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## **EMIR: ESMA highlights need for clarity on exemptions from financial obligations under Articles 41 and 42**

The European Securities and Markets Authority (ESMA) has [written](#) to the EU Commission requesting clarity on exemptions for central counterparties (CCPs) under Articles 41 and 42 of the European Market Infrastructure Regulation (EMIR).

During a meeting in March 2018, the ESMA Board of Supervisors discussed whether a CCP could exempt certain clearing members, such as central banks, governmental entities and supranational entities, from the financial obligations under Articles 41 and 42 of EMIR, i.e., to provide the CCP with initial margins and default fund contributions.

ESMA has noted different practices across EU CCPs and different interpretations across the relevant national competent authorities (NCAs) of 'credit exposures' from clearing members which are public entities. In particular, some NCAs, believing that these entities should be exempted under EMIR, have authorised their CCPs to consider the zero-risk-weight envisaged under the Capital Requirement Regulation for such entities to strike down their respective credit exposures, implying that no initial margins and no default fund contributions are due from such clearing members, while other EU CCPs apply no such exemptions for this category of clearing members.

ESMA is requesting that the Commission clarify whether CCPs could be allowed not to collect margins and default fund contributions from these public entities and, if so, whether a specific amendment of EMIR, either under the EMIR REFIT project or the EMIR 2.2 proposal, would be appropriate.

## **MiFID2: ESMA publishes 1Q18 liquidity assessment for bonds**

ESMA has [published](#) its first liquidity assessment for bonds subject to pre- and post-trade requirements under MiFID2 and MiFIR. The publication is based on a quarterly assessment of qualitative liquidity criteria, although ESMA notes the data received so far for 1Q18 is not complete for most instruments.

In the first quarter of 2018, ESMA has identified 220 bonds to be sufficiently liquid to be subject to ESMA's real-time transparency requirements under MiFID2. Transparency requirements for those instruments will apply from 16 May to 15 August 2018. ESMA will publish the liquidity assessment on a quarterly basis, with the next assessment scheduled for publication on 1 August 2018, to apply from 15 August 2018. However, additional data and corrections submitted to ESMA may result in further updates within each quarter which will be published in the [Financial Instrument Transparency System \(FITRS\)](#).

The transitional liquidity assessment for bond instruments (except ETCs and ETNs) will cease to apply from 16 May 2018.

## ECB publishes EU framework for testing financial sector resilience to cyber attacks

The European Central Bank (ECB) has published a [framework for Threat Intelligence-based Ethical Red Teaming \(TIBER-EU\)](#).

Designed to enable European and national authorities to work with financial infrastructures and institutions to test and enhance their cyber resilience, the framework provides an overview of how TIBER-EU will be implemented and explains the key phrases, activities, deliverables and interactions involved in a TIBER-EU test.

The core objectives of TIBER-EU include:

- standardising intelligence-led red team testing across the EU, while also allowing jurisdictions flexibility to adapt the framework to their specificities;
- providing guidance to authorities on establishing, implementing and managing testing at a national and European level;
- supporting cross-border, cross-jurisdictional testing for multinational entities;
- reducing the regulatory burden and fostering mutual recognition of tests across the EU; and
- creating the protocol for cross-authority/border collaboration, result sharing and analysis.

Adoption of the TIBER-EU framework at national level or by EU institutions or authorities is voluntary, although it must be implemented in accordance with the mandatory requirements set out in Annex I to the framework.

## Global Legal Entity Identifier System: Regulatory Oversight Committee reports on progress

The Regulatory Oversight Committee of the Legal Entity Identifier System (LEI ROC) has published its [second progress report](#) on the Global LEI System (GLEIS), which includes an overview of the system, regulatory uses of the LEI and activities of the LEI ROC.

The report notes that the governance of GLEIS, which is responsible for the issuance and maintenance of LEIs, is now fully in place and that all active LEI issuers have been accredited by GLEIS's operational arm, the Global LEI Foundation (GLEIF). Policy standards have been established by the ROC and include policy on eligibility criteria and conditions for obtaining a LEI, the definition of reference data and high-level principles on governing data and information access.

The report also notes that the number of LEIs grew rapidly in the second half of 2017; between January and November 2017 the total value of securities covered by the LEI increased by 25% to EUR 95 trillion. Authorities in jurisdictions represented by the ROC have adopted at least 91 regulatory actions using the LEI. Examples of usage include:

- identifying, in regulatory reporting, the parties to OTC derivatives contracts and other securities transactions, as well as the various institutions involved in processing the transaction to facilitate aggregation of data relating to the same entity;

- improving the comparability of data reported by financial institutions; and
- supporting more granular disclosures of assets held in securitised products to allow investors to conduct more cost-effective analysis on the assets.

However, the report adds that further benefits from the LEI could be achieved by, amongst other things, upgrading data infrastructures, maintaining support from the public sector, and ensuring relevant entities register for LEIs and keep their data up-to-date.

### **Payments: NPSO takes responsibility for Bacs and Faster Payments**

The New Payment System Operator (NPSO) has [taken over](#) operational responsibility and control for the Bacs and Faster Payments systems, their managed products and services. Simultaneously the Bacs and Faster Payments schemes have become subsidiaries of the NPSO.

The consolidation of the operators has been a [key focus](#) for the Payment Systems Regulator (PSR) and Bank of England (BoE) and is intended to reduce the complexity and costs associated with having separate payment system operators (PSOs). Over the coming months, the NPSO is also expected to take on responsibility for the Cheque and Credit Clearing Company Limited (C&CCC), which manages the paper processing system for cheques and incorporates the recently launched Image Clearing System (ICS), as well as UK Payments Administration Limited, which provides resource and business services to the payments sector.

### **Bank of England publishes feedback to consultation on CCP incident reporting**

The BoE has published [feedback](#) to its February 2018 consultation on a new rule for central counterparties (CCPs) relating to incident reporting.

Following the consultation and consideration of responses received, the BoE has decided to proceed with [the rule as proposed](#).

The rule will formalise the requirement for CCPs to notify the BoE of certain incidents having an impact on their IT systems.

The rule has been effective and binding on CCPs since 7 May 2018.

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

The Financial Conduct Authority (FCA) has published a [consultation paper](#) on the funding of the Financial Services Compensation Scheme (FSCS). The paper forms part of the FCA's work on reviewing FSCS funding to ensure it provides appropriate protections, works effectively and is funded fairly. The paper summarises the feedback the FCA received to its earlier consultation on FSCS funding (CP17/36) and sets out final rules. The rules, which will take effect in April 2019:

- merge the Life and Pensions, and Investment Intermediation funding classes;
- require product providers to contribute 25% of the compensation costs falling to the intermediation classes;

- move the pure protection intermediation from the Life and Pensions funding class to the General Insurance Distribution class; and
- increase the FSCS compensation limit for investment provision and intermediation, home finance and debt management claims to GBP 85,000

The FCA is also seeking feedback on draft rules to ensure that personal investment firms (PIFs) have professional indemnity insurance (PII) policies that do not limit claims where the policyholder or a third party is insolvent, or where a person other than the PIF, such as the FSCS, is entitled to make a claim. These proposals are intended to ensure that more consumer claims are covered by insurance policies, thus helping reduce the cost of the FSCS to other firms.

Comments are due by 1 August 2018. The FCA intends to consider the feedback received and then publish final rules in a Handbook Notice.

### **PRA publishes policy statement on model risk management principles for stress testing**

The Prudential Regulation Authority (PRA) has published a [policy statement \(PS7/18\)](#) containing the [final supervisory statement \(SS3/18\)](#) on model risk management principles for stress testing, and providing the PRA's feedback to responses to its consultation (CP26/17).

PS7/18 reports that respondents to CP26/17 were supportive of the model risk management principles for stress testing, but also asked for further clarification, guidance and alternative wording in some areas. The PRA's feedback to responses and its decisions are set out in chapter 2 of PS7/18.

SS3/18 sets out the PRA's expectation as to the model risk management practices firms should adopt when using stress test models. All firms applying the principles are expected to undertake a self-assessment of their stress test model risk management practices against the principles as part of the internal capital adequacy assessment process (ICAAP) and report the findings in the ICAAP documents from 1 January 2019 onwards, depending on the frequency of the supervisory review and evaluation process (SREP).

The PRA expects SS3/18 to take effect from 1 June 2018.

### **PRA publishes policy statement on groups and double leverage**

The PRA has published a [policy statement \(PS9/18\)](#) on group policy and double leverage. The policy statement sets out feedback to its consultation paper (CP19/17) and the final rules.

The PRA received three responses to its consultation and has made certain changes in response, which the PRA does not consider to be significant. Respondents supported the overarching principle that consolidated capital requirements could take into account all risks that a group faces and that the financial strength of the holding company is of great importance.

The policy statement sets out the changes to the PRA Rulebook for CRR Firms, alongside updates to:

- supervisory statements on the internal capital adequacy assessment process (ICAAP) and the supervisory review and evaluation process

(SREP) (SS31/15) and the PRA's approach to supervising funding and liquidity risks (SS24/15); and

- the PRA's Statement of Policy (SoP) on the methodology for setting Pillar 2 capital.

The policy statement is relevant to PRA-authorised UK banks, building societies, PRA-designated UK investment firms and their qualifying parent undertakings, as well as credit institutions, investment firms and financial institutions that are subsidiaries of these firms, regardless of location.

The final rules and updated statements will come into effect on 1 January 2019.

## **PRA updates reporting requirements for Pillar 2**

The PRA has published a [policy statement \(PS8/18\)](#) containing the final Pillar 2 reporting requirements.

This follows a consultation (CP25/17) to which the PRA received no responses. PS8/18 contains:

- the final rules amending the Glossary, Regulatory Reporting Part, Reporting Leverage Ratio Part, and Reporting Pillar 2 Part of the PRA Rulebook;
- the final data item PRA111;
- an updated supervisory statement (SS32/15) including instructions for completing data items FSA071 to FSA082, and PRA111; and
- an updated statement of policy on 'The PRA's methodologies for setting Pillar 2 capital'.

The final rules, updated SS32/15 and updated statement of policy in PS8/18 will take effect from 1 October 2018.

## **BaFin publishes minimum requirements for complaints-handling**

The German Federal Financial Supervisory Authority (BaFin) has published a [note](#) on minimum requirements for handling customer complaints.

In implementing the Joint Committee's guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors, BaFin aims to set minimum standards for CRR credit institutions, capital management companies, payment service providers and e-money institutions when handling customer complaints.

## **PBoC issues circular on RMB qualified domestic institutional investors**

The People's Bank of China (PBoC) has issued a [circular](#) further clarifying relevant matters concerning the management of RMB qualified domestic institutional investors (QDIIs) engaged in overseas securities investment. The circular sets out rules on several issues including macro-prudential management and information reporting to further standardise requirements applicable to RMB QDIIs when investing overseas. The following aspects are worth noting:



- RMB QDIIs should invest in RMB denominated products in offshore markets (except for RMB QDIIs that are commercial banks making proprietary investments);
- RMB QDIIs may not remit RMB offshore for purchasing foreign exchange outside China;
- RMB QDIIs are required to report to the Shanghai headquarters of the PBoC. The report shall contain basic information regarding the RMB QDII, custodian bank, the source and size of the funds, investment plan, cross-border remittance, trading positions and other key information; and
- domestic custodian banks shall examine the authenticity and compliance issues of the overseas investment of RMB QDII and report relevant information to the PBoC through the RMB Cross-border Collection and Payment Information Management System.

The circular took effect on 3 May 2018.

### **Revised disclosure rules and amendment notice under Banking Ordinance to implement international standards on banking regulation gazetted**

The Hong Kong Government has gazetted the [Banking \(Disclosure\) \(Amendment\) Rules 2018](#) and the [Banking \(Specification of Multilateral Development Bank\) \(Amendment\) Notice 2018](#) to implement international standards on banking regulation in Hong Kong.

The Disclosure Rules are intended mainly to implement the latest disclosure requirements issued by the Basel Committee on Banking Supervision (BCBS) in March 2017 to enhance the requirements in terms of transparency, comparability and user-relevance of bank disclosures.

The Amendment Notice reflects the BCBS decision in October 2017 to specify the Asian Infrastructure Investment Bank as a multilateral development bank to which banks' exposures will be eligible for preferential capital and liquidity treatment. It is intended to ensure that the capital and liquidity frameworks of local authorised institutions are brought up to date.

The Disclosure Rules and the Amendment Notice will be tabled before the Legislative Council on 9 May 2018 for negative vetting and will come into operation on 30 June 2018.

### **Hong Kong Government publishes money laundering and terrorist financing risk assessment report**

The Hong Kong Government has published Hong Kong's [money laundering and terrorist financing \(ML/TF\) risk assessment report](#). The report examines the money laundering and terrorist financing threats and vulnerabilities facing various sectors in Hong Kong and the city as a whole according to the recommendation of the Financial Action Task Force (FATF), an inter-governmental body that sets international standards on combating such crimes.

The Securities and Futures Commission (SFC) has issued a [circular](#) to licensed corporations and associated entities drawing their attention to the government report. The circular requires licensed corporations and associated entities to identify and assess ML/TF risks to which the firms are exposed, so as to determine the adequate and appropriate anti-money

laundrying and counter-financing of terrorism (AML/CFT) policies, procedures and controls (AML/CFT systems) that should be implemented to mitigate the risks of ML/TF identified. Licensed corporations and associated entities are advised to give due consideration to the ML/TF threats and vulnerabilities identified in the report, in particular its Chapter 5.3 on the assessment of ML risks of the securities sector, that are relevant to their own circumstances in their risk assessment process. Further, licensed corporations and associated entities are advised to review as appropriate their customer risk assessment schemes and suspicious transaction monitoring systems, or take other measures to ensure that they properly manage and mitigate the risks which are applicable to them. Related guidance is set out in the appendix to the circular.

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

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to authorised institutions informing them of its further revision to the implementation timeline of the new Basel Committee on Banking Supervision (BCBS) standards on interest rate risk in the banking book (IRRBB) in Hong Kong.

The BCBS standards were scheduled to be implemented by 1 January 2019. However, the implementation timeline has been further revised due to concerns articulated by the industry about the challenges in implementing the new standards. The HKMA has decided to allow authorised institutions an additional period of six months to comply with the new Hong Kong IRRBB standards, i.e. authorised institutions should be ready to measure and report their IRRBB exposures using the new standardised framework by 1 July 2019, with the first report based on data as at 30 June 2019.

### **HKMA issues guideline on exercising power to order a pecuniary penalty under Payment Systems and Stored Value Facilities Ordinance**

The HKMA has issued by notice in the Gazette a [guideline on exercising power to order a pecuniary penalty under section 54\(1E\) of the Payment Systems and Stored Value Facilities Ordinance \(PSSVFO\)](#). The guideline came into operation on 27 April 2018.

The guideline sets out factors that the HKMA will consider in exercising its power to order a regulated person to pay a pecuniary penalty if the HKMA is satisfied that the regulated person has contravened a provision of the PSSVFO, a requirement imposed under the PSSVFO or a condition attached to a licence, consent or any other instrument granted or given by the HKMA under the PSSVFO. The factors listed in the guideline are not exhaustive. The HKMA will consider the factors listed in the guideline and any other factors that are relevant to a particular case but are not listed. The guideline includes the matters that the HKMA must have regard to under section 33Q(3) of the PSSVFO.

The HKMA has also revised its [guideline on exercising power to impose a pecuniary penalty under section 23\(1\) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance \(AMLO\)](#). The penalty guideline under the AMLO has been revised to clarify how the HKMA will exercise its power to impose a pecuniary penalty in relation to both authorised institutions and



stored value facility (SVF) licensees to which Schedule 2 of the AMLO applies. Previously, the penalty guideline under the AMLO only had a reference to how the HKMA exercises power to impose a pecuniary penalty on authorised institutions and did not reflect that the HKMA may also exercise the same power in relation to SVF licensees to which Schedule 2 of the AMLO applies by virtue of section 5(4) of the AMLO.

### **FSC proposes amendments to Enforcement Decree of Act on External Audit of Stock Companies**

The Financial Services Commission (FSC) has [proposed amendments](#) to the Enforcement Decree of the Act on External Audit of Stock Companies, which will provide for an enhanced independent external audit regime.

The key proposals include the following:

- companies in addition to those that are listed or set to be listed will be subject to independent external audit – an exemption will be given to small companies that satisfy three of four thresholds in assets, liabilities, sales revenue, and the number of employees;
- the scope of companies that are required to file financial statements with the Securities and Futures Commission (SFC) when they are provided to the external auditor will be expanded to include financial firms;
- external auditors will be required to notify the SFC of any unusual discovery made while performing an audit or any significant development within the auditing firm; and
- deficiencies in audit quality control reported to the SFC and any noncompliance thereafter will be made public for a period up to three years.

Comments on the proposed amendments are due by 31 May 2018.

### **Singapore and Vietnam enhance cooperation in financial innovation and banking supervision**

The Monetary Authority of Singapore (MAS) and the State Bank of Vietnam (SBV) have [agreed](#) to establish a new partnership to encourage fintech innovation and to strengthen cooperation in banking supervision.

The new memorandum of understanding (MOU) between the MAS and the SBV on financial innovation is intended to facilitate joint innovation projects between the two countries, help fintech companies in either jurisdiction better understand the regulatory regime and opportunities in the other, and encourage the sharing of information on emerging fintech trends and developments.

The MAS and the SBV have also revised their existing MOU on banking supervision to enhance cooperation in crisis management. The enhanced MOU underscores the two regulators' shared commitment to safeguarding the financial sectors in Singapore and Vietnam.

The MOU on financial innovation and the enhanced MOU on banking supervision were signed in Singapore last week.

## **MAS consults on proposed regulatory capital treatment of banks' holdings of TLAC liabilities under MAS Notice 637**

The MAS has launched a [public consultation](#) on proposed amendments to MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore. The proposed amendments implement the relevant requirements under the final standard issued by the Basel Committee on Banking Supervision, which sets out the regulatory capital treatment of banks' investments in total loss-absorbing capacity (TLAC) and pari passu treatments. The proposed amendments are intended to limit contagion within the financial system if a global systemically important bank were to enter resolution.

Amongst other things, the MAS is seeking feedback on the following proposals:

- to introduce an additional 5% threshold for non-regulatory capital TLAC holdings in accordance with the Basel standard on TLAC holdings; and
- that the additional 5% threshold may be used only for non-regulatory capital TLAC holdings that meet the following conditions:
  - the holding is in the bank's trading book; and
  - the holding is sold within 30 business days of the date of its acquisition.

The proposed amendments will be effective from 1 January 2019.

Comments on the consultation paper are due by 9 May 2018.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Policy Statement on Groups Policy and Double Leverage**

The PRA published its policy statement on groups policy and double leverage on 30 April 2018. The policy statement addresses various group-level prudential regulatory issues. The over-arching theme is a concern that compliance with formal consolidated group prudential requirements may leave gaps and mismatches in risk coverage across a group. The PRA will therefore consider, and require its supervised groups to consider, such group-wide issues more specifically and comprehensively through the ICAAP/SREP and Pillar 2 process, but does not commit itself to imposing quantified additional capital requirements.

This briefing discusses the policy statement.

[https://www.cliffordchance.com/briefings/2018/05/policy\\_statementongroupspolicyanddoubl.html](https://www.cliffordchance.com/briefings/2018/05/policy_statementongroupspolicyanddoubl.html)

### **MAS issues proposal to heighten senior management accountability**

Regulators around the world have been looking to the board and senior management of financial institutions (FIs) to ensure a strong culture of responsibility and ethical conduct within their organisations. Singapore is no exception. With the proposed introduction of the Guidelines on Individual

Accountability and Conduct, the MAS aims to strengthen the individual accountability of senior managers in FIs.

This briefing discusses the proposed guidelines.

[https://www.cliffordchance.com/briefings/2018/05/mas\\_issues\\_proposaltoheightseniormanagemen.html](https://www.cliffordchance.com/briefings/2018/05/mas_issues_proposaltoheightseniormanagemen.html)

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