

International Regulatory Update

04 – 08 December 2017

IN THIS WEEK'S NEWS

- EU Commission publishes roadmap for deepening Economic and Monetary Union
- EU Council adopts final texts of Directive on creditor hierarchy and Regulation on IFRS 9 transitional arrangements
- EBA publishes impact assessment of revised Basel framework
- Brexit: EU Commission recommends sufficient progress on first phase of negotiations
- MiFIR: Commission Implementing Decision on equivalence of US derivatives trading venues published in Official Journal
- CRR: Commission Implementing Regulation regarding templates and instructions published in Official Journal
- Commission Implementing Regulation extending the transitional periods related to own funds requirements for exposures to CCPs published in Official Journal
- ELTIF Regulation: EU Commission adopts RTS
- MiFID2: ESMA publishes transitional transparency calculations for equity instruments and bonds
- ESAs publish amended ITS on External Credit Assessment Institutions
- ESAs publish draft RTS on group-wide management of money laundering and terrorist financing risks
- EU Council agrees general approach on mutual recognition of freezing and confiscation orders
- EU Council agrees stance on mandatory transparency register proposal
- SRB publishes 2018 work programme and multi-annual plan to 2020
- Insurance linked securities: Risk Transformation Regulations 2017 made
- Packaged Retail and Insurance-based Investment Products Regulations 2017 laid before Parliament
- PRA consults on model risk management principles for stress testing
- PRA consults on Pillar 2 reporting requirements
- HMT publishes investment management strategy
- Ministerial orders published on the authorisation and initial capital of financing companies and credit institutions

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

If you would like to continue to receive International Regulatory Update or would like to request a subscription for a colleague, please [click here](#).

To request a subscription to our Alerter: Finance Industry service, please email [Online Services](#).

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

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

www.cliffordchance.com

- Ministerial order published on criteria for assessing resolvability of credit institutions
- AMF and ACPR issue warning to savers regarding Bitcoin
- Socially responsible investing: AMF publishes new stocktake of practices in collective investment industry
- Credit-linked notes: BaFin decides not to prohibit distribution to retail clients
- CONSOB adopts amendment to Regulation on crowdfunding
- Italian Council of Ministers adopts measure to fully implement ELTIF Regulation
- Dutch bank creditor hierarchy consultation launched
- New documentation for WIBID and WIBOR reference rates published
- PFSA announces recommendations on dividend policies
- CNMV streamlines its verification procedures for fixed-income issues for qualified investors
- FINMA publishes revised outsourcing circular
- MAS responds to feedback on proposed amendments to capital framework for securitisation exposures in MAS Notice 637
- SGX consults on proposed changes to securities settlement framework and service enhancements
- MAS consults on execution of customers' orders by capital market intermediaries
- SGX and industry bodies launch guide on handling confidential information and dealings in securities
- SEC Cyber Unit obtains first emergency asset freeze to halt ICO

EU Commission publishes roadmap for deepening Economic and Monetary Union

The EU Commission has published a [roadmap](#) setting out steps for deepening Europe's Economic and Monetary Union (EMU) alongside a package of measures.

Published ahead of the Euro Summit on 15 December 2017, the package sets out:

- a proposal to establish a European Monetary Fund (EMF), which would succeed the European Stability Mechanism (ESM), in the form of a proposal for a Council Regulation;
- a proposal to integrate the Treaty on Stability, Coordination and Governance (the Fiscal Compact) into EU law;
- a communication on new budgetary instruments for the euro area; and
- a communication on the possible functions of a European Minister of Economy and Finance serving as vice-president of the EU Commission and chair of the Eurogroup.

The package also proposes amendments to the Common Provisions Regulation and Structural Reform Support Programme.

In the view of the Commission, a roadmap should be agreed upon, which should include a number of steps to be taken over the next 18 months, with a view to deepening the EMU by 2025.

EU Council adopts final texts of Directive on creditor hierarchy and Regulation on IFRS 9 transitional arrangements

The EU Council has adopted the final texts of the fast-tracked risk-reduction measures:

- a [Directive](#) on the ranking of unsecured debt instruments in insolvency proceedings; and
- a [Regulation](#) on transitional arrangements to phase in the regulatory capital impact of the IFRS 9 international accounting standard.

Both the Directive and Regulation will enter into force the day following their publication in the Official Journal. The Regulation will apply from 1 January 2018. Member States will have twelve months after entry into force to transpose the Directive.

EBA publishes impact assessment of revised Basel framework

The European Banking Authority (EBA) has published a summary of the [impact assessment](#) it has carried out on the finalisation of the Basel III framework on the EU banking sector.

On 7 December 2017, the Basel Committee on Banking Supervision (BCBS) published the final set of revisions to the Basel III framework, with the aim of addressing undue variability in risk-weighted assets calculations. The EBA's impact assessment shows that, under the revised international standards, minimum required capital for the EU sample would increase by 12.9% in weighted average terms. The increase is mainly driven by the impact of the

reforms on global systemically important institutions (G-SIIs) and larger institutions (Group 1 banks). The assessment also finds that the weighted average CET1 ratio, calculated in accordance with the revised framework, is 0.6 percentage points lower than the status quo. The aggregate output is the main driver of the capital impact for the EU sample under the new standards.

The EBA intends to publish a more detailed cumulative impact assessment report in due course.

Brexit: EU Commission recommends sufficient progress on first phase of negotiations

The EU Commission has published a [communication](#) to the European Council (Article 50) recommending that it conclude that sufficient progress has been made in the first phase of the negotiations on the UK's withdrawal from the EU. Progress in the first phase of the negotiations is set out in a [joint report](#) agreed between the negotiators of the Commission and the UK and endorsed by the UK Prime Minister and EU Commission President.

The report sets out the agreement in principle reached by both parties across the three priority areas under consideration in the first phase of negotiations, as set out in the European Council Guidelines of 29 April 2017:

- protecting the rights of EU citizens in the UK and UK citizens in the EU;
- the framework for addressing the unique circumstances in Northern Ireland; and
- the financial settlement.

The European Council (Article 50) is scheduled to discuss and determine whether sufficient progress has been made in the first phase of the negotiations on 15 December 2017. If the European Council does consider that sufficient progress has been made, then the EU Commission and UK Government will begin drafting a Withdrawal Agreement on the basis of the joint report and the outcome of the negotiations on other withdrawal issues.

Responding to the joint report and Commission communication, the President of the European Council, Donald Tusk, issued a [statement](#) confirming that he has sent draft guidelines to the European Council for the second phase of the Brexit negotiations. Those guidelines relate to negotiating a transition period and discussions with the UK on the future relationship between the UK and EU. During a potential transition period, Tusk's statement proposes that the UK would respect:

- the whole of EU law, including new law;

- budgetary commitments;
- judicial oversight; and
- all related obligations.

President Tusk called on EU leaders to mandate the negotiator, Michel Barnier, to start talks on these arrangements immediately.

Alongside the joint report, a [joint technical note](#) expressing the detailed consensus on citizens' rights has been published, and the Prime Minister's Office has published a [statement on commitments](#) to Northern Ireland.

MiFIR: EU Commission Implementing Decision on equivalence of US derivatives trading venues published in Official Journal

EU Commission [Implementing Decision \(EU\) 2017/2238](#) on the equivalence of the legal and supervisory framework applicable to designated contract markets and swap execution facilities in the United States of America in accordance with MiFIR has been published in the Official Journal.

The decision confirms that the EU Commission has deemed certain US trading venues for derivatives authorised by the Commodity Futures Trading Commission (CFTC) as operating under an equivalent regulatory regime to those in the EU.

The decision will ensure that EU counterparties can continue to trade the most liquid derivatives instruments on US platforms. Simultaneously, the CFTC is working towards exempting certain EU-authorized trading venues from registration requirements in the US following an agreement between the Commission and the CFTC on a common approach regarding certain derivatives trading platforms.

The decision entered into force on 7 December 2017.

CRR: Commission Implementing Regulation regarding templates and instructions published in Official Journal

Commission [Implementing Regulation \(EU\) 2017/2114](#) amending Implementing Regulation (EU) 680/2014 as regards templates and instructions has been published in the Official Journal. The Regulation amends implementing technical standards (ITS) on supervisory reporting, templates and instructions under the Capital Requirements Regulation (CRR).

The Regulation will enter into force on 29 December 2017 and will apply from 1 March 2018.

Commission Implementing Regulation extending the transitional periods related to own funds requirements for exposures to CCPs published in Official Journal

Commission [Implementing Regulation \(EU\) 2017/2241](#) on the extension of the transitional periods related to own funds requirements for exposures to central counterparties (CCPs) set out in the CRR and the European Market Infrastructure Regulation (EMIR) has been published in the Official Journal.

Transitional periods under Article 497(2) of CRR and Article 89(5a) of EMIR had previously been extended to 15 December 2017. This Implementing Regulation extends the transitional periods for an additional six months until 15 June 2018.

The Regulation entered into force on 11 December 2017.

ELTIF Regulation: EU Commission adopts RTS

The EU Commission has adopted a [Delegated Regulation](#) with regard to regulatory technical standards (RTS) on several areas under the European Long-Term Investment Fund (ELTIF) Regulation. The draft RTS address:

- financial derivative instruments solely serving hedging purposes;
- sufficient length of the life of the ELTIFs;
- assessment criteria for the market for potential buyers and valuation of the assets to be divested; and
- the types and characteristic of the facilities available to retail investors.

The delivery of RTS on cost disclosures has been postponed to ensure their consistency with the legal requirements under the Regulation on key information documents for Packaged Retail And Insurance-Based Investment Products (PRIIPs Regulation).

The EU Parliament and EU Council have three months to scrutinise the RTS. The RTS will enter into force on the twentieth day following that of their publication in the Official Journal.

MiFID2: ESMA publishes transitional transparency calculations for equity instruments and bonds

The European Securities and Markets Authority (ESMA) has published the MiFID2/MiFIR [transitional transparency calculations](#) (TTCs) for equity and bond instruments. The TTC for equity instruments includes equity instruments available for trading in September 2017 and the TTC for bonds includes bonds available for trading in October 2017. The TTC for instruments listed after these dates will be

performed by national competent authorities (NCAs) and will be published by ESMA in January 2018.

The publication of the TTC for equity instruments and bonds means that all asset classes, applicable from 3 January 2018, are now available to market participants, infrastructures and authorities. The TTC for equity instruments will apply until 31 March 2019 and the TTC for bond instruments will apply until 15 May 2018.

ESAs publish amended ITS on External Credit Assessment Institutions

The Joint Committee of the European Supervisory Authorities (ESAs), which comprises the EBA, European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA), has published [two final reports](#) on draft amended Implementing Technical Standards (ITS) on the mapping of credit assessments of External Credit Assessment Institutions (ECAIs) for credit risk.

The ITS, which were previously adopted by the EU Commission on 7 and 11 October 2016, are intended to ensure that only credit ratings issued by ECAIs can be used for calculating capital requirements of financial institutions and insurance undertakings. As such, the ESAs have specified an approach that establishes the mapping between credit assessments and the credit quality steps defined in the CRR and Solvency II Directive.

The ITS have been updated to reflect the recognition of five new credit rating agencies (CRAs) and the decision to deregister one CRA. The amendments reflect the allocation of appropriate risk weights to the newly established ECAIs and to remove the reference to the de-registered ECAI. Details of mapping the other 25 ECAIs remain unchanged.

ESAs publish draft RTS on group-wide management of money laundering and terrorist financing risks

The Joint Committee of the ESAs has published [draft RTS](#) on the management of money laundering and terrorist financing risks at group level when they have branches or majority-owned subsidiaries based outside of the EEA.

In instances where branches or subsidiaries are based in countries whose laws do not permit the full application of a group's anti-money laundering and counter terrorist financing (AML/CFT) policies, the draft RTS set out that the parent institution should take sufficient steps to manage resulting risk, which may include:

- carrying out enhanced reviews to ensure that the branches and majority-owned subsidiaries are able to adequately manage money laundering and terrorist financing risks;
- restricting financial services and products offered by the branches and majority-owned subsidiaries to customers that present a low money laundering and terrorist financing risk;
- ensuring that other entities in the same group do not rely on customer due diligence measures carried out by the branches and majority-owned subsidiaries;
- requiring that the risk profile and due diligence information relating to customers of the branches and majority-owned subsidiaries are kept for as long as legally possible under the third country's legislation; and
- requiring approval from senior management at group-level of any higher risk business relationships.

The draft RTS also require credit and financial institutions to determine the extent of these measures on a risk-sensitive basis and demonstrate to competent authorities that the extent is appropriate to the level of risk.

The draft RTS will be submitted to the EU Commission for endorsement before being published in the Official Journal.

EU Council agrees general approach on mutual recognition of freezing and confiscation orders

The EU Council has agreed its [general approach](#) on the EU Commission's proposal for a regulation on the mutual recognition of freezing and confiscation orders.

Key elements of the proposed text agreed by the Council include:

- replacing common minimum rules with a single regulation on the mutual recognition of freezing and confiscation orders;
- widening the types of orders covered within the framework of proceedings in criminal matters to include those issued without a conviction;
- the introduction of standardised documents and procedures; and
- ensuring victims' rights to compensation and restitution are not prejudiced in cross-border cases.

On the basis of this general approach, the Council Presidency will now start negotiations on the proposal with the EU Parliament.

EU Council agrees stance on mandatory transparency register proposal

The Permanent Representatives Committee of the EU Council (Coreper) has reached [political agreement](#) on the Council's position in relation to a Commission proposal for an Inter-Institutional Agreement on a mandatory transparency register covering certain interactions between interest representatives and EU decision-makers.

The Council mandate agreed by Coreper would require:

- interest representatives to be on the transparency register in order to meet with senior staff of the General Secretariat of the Council; and
- registration for thematic briefings, public events and access to the Council premises.

In relation to interactions between interest representatives and national officials, the mandate sets out that this would be the sole responsibility of Member States, including when serving as the rotating EU Council Presidency, although Member States would be encouraged to require registration for certain interactions.

The agreement provides a mandate to the EU Council Presidency to open negotiations with the EU Parliament and EU Commission.

SRB publishes 2018 work programme and multi-annual plan to 2020

The Single Resolution Board (SRB) has published its first [multi-annual work programme](#), which includes its work programme for 2018. The actions the SRB intends to take relate to:

- resolvability of SRB banks and less significant institutions (LSIs);
- the resolution framework;
- crisis management;
- the Single Resolution Fund (SRF); and
- the SRB as an organisation.

Overall the SRB's key objectives include completing resolution plans for all major banking groups by 2020 comprising binding minimum requirements for own funds and eligible liabilities (MREL) targets on all levels of a group, and further operationalisation of the SRF.

Insurance linked securities: Risk Transformation Regulations 2017 made

The [Risk Transformation Regulations 2017 \(SI 2017/1212\)](#) have been made. The Regulations introduce a new

regulatory and supervisory framework for insurance linked securities (ILS) in the UK.

The Regulations make provision for transformer vehicles and a new regulated activity which has the effect of bringing transformer vehicles carrying on that activity within the scope of regulation under the Financial Services and Markets Act 2000. The Regulations also restrict the type of investors to whom transformer vehicles may issue investments and enable the creation of protected cell companies to act as special purpose vehicles in ILS transactions.

The Regulations come into force on 8 December 2017.

Packaged Retail and Insurance-based Investment Products Regulations 2017 laid before Parliament

The [Packaged Retail and Insurance-based Investment Products Regulations 2017 \(SI 2017/1127\)](#) have been laid before Parliament.

The Regulations implement certain Articles of the Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPs Regulation).

The Regulations will come into force on 1 January 2018.

PRA consults on model risk management principles for stress testing

The Prudential Regulation Authority (PRA) has launched a [consultation \(CP26/17\)](#) on proposals to further extend its stress test principles to the wider banking sector.

The PRA has developed principles in the context of the annual concurrent stress testing process, which tests the resilience of the banking system. The consultation sets out proposals to extend these principles in order that:

- firms participating in the Bank of England's (BoE's) annual concurrent stress test should adopt the principles for all stress test models; and
- firms not participating in the BoE's annual concurrent stress test should take into account their size, nature, scale, complexity of business activities and use of stress test models when seeking to apply the principles, and at a minimum:
- implement Principles 1 and 2, which relate to establishing a model definition, maintaining a model inventory and implementing an effective governance framework, policies and procedures; and

- applying Principles 3 and 4 to models they have identified as material, which relate to the implementation of a robust model development process and undertaking validation and independent review.

Comments are due by 6 March 2018.

PRA consults on Pillar 2 reporting requirements

The PRA has published a [consultation paper \(CP25/17\)](#) on reporting requirements under the Pillar 2 framework.

The consultation sets out proposals on:

- a new data item (PRA111) to capture stress testing data currently included in firms' Internal Capital Adequacy Assessment Process (ICAAP) documents;
- reducing the frequency of reporting for data items in the Reporting Pillar 2 Part of the PRA Rulebook for certain firms; and
- consolidating the definitions in several Parts of the PRA Rulebook into the Glossary.

The consultation also sets out proposals to update the reporting instructions in the supervisory statement on Pillar 2 reporting (SS32/15).

Comments on the consultation are due by 6 March 2018.

HMT publishes investment management strategy

HM Treasury (HMT) has published its [strategy](#) for the UK's asset management industry. The Investment Management Strategy II sets out the Government's long-term approach to ensuring that the UK remains a globally competitive location for asset management. As the UK withdraws from the EU, the Government believes that it is the right time to renew and broaden its investment management strategy, which was published in 2013.

The strategy focuses on six areas:

- establishing an asset management taskforce to enhance dialogue between the Government, regulators and industry; and
- strengthening the domestic skills pipeline by supporting the establishment of Asset Management Centres of Excellence at UK universities;
- enhancing the use of fintech within the asset management industry;
- attracting overseas firms to locate in the UK and promoting UK firms abroad;
- promoting the UK's tax and regulatory environment; and

- supporting innovative investment strategies, including green finance and social impact investing.

Ministerial orders published on the authorisation and initial capital of financing companies and credit institutions

Two Ministerial orders dated 4 December 2017 have been published in the Official Journal.

[ECOT1727727A](#) is intended to determine the rules relating to the authorisation and initial capital of financing companies by introducing a level of requirement similar to that which applies to credit institutions. The order sets out the conditions for approval, modification of the situation, withdrawal of approval and cancellation of financing companies, as well as the reporting obligations of certain financial institutions. The order will come into force on 9 December 2017.

[ECOT1724515A](#) is intended to determine the rules relating to the authorisation and initial capital of credit institutions. The order takes into account the new powers conferred on the European Central Bank (ECB) in the field of accreditation since the entry into force of the Single Supervisory Mechanism (SSM) and completes the transposition of CRD 4. The order came into force on 8 December 2017.

Ministerial order on criteria for assessing resolvability of credit institutions published

A [Ministerial order](#) dated 22 November 2017, which sets out the criteria for assessing the resolvability of credit institutions and investment firms by the resolution college of the French Prudential Supervisory and Resolution Authority (ACPR) pursuant to Article L. 613-41 of the Monetary and Financial Code, has been published in the Official Journal. In particular, the order sets out that the absence of a contractual recognition clause for the suspension of financial contracts in resolution where such contracts are governed by the law of a third State may constitute an obstacle in terms of resolvability.

The order came into force on 8 December 2017.

AMF and ACPR issue warning to savers regarding Bitcoin

The Autorité des marchés financiers (AMF) and the Autorité de Contrôle Prudentiel et de Résolution (ACPR) have published a [press release](#) noting the rapid appreciation in value of Bitcoin in recent weeks and its volatility, and reminding savers of the risks associated with investing in speculative assets.

Socially responsible investing: AMF publishes new stocktake of practices in collective investment industry

Since the publication of its first report on socially responsible investing (SRI) in 2015, the AMF has noted an improvement in investor disclosures and is issuing [new recommendations](#). The regulator has also prepared a first assessment of the application by management companies of the Energy Transition for Green Growth Act.

After conducting a first review of investor disclosure practices on 100 funds in 2015, the AMF decided to assess the same practices two years later using a comparable sample. The findings are positive, revealing that companies have acted on the recommendations issued by the AMF two years ago. In 2015, 26% of funds provided detailed information on environmental, social and governance (ESG) criteria and defined their SRI investment policy. In 2017, 71% provided a level of information that was sufficient to allow investors to understand the SRI strategy followed by the fund.

To make it easier for investors to differentiate between SRI funds and more conventional funds, the AMF is proposing new best practices for management companies, including the following:

- publishing votes at general meetings of the main investee companies;
- publishing a report on dialogue with investee companies; and
- publishing an inventory of portfolio securities on their website.

Credit-linked notes: BaFin decides not to prohibit distribution to retail clients

Following a nine-month monitoring phase, the German Federal Financial Supervisory Authority (BaFin) has decided not to prohibit the distribution of credit-linked notes to retail clients. BaFin monitored the issuance and distribution of these products until the end of September 2017 and concluded that the voluntary commitment made by the German Banking Industry Committee (DK) and the German Derivatives Association (DDV) is sufficient to protect retail investors.

The [voluntary commitment](#) provides for improved advice about risks, increases quality control for the selection of the reference entity and restricts the distribution of credit-linked notes to investors with a higher risk appetite.

Against this background, BaFin takes the view that further supervisory restrictions are not necessary at present.

CONSOB adopts amendment to Regulation on crowdfunding

The Commissione Nazionale per le Società e la Borsa (CONSOB) has adopted [Decision no. 20204/2017](#) on amending the Regulation on crowdfunding (Regulation no. 18592/2013). The revision has been approved in order to adapt the existing second-level regulations to the latest legislative reform introduced by the 2017 Budget Law (Law no. 232/2016) and Legislative Decree no. 129/2017 implementing MiFID2 in Italy.

The revision expands the application of the Regulation beyond start-up and innovative companies to all small and medium-sized enterprises (SMEs). It is intended to ensure a higher level of protection for investors through an obligation for crowdfunding websites to adhere to a compensation scheme or to have an insurance policy in place.

The revised Regulation will enter into force on 2 January 2018, except for the rules governing the obligation to adhere to a compensation scheme or have an insurance policy in place, which will enter into force 6 months after the Regulation is published in the Official Gazette.

Italian Council of Ministers adopts measure to fully implement ELTIF Regulation

The Italian Council of Ministers has adopted the [final text of a legislative decree](#) intended to give full implementation to the Regulation on European long-term investment funds (2015/760 - ELTIF Regulation). The Regulation relates to the cross-border marketing of ELTIFs, harmonised procedure for ELTIF authorisation, prevention of conflicts of interests, and transparency obligations.

The legislative decree will amend the Italian Financial Act (Legislative Decree no. 58/1998: Testo unico delle disposizioni in materia di intermediazione finanziaria) and, among other things, provides:

- relevant supervisory and investigative powers to the Bank of Italy and Consob and, in case of breach of the ELTIF Regulation, the power to apply effective, dissuasive and proportionate sanctions; and
- amendments to the existing legislation in order to ensure financial stability and protection for investors

Dutch bank creditor hierarchy consultation launched

The Dutch Ministry of Finance has launched a [consultation and legislative proposal](#) on the ranking of unsecured debt instruments in insolvency proceedings (Bank Creditor Hierarchy Proposal), implementing the EU Commission's

proposed Directive on the ranking of unsecured credit claims, which principally amends Article 108 of the Bank Recovery and Resolution Directive (BRRD). The Bank Creditor Hierarchy Proposal amends the Dutch Bankruptcy Act.

The Bank Creditor Hierarchy Proposal introduces a layer of non-preferred senior (NPS) debt into Dutch law that ranks above subordinated debt but below other senior liabilities in insolvency. As such, the additional layer of NPS debt gives banks a statutory option to comply with the subordination requirement under the Total Loss-Absorbing Capacity (TLAC) standard and MREL.

The consultation period ends on 9 January 2018.

New documentation for WIBID and WIBOR reference rates published

GPW Benchmark S.A. has published the '[New Documentation for Reference Rates](#)', which comes into force on 1 February 2018 and consists of the 'Code of Procedure for Participants of WIBID and WIBOR Fixing' and the 'Rules on WIBID and WIBOR Reference Rates'.

The change to the documentation has come about directly because of the need to adjust the WIBID and WIBOR reference rates to the requirements of Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.

PFSA announces recommendations on dividend policies

The Polish Financial Supervision Authority (PFSA) has published [its standpoint](#) on the dividend policy of cooperative and associated banks, insurance and reinsurance companies, pension fund managers, brokerage houses and investment fund managers in 2018. The document sets out the PFSA's recommendations concerning payment of a dividend by those entities.

CNMV streamlines its verification procedures for fixed-income issues for qualified investors

The Spanish National Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has decided to [introduce changes](#) to its verification procedures for fixed-income issues aimed at qualified investors, in order to speed these procedures up and make the Spanish market more attractive for the admission to trading of bonds and notes, both for Spanish and other EU companies.

The principal objective of these new procedures is for the CNMV's supervisory approach to be as similar as possible to that implemented in other European countries. In order to achieve this, the CNMV will reduce the degree of substantive review, avoiding unnecessary specificities, and seek to combine rigorous supervision and agility in the process, taking into account that each issuer will be responsible for the veracity and accuracy of the information included in its prospectus.

In particular, the changes to be implemented are as follows:

- the deadline for submission of comments to the final terms is reduced to three days and in the case of subsequent comments to two business days;
- the verification of the admission requirements will be carried out within two business days after the documentation has been received (instead of the ten business days allowed by the regulation);
- the final terms relating to issues based on programmes will not be reviewed prior to placement; and
- the delivery of statistical information ('dissemination tables') to the CNMV will not be required.

Likewise, other relevant changes regarding the CNMV's internal processes will be adopted in order to improve the review and approval deadlines.

These changes will not apply to equity issues or to fixed-income public offerings to be distributed among retail investors.

FINMA publishes revised outsourcing circular

The Swiss Financial Market Supervisory Authority (FINMA) has published a [revised Circular 2018/3 'Outsourcing – banks and insurers'](#). The circular applies to banks, securities dealers and, for the first time, covers insurance companies.

Key revisions include the following:

- outsourcing requirements will be 'technology-neutral', such that financial institutions can implement outsourcing requirements based on their own business models and risks;
- outsourcing requirements will reflect the higher risks resulting from outsourcing activities outside Switzerland;

FINMA has accepted recommendations to introduce a principles-oriented approach to the materiality of outsourcing initiatives, resulting in more emphasis being

placed on financial institutions' self-assessment responsibilities;

- the circular no longer contains special implementation rules for systemically important banks;
- the transition period for banks to implement the new requirements will be extended from two to five years; and
- the circular will apply to all first-time licensed insurance businesses.

The revised circular will enter into force on 1 April 2018.

MAS responds to feedback on proposed amendments to capital framework for securitisation exposures in MAS Notice 637

The Monetary Authority of Singapore (MAS) has published:

- its [responses](#) to the feedback it received on its January 2017 consultation on the proposed amendments to the capital framework for securitisation exposures and interest rate risk in the banking book in [MAS Notice 637](#); and
- [MAS Notice 637 \(Amendment No. 2\) 2017](#), which implements amendments to the securitisation framework and will take effect from 1 January 2018.

The MAS has only published its responses in respect of its proposals on securitisation exposures, and will publish its responses in respect of its proposals on interest rate risk in the banking book at a later date.

The amendments to the securitisation framework are to implement requirements for Singapore-incorporated banks that are consistent with the following final standards issued by the BCBS:

- 'Revisions to the securitisation framework'; and
- 'Revisions to the securitisation framework, incorporating capital treatment for simple, transparent and comparable securitisations'.

The amendments are intended to strengthen the capital standards for securitisation exposures, while providing a preferential capital treatment for simple, transparent and comparable traditional securitisations. The amendments also include the International Development Association and the Asian Infrastructure Investment Bank in the list of qualifying multilateral development banks in accordance with the BCBS publications.

SGX consults on proposed changes to securities settlement framework and service enhancements

Singapore Exchange (SGX) has launched a [consultation](#) on its proposed changes to clearing and settlement of securities in the Singapore stock market. The proposed changes are intended to reduce systemic risks and align the clearing and settlement processes of the Singapore market with global practices.

The proposed improvements include:

- a shorter securities settlement cycle of two days (T+2) instead of three days (T+3) – the MAS and the SGX proposed this plan in 2014. The shorter settlement period reduces counterparty risks market-wide and avails securities and funds earlier for investors. HKEx, NYSE and the EU already operate a T+2 settlement cycle;
- simultaneous securities and money settlement for transactions settled on a delivery-versus-payment (DVP) basis – this reduces risk arising from the current time lag between money and securities settlement; and
- enhancement of various settlement processes – for example, Singapore dollar payments between Central Depository Pte Limited (CDP) and settlement participants will be carried out through, and made final in, the MAS Electronic Payment System, or MEPS+, the MAS' electronic inter-bank payment and fund transfer system, rather than through commercial settlement banks. This will allow participants to reduce their exposure to settlement bank risks. Further, CDP will cash-settle on the Intended Settlement Day + 6 business days (ISD+6) any trade with failed delivery that is not resolved by then. This is in line with global standards and practices.

The SGX also proposes that investors with shares in their CDP direct accounts have the option of giving their broker visibility over specific holdings by creating a broker-linked balance of these holdings. The broker can then offer more personalised services such as portfolio management services.

The SGX intends to introduce the changes by the second half of 2018. Comments on the consultation paper are due by 15 January 2018.

MAS consults on execution of customers' orders by capital market intermediaries

The MAS has launched a [consultation](#) in relation to its proposal to formalise expectations for holders of a capital

markets services licence (CMS licensees), banks, merchant banks and finance companies to have in place policies and procedures to place and/or execute customers' orders on the best available terms ('best execution') to support fair outcomes for customers.

The specific requirements proposed are set out in the draft Notice on execution of customers' orders and the draft guidelines to the Notice, which are annexed to the consultation paper.

The proposals are in tandem with the MAS' April 2017 proposal for a market operator to have in place measures to facilitate its members' execution of customers' orders in the customers' interests, and to ensure that its handling and execution of bids and offers is conducted on a fair and objective basis.

The MAS is also proposing an enhancement to the existing business conduct requirements relating to the handling of customers' orders.

Comments on the consultation paper are due by 18 December 2017.

SGX and industry bodies launch guide on handling confidential information and dealings in securities

The SGX, together with the Association of Banks in Singapore (ABS), the Institute of Singapore Chartered Accountants (ISCA), the Law Society of Singapore and the Singapore Institute of Directors (SID), have launched a [guide](#) to assist issuers and their advisers in developing and implementing best practices in handling confidential information and dealings in securities.

The guide outlines principles of best practice for issuers and their advisers in creating a culture of compliance, handling and controlling confidential information, and restricting dealings in securities. It also includes practical examples on how issuers and their advisers can put these principles and guidelines into practice.

Amongst other things, the guide covers:

- arrangements for ensuring that confidential information generated and/or received remains confidential until it is reasonably expected to be disclosed under the relevant laws, regulations and the Listing Rules;
- how to minimise the risks of accidental leaks of confidential information;
- characteristics of effective trading restrictions on dealings in securities; and

- promoting strong awareness of the importance of appropriate handling and control of confidential information.

SEC Cyber Unit obtains first emergency asset freeze to halt ICO

The US District Court for the Eastern District of New York has granted an emergency asset freeze order sought by the US Securities and Exchange Commission (SEC) to halt an initial coin offering (ICO) that the SEC believes is fraudulent. The SEC, through its new Cyber Unit, sought the order to prevent further misappropriation of investor funds raised through an unregistered offer and sale of “PlexCoin”.

The SEC’s complaint charges the sponsor and its executive team with violating securities offering registration and anti-fraud provisions of the US securities laws. The complaint also seeks permanent injunctions, disgorgement plus interest and civil money penalties, officer-and-director bars, and other sanctions.

The SEC [announced](#) that this is the first complaint filed by the SEC’s Cyber Unit, which was created in September 2017. The SEC Cyber Unit will focus the Enforcement Division’s cyber-related expertise on misconduct involving distributed ledger technology and ICOs, the spread of false information through electronic and social media, hacking and threats to trading platforms.

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

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

© Clifford Chance 2017

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.