 2019. This threshold determines when an entity's swap dealing activity requires swap dealer registration, which triggers CFTC oversight as well as disclosure, recordkeeping, and documentation requirements.

In 2016, the CFTC had designated 31 December 2018 as the *de minimis threshold* phase-in termination date. This CFTC order now establishes 31 December 2019 as the new phase-in termination date, at which time the *de minimis* threshold will decrease to USD 3 billion. The resulting one-year extension provides additional time for CFTC staff to conduct data analysis regarding the *de minimis* exception and gives market participants further clarity regarding when they will need to begin preparing for a change, if any, in the *de minimis* exception.

#### **CFTC publishes no-action letter concerning swaps related margin requirements**

The CFTC's Division of Swap Dealer and Intermediary Oversight (DSIO) has published [CFTC Staff Letter No. 17-52](#), which provides relief, subject to specified conditions, to registered swap dealers from compliance with the variation margin requirements of CFTC regulation 23.153 when amending or novating swaps in existence prior to 1 March 2017 with issuers that are special purpose vehicles (legacy SPV swaps).

In a previously issued 2015 no-action letter (CFTC Staff Letter 15-21), DSIO had provided similar relief from certain business conduct standards concerning the legacy SPV swaps.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **EU financial services horizon scanner, October 2017**

Clifford Chance has prepared a financial services horizon scanner, providing a high level overview of ongoing and expected EU legislative initiatives that are likely to impact firms providing financial services in the EU.

The horizon scanner has been prepared as of October 2017 and sets out projected timelines for the finalisation and implementation of relevant requirements, covering approximately the next 18 months.

[https://www.cliffordchance.com/briefings/2017/08/eu\\_financial\\_serviceshorizonscanner.html](https://www.cliffordchance.com/briefings/2017/08/eu_financial_serviceshorizonscanner.html)

### European Commission takes aim at UK CFC tax regime

The European Commission has opened an in-depth State aid probe into the group financing exemption under the UK's Controlled Foreign Companies (CFC) rules. An adverse finding at the end of the investigation, even if after the date of Brexit, could lead to the removal of the exemption, resulting in liabilities to pay extra tax for companies that have benefitted from it since its introduction in 2013.

However, previous Court of Justice of the European Union case law suggests that applying CFC rules within the EEA is contrary to the freedom of establishment unless the arrangements are "wholly artificial". This creates something of a paradox: the Commission may be requiring CFC rules to have broader scope than EU law in fact permits.

This briefing discusses the background of the Commission's investigation and implications for UK headquartered multinationals.

[https://www.cliffordchance.com/briefings/2017/11/european\\_commissiontakesaimatukcfc taxpregime.html](https://www.cliffordchance.com/briefings/2017/11/european_commissiontakesaimatukcfc taxpregime.html)

### The EU (Withdrawal) Bill in October - amendments and delays

The European Union (Withdrawal) Bill is shaping up to be one of the most controversial pieces of UK legislation in recent memory, with over 400 amendments and new clauses proposed by MPs so far. Our briefing of 29 September 2017 looked at the amendments to the Bill proposed by MPs up to that date. Since then, over 200 further amendments have been proposed by MPs concerned about issues ranging from parliamentary sovereignty, devolution and human rights to the environment.

This briefing considers the key themes in the new batch of amendments, including which amendments may cause the biggest headaches for a Government with a slim working majority in the House of Commons.

[https://www.cliffordchance.com/briefings/2017/10/the\\_eu\\_w ithdrawalbillinOctober-amendment.html](https://www.cliffordchance.com/briefings/2017/10/the_eu_w ithdrawalbillinOctober-amendment.html)

### FCA publishes new rules to reform availability of information during UK equity IPO process

Over the last 18 months, the FCA has published a series of consultation and discussion papers looking at a number of potential enhancements to the current UK primary capital markets regime to ensure that it continues to remain effective for both issuers and investors. On 26 October

2017, the FCA published final rules to reform the availability of information during the UK equity IPO process (Policy Statement 17/23) and to clarify and enhance a number of elements of the listing rules (Policy Statement 17/22).

Alongside these policy statements, in Feedback Statement 17/3 the FCA has identified three areas that it believes merit further consideration: (i) the positioning of standard versus premium listing; (ii) the provision of patient capital to companies requiring long term investment; and (iii) retail access to debt markets.

This briefing discusses the FCA's new rules to reform the availability of information during the UK equity IPO process.

[https://www.cliffordchance.com/briefings/2017/10/fca\\_publicshes\\_newrulestoreformavailability.html](https://www.cliffordchance.com/briefings/2017/10/fca_publicshes_newrulestoreformavailability.html)

### Anti-corruption compliance in Poland – new obligations and sanctions

The Polish Government is working on draft legislation to introduce a requirement that companies apply internal anti-corruption procedures.

The penalty for failing to comply with this new requirement may be a fine of up to PLN 10,000,000 and a five-year ban on participating in public tenders. The work on the Draft Act is at a very early stage, but it is expected that the Draft Act will come into force in 2018.

This briefing discusses the anti-corruption compliance obligation and rules and measures for protecting whistleblowers.

[https://www.cliffordchance.com/briefings/2017/10/anti-corruption\\_complianceinpoland-ne.html](https://www.cliffordchance.com/briefings/2017/10/anti-corruption_complianceinpoland-ne.html)

### Simplified regulatory regime for venture capital fund managers comes into effect

On 20 October 2017, the Monetary Authority of Singapore (MAS) announced the adoption of a simplified regulatory regime for managers of venture capital funds (VC managers) with immediate effect. The announcement follows a public consultation on the proposed regulatory regime for VC managers, which was published on 15 February 2017 (Consultation Paper). In an effort to encourage the further growth of the VC industry in Singapore, the new regime simplifies the authorisation process and reduces the ongoing requirements for VC managers.

This briefing discusses the new regime, its implementation, and how it compares with the EU and US VC manager regimes.

[https://www.cliffordchance.com/briefings/2017/11/simplified\\_regulatoryregimeforventurecapita.html](https://www.cliffordchance.com/briefings/2017/11/simplified_regulatoryregimeforventurecapita.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)

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

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