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Money market funds: EU Commission adopts Delegated Regulation on STS securitisations and asset-backed commercial papers

The EU Commission has adopted a [Delegated Regulation](#) amending and supplementing the Money Market Funds (MMF) Regulation in relation to simple, transparent and standardised (STS) securitisations and asset-backed commercial papers (ABCPs), requirements for assets received as part of reverse repurchase agreements and credit quality assessment methodologies.

The Delegated Regulation aims to ensure that MMFs are invested in appropriate eligible assets by setting out MMF investment requirements and providing an overview of and single point of access to them.

The Delegated Regulation will enter into force 20 days after its publication in the Official Journal and will apply from 21 July 2018, except for Article 1 which will apply from 1 January 2019.

ESAs publish joint report on risks and vulnerabilities in the financial system

The Joint Committee of the European Supervisory Authorities (ESAs), which comprise the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA), have published their [report](#) for the second half of 2017, which outlines risks and vulnerabilities facing the securities, banking and insurance sectors.

In particular, the report highlights risks relating to:

- valuation risk and the potential for sudden risk premia reversals;
- uncertainties around the terms of the UK's withdrawal from the EU and the potential to expose the EU27 and UK to economic and financial instability;
- cyber attacks; and
- climate change and the transition to a low carbon economy, which raises concerns about the sustainability of investments across large parts of the financial sector.

The report also addresses policy actions in relation to the risks identified, which include recommendations to EU financial institutions and their counterparties to consider timely mitigation actions to prepare for the UK's withdrawal from the EU.

MiFID2: ESMA requests further guidance from Commission on ancillary activity test

The Chair of ESMA, Steven Maijoor, has written a [letter](#) to the EU Commission Vice President in charge of Financial Stability, Financial Services and Capital Markets Union, Valdis Dombrovskis, on the ancillary activity exemption under MiFID2.

RTS 20 (Commission Delegated Regulation (EU) 2017/592) establishes criteria and tests to be performed for establishing whether an activity is to be considered to be ancillary of the main business, but questions have emerged from stakeholders, in particular on whether the tests should be performed at group or single entity level.

ESMA takes the view that this appears to be a matter of interpretation related to the scope of the Level 1 text, and related amendments to the Level 2 text introduced by the Commission, and, as such, would not be appropriately addressed through the ESMA questions and answers (Q&A) mechanism. ESMA requests the Commission provide further guidance on the criteria for the ancillary activity test under Article 2(4) MiFID2 and RTS 20.

MiFID2: ESMA updates double volume cap register

ESMA has published the March 2018 update of the [double volume cap \(DVC\) register](#) under MiFID2. The update includes DVC data and calculations for 1 March 2017 – 28 February 2018.

DVC limits the amount of dark trading allowed under the reference price waiver and negotiated transaction waiver. The March 2018 update sets out new breaches of 47 equities for the 8% cap, applicable to all trading venues, and 8 equities for the 4% cap, which applies to individual trading venues. The instruments which breached the DVC thresholds for March which are already subject to caps will continue to be suspended and trading under the waivers for all new instruments in breach of the DVC thresholds should be suspended from 13 April 2018 to 13 October 2018.

The update has also revised data from past DVC calculations and, as such, suspensions of trading under the waivers for 34 instruments have been lifted.

EBA reports on remuneration practices

The EBA has published a [report](#) on high earners and remuneration practices in EU banks, as part of its monitoring activities under the Capital Requirements Directive (CRD 4). The report provides an analysis of the 2016 data reported for high earners and an analysis of the 2015 and 2016 remuneration benchmarking data, which contains information on all 'identified staff' (individuals whose professional activities have a material impact on an institution's risk profile).

Amongst other things the EBA reports that:

- in 2016 the number of high earners receiving a remuneration of over EUR 1 million decreased by 10.6%;
- the average ratio between variable and fixed remuneration for high earners decreased from 118% in 2015 to 104% in 2016, and all identified staff from 62.2% to 57.1%;
- the number of identified staff decreased significantly from 67,802 in 2015 to 53,382 in 2016. The EBA intends to consider the identification process when reviewing the application of the regulatory technical standard (RTS) on identified staff; and
- remuneration practices, in particular the application of deferral and pay out instruments, differ significantly across institutions and Member States.

The EBA will continue to benchmark remuneration trends every two years. The report for the performance years 2017 and 2018 will be published at the beginning of 2019.

ECB consults on cyber resilience oversight expectations

The ECB has launched a [consultation](#) on draft cyber resilience oversight expectations (CROE) for financial market infrastructures (FMIs).

The draft CROE, which are predicated on global guidance on cyber resilience published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions (CPMI-IOSCO) in 2016 and the Principles for FMIs, seek to serve three key purposes:

- to provide overseers with clear expectations to assess FMIs and determine cyber resilience maturity levels;
- to provide FMIs with detailed steps on how to operationalise the guidance, foster improvements and enhance resilience over a sustained period of time; and
- to provide a basis for a discussion between FMIs and their respective overseers.

Views are sought from FMIs and other interested parties by 17:00 CET on 5 June 2018.

ICE Benchmark Administration consults on LIBOR code of conduct

ICE Benchmark Administration Limited (IBA) has launched a [consultation](#) on its latest LIBOR code of conduct.

In accordance with Article 15 of the EU Benchmarks Regulation (BMR), benchmark administrators must develop a code of conduct specifying contributors' responsibilities with respect to the contribution of input data. IBA, as the administrator of LIBOR, is seeking feedback on its proposed LIBOR Code of Conduct.

Comments are due by 11 May 2018.

IBA intends to withdraw the current LIBOR Code of Conduct when the new code conforming to the BMR is introduced.

FCA and PRA publish business plans for 2018/19

The Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) have published their business plans for 2018/19.

Among other things, the [FCA business plan](#) covers various cross-sector priorities in relation to:

- culture and governance;
- financial crime and anti-money laundering (AML);
- data security, resilience and outsourcing;
- innovation, big data, technology and competition;
- treatment of existing customers;
- long-term savings, pensions and intergenerational differences; and

- high-cost credit.

The FCA has also highlighted Brexit-related work as a high priority, including providing technical advice to the Government on converting existing EU legislation into UK law and reviewing the Handbook, as well as ensuring there is an appropriate transition for EEA firms currently providing services in the UK under a passport.

The [PRA business plan](#) includes work on:

- implementation of ring-fencing;
- governance arrangements, including remuneration practices and the work of its Bank Start Up Unit, noting that it expects to start supervising 20-30 new banks over the next 3 years;
- monitoring of implementation of the December 2017 Basel standards and a focus on stress testing, investment risk and asset quality;
- developing its supervision of operational resilience in order to mitigate the risk of disruption to the provision of critical economic functions;
- recovery planning and resolution strategy; and
- delivering a smooth transition to the UK financial regulatory framework following the UK's exit from the EU.

Bank of Italy extends application of transitional provisions regarding IFRS 9 to financial intermediaries

The Bank of Italy has published a [communication](#) extending the application of the transitional provisions regarding IFRS 9 to financial intermediaries (intermediari finanziari) referred to under Article 106 of the Italian Banking Act (Legislative Decree no. 385/1993). This temporary regime is intended to ensure a progressive application of IFRS 9 to these financial institutions.

CRR: Bank of Italy consults on implementation of EBA guidelines

The Bank of Italy has launched a [consultation](#) on the implementation of the following guidelines issued by the EBA in the context of the Capital Requirements Regulation (CRR):

- EBA guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of the CRR;
- EBA guidelines on implicit support for securitisation transactions;
- EBA guidelines on corrections to modified duration for debt instruments under Article 340(3) of the CRR;
- EBA guidelines on ICAAP and ILAAP information collected for SREP purposes;
- EBA guidelines on disclosure requirements under Part 8 of the CRR;
- EBA guidelines on LCR disclosure to complement the disclosure of liquidity risk management under Article 435 of the CRR; and
- EBA guidelines on uniform disclosures under Article 473a of the CRR as regards the transitional period for mitigating the impact of the introduction of IFRS 9 on own funds.

Comments are due by 6 May 2018.

AML4: Bank of Italy consults on second-level implementing provisions

The Bank of Italy has published two consultations on new second-level provisions intended to give full implementation to Legislative Decree No. 231 of 21 November 2007, as recently amended by Legislative Decree No. 90 of 25 May 2017, which transposed Directive 2015/849/EU on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (AML4) into Italian law.

The [consultation on organisational measures, procedures and internal controls](#) seeks views on, amongst other things:

- a more granular implementation of a risk-based approach;
- the establishment of a central contact point for cross-border institutions; and
- the improvement of the suspicious transaction reporting regime.

The [consultation on customer checks and requirements](#) seeks views on, amongst other things:

- a revision of the definition of ‘beneficial owner’ (titolare effettivo);
- a revision of the cases in which simplified and enhanced customer due diligence measures should be adopted; and
- a revision of distance customer due diligence measures.

Comments need to be submitted within 60 days of the publication of the consultation documents (13 April 2018).

AML4: Act on combatting money laundering and terrorism financing published in Poland

The [Act on combatting money laundering and terrorism financing](#), which implements the fourth Anti Money-laundering Directive (AML4) of 2015, has been published in the Journal of Laws.

Among other things, the Act provides for new categories of institutions that are obliged to apply it, and the creation of the Central Register of Beneficial Owners.

The majority of the provisions will come into force 3 months following the promulgation.

PBoC announces specific measures and timeline for further liberalisation of PRC financial industry

Yi Gang, the newly appointed Governor of the People’s Bank of China (PBoC), has [announced](#) a series of measures intended further to open up the domestic financial market. This follows a recent keynote speech delivered by President Xi at the Bo’ao Forum for Asia Annual Conference 2018, in which he committed China to continue its policy of further liberalising its economy and financial markets.

Mr. Yi indicated that, among others, the following measures will be implemented by the government in the next few months:

- foreign ownership limits on domestic commercial banks and financial asset management companies will be completely removed;
- the current cap on foreign shareholding in domestic securities companies, mutual fund managers, futures brokers and life insurers will be increased to 51% and this foreign investment cap will be removed after three years;
- a Sino-foreign joint venture securities company is no longer required to have at least one domestic securities company as its shareholder; and
- the business scope of foreign-invested insurance brokers will be allowed to match the business scope of domestic-invested insurance brokers.

In addition, the following measures will be rolled out by the end of 2018, among others:

- there will be no foreign ownership limit on financial asset investment companies or wealth management companies newly established by domestic commercial banks;
- the business scope of Sino-foreign joint venture securities companies will be liberalised to be the same as that of domestic-invested securities companies; and
- a foreign insurer will no longer need to operate a representative office in China for at least 2 years before it can establish a foreign-invested insurer in China.

Mr. Yi also noted that the Shanghai-London Stock Connect is expected to be launched in 2018.

To give effect to the announced measures, amendments to the relevant regulations and rules will need to be made by the PRC financial regulators.

Regulators announce increase in daily quotas under Stock Connect

The Securities and Futures Commission (SFC) and the China Securities Regulatory Commission (CSRC) have agreed to increase the daily quotas under the Shanghai-Hong Kong Stock Connect and Shenzhen-Hong Kong Stock Connect.

According to the [joint announcement](#) issued by the SFC and the CSRC, the new daily quota for each of the northbound trading links will be RMB 52 billion and the new daily quota for each of the southbound trading links will be RMB 42 billion with effect from 1 May 2018.

SFC issues circular to licensed corporations on alternative liquidity pools

The SFC has issued a [circular](#) to licensed corporations to highlight areas of concern regarding alternative liquidity pools (ALPs). The circular follows a recent thematic review conducted by the SFC to assess compliance with the regulatory requirements for ALPs by licensed corporations.

The SFC review was conducted between 2016 and 2017, and although licensed corporations had implemented measures to comply with the requirements, the SFC did identify a number of deficiencies. In particular, the

deficiencies related to ensuring ALP users are qualified investors, disclosing information to ALP users, routing orders to third-party ALPs and posting orders to both the ALP and the exchange.

The [review report](#) provides an overview of the ALP landscape in Hong Kong, outlines the areas covered by the thematic review and summarises the findings and a number of good practices identified.

The SFC has encouraged licensed corporations to consider implementing similar controls and mechanisms, where applicable, to enhance their ALP control frameworks.

Bank of Japan and Hong Kong Monetary Authority to introduce DVP settlement framework for cross-border transactions

The Bank of Japan (BOJ) and the Hong Kong Monetary Authority (HKMA) have [announced](#) their plan to introduce a delivery versus payment (DVP) settlement framework for cross-border transactions of Japanese Government bonds (JGBs) and Hong Kong dollars (HKD) to reduce settlement risk. The BOJ and the HKMA published the result of their joint study on a cross-border DVP link in May 2015.

Under the plan, the BOJ will start preparing for the implementation of the cross-border DVP link in the fiscal year 2018 by linking BOJ-NET (Bank of Japan Financial Network System) JGB Services with HKD CHATS (Hong Kong dollar Clearing House Automated Transfer System) to enable DVP settlement of JGBs and HKD.

The BOJ and the HKMA intend to implement the cross-border DVP link around the spring of 2021. Further details including the go-live date will be made public in due course, depending on the progress made in the preparatory work.

MAS publishes revised notice on minimum entry and examination requirements for representatives of licensed financial advisers and exempt financial advisers

The Monetary Authority of Singapore (MAS) has published a [revised Notice](#) on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers [FAA-N13]. The Notice has been revised in response to the changes arising out of the consultation exercise conducted by the MAS from December 2016 to January 2017 on the review of competency requirements for representatives conducting regulated activities under the Securities and Futures Act (SFA) and Financial Advisers Act (FAA). The [MAS responses](#) to the consultation feedback were published in September 2017.

Amongst other things, the revised notice provides as follows:

- the MAS has reduced the accredited continuing professional development (CPD) training hours for appointed representatives under the FAA from twelve Core CPD hours to six Core CPD hours. Further, to provide more flexibility for FAA appointed representatives to complete the accredited CPD hours, the MAS will no longer require appointed representatives to complete a minimum number of Core CPD hours in respect of courses in Ethics, or Rules and Regulations. Instead, appointed representatives can

complete six hours of accredited training either on Ethics and/or Rules and Regulations; and

- the MAS will require appointed representatives to complete up to 24 hours of Supplementary CPD hours, depending on the number of financial advisory services and type of financial advisory service that the appointed representative provides.

The amendments to the notice are effective from 11 April 2018.

MAS to develop guidance on responsible use of data analytics by financial institutions

The MAS has [announced](#) that it is working with key industry stakeholders to develop a guide to promote the responsible and ethical use of artificial intelligence (AI) and data analytics by financial institutions.

The guide will set out key principles and best practices for the use of AI and data analytics, helping financial institutions to strengthen internal governance and reduce the risk of data misuse. It will cover all segments of the financial sector including fintech firms.

The MAS intends to engage the industry to obtain views and feedback on the proposed guide in the second quarter of 2018.

Federal Reserve Board requests comments on proposal to simplify capital rules for large banks

The Board of Governors of the Federal Reserve System (FRB) has issued a [request for comments](#) on a proposal intended to simplify its capital rules for large banks while preserving strong capital levels that would maintain their ability to lend to households and businesses under stressful conditions. The proposal would amend the FRB's capital plan rule, capital rule, and stress testing rules, and make amendments to the Stress Testing Policy Statement that was proposed for public comment on 15 December 2017.

The proposal would introduce a stress capital buffer, or SCB, that would replace an existing fixed capital buffer applicable to all banks with an individual buffer calculated during the bank's stress test. According to a related FRB release, the intended result would be to produce capital requirements for large banking organizations that are firm-specific and risk-sensitive.

The proposal would apply to bank holding companies with USD 50 billion or more in total consolidated assets and US intermediate holding companies of foreign banking organizations established pursuant to Regulation YY. The proposal would not apply to any community bank, any bank holding company with total consolidated assets of less than USD 50 billion, or to any state member bank or savings and loan holding company. It would be effective on 31 December 2018. Under the proposal, a firm's first stress capital buffer and stress leverage buffer requirements would generally be effective on 1 October 2019.

Comments on the proposals will be accepted for 60 days following their publication in the Federal Register.

RECENT CLIFFORD CHANCE BRIEFINGS

New Fund Structure Available For Real Estate Investment in Japan – Should the TKGK Structure be Reassessed?

On 1 December 2017, amendments to the Real Estate Specified Joint Enterprise Act of Japan took effect. Under these amendments, a new structure for investment in hard asset real estate (as opposed to trust beneficiary interests representing real estate) is made available.

This briefing outlines the new structure and its impact on real estate investment in Japan.

https://www.cliffordchance.com/briefings/2018/04/new_fund_structureavailable_forrealestat.html

The US imposes sanctions on certain Russian oligarchs, prominent companies, and government officials in response to ongoing ‘worldwide malign activity’

On 6 April 2018, the US Office of Foreign Assets Control (OFAC) listed 38 individuals and entities as Specially Designated Nationals (SDNs) under existing Russia and Syria-related sanctions authorities in response to ongoing Russian activity against US interests worldwide.

This briefing discusses the sanctions.

https://www.cliffordchance.com/briefings/2018/04/the_us_imposes_sanctions_on_certain_russia.html

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