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November 2015

PwC Regulatory Update

1 Legislative/Government developments

FOFA Bill passes the Senate

The Senate has passed the *Corporations Amendment (Financial Advice Measures) Bill.*

The Bill includes an extension of the timeframe for advisers to send renewal opt-in notices and fee disclosure statements to retail clients from 30 to 60 days. This will enable the industry to properly prepare and quality assure these documents and for consumers to make an assessment of the value of the advice services provided.

The next steps in improving the quality and accessibility of financial advice will surround:

- new legislation establishing a new framework for the professional, ethical and education standards of financial advisers
- consulting on the introduction of a product design and distribution obligation, and
- a new product intervention power for ASIC.

Source: Minister for Small Business and Assistant Treasurer

Financial market infrastructure resolution and licensing of overseas financial market infrastructure reports

The Council of Financial Regulators'* (CFR) released reports on Financial Market Infrastructure (FMI) resolution and the licensing of overseas FMI.

Acting on the Murray Inquiry, the Government announced that it would strengthen crisis management powers for FMI. The Government is committed to putting powers in the hands of regulators to manage a crisis in the event an FMI failure. The release of these reports, responding to industry consultations, is a step in this process.

The Government's crisis management response package will include measures relating to both the resolution and licensing of certain FMI and will ensure a robust regulatory framework for these important entities.

The Government will consult further on draft legislation in this area by mid-2016.

Source: Minister for Small Business and Assistant Treasurer

*The Council of Financial Regulators (CFR) is made up of the Reserve Bank of Australia (RBA), the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA) and the Australian Treasury.

1 Legislative/Government developments (cont'd)

Government response to the Productivity Commission and Competition Policy Review recommendations on the National Access Regime

The National Access Regime (Regime) is a regulatory framework through which third parties may seek access to nationally significant infrastructure services. The Government has released its response to the Productivity Commission and Competition Policy Review (Harper Review) recommendations on the Regime. The Government agrees with their findings that the Regime can help promote competition and should be retained after refinement.

The Productivity Commission and the Harper Review took different approaches to ensuring the effectiveness of the Regime by recommending alternative approaches to refine the Regime's declaration criteria. The Government has decided to implement the Productivity Commission's recommendations on the declaration criteria. The Government is also amending a criterion in line with the recommendations of both the Productivity Commission and the Harper Review.

Overall, the Government's position involves supporting 12 Productivity Commission recommendations, noting one, and supporting the Harper Review's recommendation in part.

Source: Treasury

Government response to the Competition Policy Review

The Government has released its response to the Competition Policy Review (Harper Review).

The Government asked Professor Ian Harper and an expert panel to undertake an independent review of competition policy. This was the first comprehensive review of Australia's competition framework in more than 20 years. The Harper Review's final report made 56 recommendations for reforms across three key themes: competition policy, laws and institutions.

The Government will implement the majority of the Harper Review's recommendations. Many of the recommendations are in areas of state and territory responsibility and the Government will work closely with the states and territories to advance reform. The package of reforms outlined in the Government's response are aimed at strengthening Australia's long-term economic performance by promoting more dynamic, competitive and well-functioning markets for the benefit of all Australians.

Source: Treasury

1 Legislative/Government developments (cont'd)

Government announces reform package for life insurance industry

The Government has announced a new reform package concerning the remuneration arrangements in the life insurance advice sector, aimed at better aligning the interests of financial firms and consumers.

The final package will commence on 1 July 2016 and will apply to personal and general advice, which includes direct sales channels. Key elements of the reform include:

- phasing down upfront commissions to a maximum of 80% from 1 July 2016; 70% from 1 July 2017 and then 60% from 1 July 2018, together with a maximum 20% ongoing commission
- introducing a two year retention (clawback) period as follows: in the first year, to 100% of the commission on the first year's premium; and in the second year, to 60% of the commission on the first year's premium.

The three-year phased transition period is to ensure that advisers have time to adjust their business models to the reforms.

Source: Minister for Small Business and Assistant Treasurer

2

What have the regulators been up to?

ASIC updates guidance for fee and cost disclosure requirements for superannuation and managed investment products

ASIC has released updated guidance on fee and cost disclosure for trustees of superannuation funds and responsible entities of managed funds and other managed investment schemes.

Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements* has been updated and amendments made to Class Order [CO 14/1252] (refer: MR 14-334), which made clarifications to the requirements for disclosing fees and costs in the *Corporations Regulations 2001*.

The revised guidance and law amendments follow ASIC'S review of fee and cost disclosure practices in Report 398 *Fee and cost disclosure: Superannuation and managed investment products* (REP 398) (refer: MR 14-158). In this report inconsistencies were identified in industry practice as well as under-disclosure of fees and costs.

These measures will assist trustees and responsible entities in ensuring that the fees and costs disclosed to investors are accurate and that fees and costs are disclosed more consistently across the industry.

The amendments include an extension of the transition period for the application of the new requirements. The class order will now apply to all PDS for superannuation and managed investment products from 1 February 2017. It will also apply to periodic statements that must be given for these products by 1 January 2018 or later.

See media release

Speech: Dealing with fraud - a regulator's perspective

John Price, a Commissioner at ASIC, addressed the Association of Certified Fraud Examiners Melbourne Chapter annual seminar on dealing with fraud from the regulator's perspective. He covered the role of ASIC and others in the financial system in detecting and dealing with fraud. He mentioned some common themes observed where fraud has been alleged, such as when there is one dominant person who has undue control over a company's assets and affairs.

He highlighted various ways in which fraud can be prevented and emphasized that business needs to spend time in making sure it has the right culture. Further, gatekeepers that work with and monitor the activities of businesses need to be vigilant and display professional skepticism in the work they do. Overall, the regulatory system needs to be operating in such a way that creates a credible deterrent to people committing fraud.

He concluded by drawing attention to the impact of globalisation and digital disruption. Although globalisation allows for the greater movement of capital globally, the subsequent risk of misconduct across borders will also rise. This increases the importance of cross-border communication between ASIC and other regulators. Similarly, with the continued growth in financial technology, the risk of cyber fraud has increased markedly and promoting cyber resilience is a key ASIC initiative.

The full speech can be found here.

2

What have the regulators been up to? (cont'd)

Speech: Digital disruption - harnessing the opportunities, mitigating the risks

ASIC's Chairman, Greg Medcraft, addressed the women in banking and finance business series luncheon. He talked about the challenge posed for ASIC by digital disruption to existing business models and channels, and how ASIC is responding through the Innovation Hub, cyber resilience work, and robo-advice taskforce.

He noted that digital disruption may challenge ASIC's strategic priorities of investor and consumer trust and confidence, and fair, orderly, transparent and efficient markets.

It was highlighted that in order to respond to digital disruption and cyber resilience, ASIC will continue to focus on:

- promoting cyber resilience and identifying potential cyber attacks in markets through real-time market monitoring
- ensuring compliance with licensing obligations
- helping the industry take advantage of the opportunities on offer; while also ensuring that investor and consumer trust and confidence is not compromised
- monitoring developments on regulating financial technology being implemented in overseas jurisdictions.

The full speech can be found here.

Speech: Opening statement to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into impairment of customer loans

ASIC's Senior Executive Leader, Michael Saadat, addressed the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the impairment of customer loans. ASIC's role in the inquiry is in regulating:

- insolvency practitioners, including receivers, under the *Corporations Act*, and
- lenders under the *ASIC Act* and the *National Credit Act* – noting that the *National Credit Act* does not apply to business loans.

He touched on the role ASIC plays in regulating the conduct of lenders and receivers and previously mooted reforms in this area. Although ASIC has a strong record in enforcing specific protections for consumer borrowers who have defaulted, the regulatory obligations for commercial lending are comparatively more limited. As such, possible law reform may be considered by the committee if the current legal remedies are insufficient.

The lack of specific protections for business borrowers has been previously highlighted by ASIC. Although the Australian Bankers' Association (ABA) concluded that the existing Code of Banking Practice is sufficient for small business, ASIC has noted that additional provisions such as minimum notice periods and access to valuation reports may provide further value for the industry, subject to parliamentary law reform.

The full speech can be found here.

2

What have the regulators been up to? (cont'd)

Speech: IOSCO and FSB's work on asset management and liquidity

ASIC's Chairman, Greg Medcraft, addressed the Investment Company Institute Global – Asia Pacific Chapter Meeting. There were three main points in the speech:

- The global policymakers focus on asset management; in the context of concerns regarding market liquidity where asset management activities might be amplifying those risks and threatening systemic stability.
- Outlining the work of the Financial Stability Board (FSB); where there are two main work streams: the Standing Committee on Assessment of Vulnerabilities (SCAV) which focuses on understanding near-term market liquidity issues and contingency plans that managers have in place. Conversely, the Standing Committee on Supervisory and Regulatory Co-operation (SRC) focuses on the long-term projects on the structural vulnerabilities with asset management activities.
- Outlining the work of the International Organization of Securities Commissions (IOSCO) in two areas; firstly, understanding and addressing the gaps in the information collected about asset management activity and secondly, conducting a study into how liquidity is being managed by asset managers.

The full speech can be found here.

Speech: Corporate culture and corporate regulation

ASIC's Chairman, Greg Medcraft, addressed the Law Council of Australia BLS AGM. There were three points in the speech:

- What is corporate culture and why does it matter? He touched upon the importance of a good culture to firms as it can benefit firms for instance through loyalty and brand reputation. Culture matters to ASIC because poor culture can be a driver of poor conduct.
- What does good corporate culture look like? He mentioned three hallmarks of good culture: effective communication, encouraging challenge and guarding against complacency. This means firm-wide communication about the values and fostering an environment where employees are encouraged to raise any concerns.
- Addressing poor culture. There are many ways for firms to improve their culture. This can be through peer pressure; where the implementation of a industry disciplinary panel may encourage good behavior, given potential judgment from their peers. Protection of whistleblowers was another key point raised. Lastly, it was emphasised that individuals are responsible for implementing a change in culture, by making individuals accountable for their misconduct.

The full speech can be found here.

2

What have the regulators been up to? (cont'd)

ASIC
Australian Securities and Investments Commission

APRA
Australian Prudential and Regulatory Authority

RBA
Reserve Bank of Australia

ASX
Australian Securities Exchange

AUSTRAC
Australian Transaction Reports and Analysis Centre

APRA proposes revisions to prudential framework for securitisation

APRA has released for consultation a discussion paper, *Revisions to the prudential framework for securitisation,* for authorised deposit-taking institutions (ADIs), proposing to establish a simplified prudential framework for securitisation, including:

- dispensing with a credit risk retention or 'skin-in-the-game' requirement
- allowing for more flexibility in funding-only securitisation, and
- removing explicit references to warehouse arrangements in the prudential framework.

These amended proposals are expected to assist ADIs in strengthening their funding profile and provide further clarity for those who undertake securitisation for capital benefits.

APRA's latest proposals incorporate the new Basel III securitisation framework, with appropriate adjustments, and will be applicable equally to all ADIs.

APRA has also released a draft Prudential Standard on securitisation (APS 120).

See media release

Speech: Matching expectations with reality

APRA's Chairman, Wayne Byres addressed the Global Risk Forum in Hong Kong. He started his speech by stating that the period since the financial crisis has seen a major overhaul of the regulatory framework:

- capital requirements have been strengthened
- global liquidity standards introduced
- disclosure requirements have been enhanced
- macroprudential frameworks have been (and continue to be) developed
- additional requirements have been imposed on systemically important financial firms, and
- the rules for derivatives markets have been substantially rewritten.

He highlighted that they are at that stage of the reform program where a great deal of time and effort is being spent on technical issues of regulatory detail.

He suggested that the task in dealing with the specifics would be easier if they had a more strategic perspective on a few key issues. Those issues are the extent to which they want to design a regulatory framework founded on a degree of reliance on internal models; supervision; market discipline; and internal governance and culture. These issues were discussed in detail.

The full speech can be found here.

2

What have the regulators been up to? (cont'd)

Speech: Remarks at FINSIA Regulators Panel

Philip Lowe, Deputy Governor at RBA addressed the FINSIA Regulators Panel. His speech focused on the three general areas relating to the Bank's regulatory responsibilities.

His speech started with financial stability. The importance of high-quality data as a basis for good analysis is highlighted. By drawing attention to the irregularities in data provided in regards to owner-occupier and investor housing credit, it was concluded that a review will be conducted on the data collected from authorised deposit-taking institutions.

The speech then turned to the Bank's payments systems work and the industry efforts to modernise important aspects of Australia's payments system. This led to the discussion of the ongoing review of the regulation of the cards payments system, with particular focus on the Bank's work to consider how to manage concerns about excess surcharging on credit cards, and the appropriate level of interchange benchmarks in the card systems.

The third aspect discussed is the Bank's role as the prudential supervisor for central counterparties and securities settlement facilities. He concluded by pointing out that the Bank, as a financial institution, has made its own significant investment to address the risks posed by cyber-attacks.

The full speech can be found here.

Speech: The Path to Prosperity

Glenn Stevens, Governor at RBA addressed the 2015 Economic and Social Outlook Conference. The speech started by reflecting on the some of the economic surprises that came to pass in the preceding six years including: the 'mining boom mark II'; the further significant rise and then subsequent fall in Australia's terms of trade; and the search for yield in global capital markets driven by ongoing ultra-easy monetary policy in the major economies.

The speech moved on to suggest that although the world economy has not relapsed back into recession, it has taken extraordinary policy to sustain this and that many policymakers consider the results to be disappointing. Australia managed the 'boom' period well, as the economy has shifted towards non-mining industries to generate sustainable long-term growth.

In discussing monetary policy's contribution to the management of the economic challenges, the speech considered whether the recent increases in mortgage rates of the commercial banks, outside of the cycle of changes in the cash rate has resulted in financial conditions which are 'too tight' for the economy. Although the macroeconomic effect of these actions in themselves may not be large, they are one part of a much bigger and evolving landscape that the Reserve Bank Board will continue to carefully monitor.

The speech concludes by highlighting several key points to be considered for the future, including the future growth prospects of China and the continued development of infrastructure.

The full speech can be found here.

2

What have the regulators been up to? (cont'd)

Speech: Remarks at UBS Australasia Conference 2015

Christopher Kent, Assistant Governor at RBA, addressed the UBS Australasia Conference 2015. He highlighted that the easing in the growth of the Chinese economy over the past year has two related parts; one being its natural maturation, and secondly, the substantial slowing in the industrial sector, linked to previous over-construction.

Although the weakness in China's property and manufacturing sectors is clearly of concern to commodity exporters like Australia, there are a number of counteracting forces supporting broader activity in China.

- Growth in the services sector has been resilient, and should continue to be assisted by a shift in demand toward services as incomes rise.
- Growth in household consumption has been stable in recent quarters aided by the growth of new jobs.
- Chinese policymakers have responded to lower growth by easing monetary policy and approving additional infrastructure investment projects.

There are two key implications of the slowing in China's growth for Australia. The substantial slowing in industrial production has contributed to a further decline in commodity prices over the course of this year. The shift in demand towards services and agricultural products within China and the Asian region more broadly presents new opportunities for Australian exporters.

The full speech can be found here.

Speech: Benchmarks

Guy Debelle, Assistant Governor at the RBA addressed the Bloomberg Summit. He discussed benchmark rates, in both fixed income and foreign exchange.

He first discussed about the benchmark reform in foreign exchange and the work done on developing a single code of conduct for the foreign exchange market.

The next point of discussion was on interest rate benchmarks, focusing on domestic reforms around the principal interest rate benchmark in Australia, the bank bill swap rate (BBSW), consideration of a 'risk-free' interest rate for the domestic market and briefly some small changes to the calculation of the cash rate, the RBA's operational target for monetary policy.

He concluded by stating that benchmarks are a very critical part of the financial system. It is important that market participants have a reasonable awareness of how they are calculated. Also, market participants need to have confidence in their robustness and integrity.

The full speech can be found here.

2

What have the regulators been up to? (cont'd)

Speech: The long run

Glenn Stevens, Governor at the RBA, addressed the Australian Business Economists at their annual dinner.

He began his speech by discussing the RBA's short-term predictions on the Australian economy, with reference to key data points such as labour force participation rate and the unemployment rate. Although the RBA lowered its forecast for inflation, he noted that much of this analysis is made qualitatively and that outlooks should be considered as 'probabilistic', where the focus should not be on certain numbers but rather on the key issues that support the forecast.

He noted that some current key forces for Australia are: the closing of a very large and long-running terms of trade event, leading to a period of economic adjustment and the impact of a global economy affected by structural change and facing legacy effects of debt.

He also brought forward his own ideas about what key forces will drive Australian growth over the next decade, noting that the growth of India should be considered, given the slowing of the Chinese economy. Australia's shift towards a more service based economy will be primarily driven by health and aged care, given the expected demographical shift. Finally, the importance of digital disruption was noted, with increased resources being devoted to IT security, given that developing trust between users will be fundamental to the development of a prosperous economy.

The full speech can be found here.

2

What have the regulators been up to? (cont'd)

Consultation paper: Shareholder approval requirements for listed company mergers

ASX has released a consultation paper, *Reverse Takeovers - Consultation on Shareholder Approval Requirements for Listed Company Mergers,* seeking feedback from stakeholders on whether the listing rules should be amended to require bidder shareholder approval for reverse takeovers.

Differing views have been expressed to ASX on the regulatory framework for reverse takeovers including:

- shareholders should have a say in matters that will significantly dilute their ownership interests
- the ASX listing rules are out of line with other international exchanges which require shareholder approval
- reverse takeovers are a long accepted form of control transaction in Australia and no regulatory reform is required.

This paper outlines:

- the current regulatory framework for reverse takeovers
- a consultation option for potential amendments to the ASX listing rules which would impose a shareholder approval requirement under listing rule 7.1 where the bidder issues shares in excess of 100% of its existing share capital as consideration for an acquisition by way of takeover or scheme
- some of the implications for reverse takeovers in the event of a change to the regulatory framework.

Submissions close on 17 December 2015.

See media release

2

What have the regulators been up to? (cont'd)

ASIC
Australian Securities and Investments Commission

APRA
Australian Prudential and Regulatory Authority

RBA
Reserve Bank of Australia

ASX
Australian Securities Exchange

AUSTRAC
Australian Transaction Reports and Analysis Centre

Draft Privacy Impact Assessment - Amendments to chapter 4 of the AML/CTF rules

AUSTRAC has released the draft Privacy Impact Assessment – Amendments to chapter 4 of the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) rules, in order to seek stakeholder feedback on the potential privacy impacts of the proposed amendments.

Currently, Chapter 4 requires reporting entities to collect and verify customer identification information 'from' their customers. The proposed amendments will allow reporting entities the discretion to collect identification information 'about' customers rather than directly from the customer.

The assessment seeks industry feedback on the following questions:

- whether they anticipate collecting information about a customer from sources other than the customer
- whether they anticipate amending their existing privacy policies and documentation relevant to the Australian Privacy Principles 1 to 13, if the new process is adopted.

See media release

New guidance on key terms used in 'politically exposed person' definition

AUSTRAC has published comprehensive new guidance explaining many of the key terms used in the AML/CTF Rules requirements for customers who may be 'politically exposed persons' (PEPs).

The new guidance has been incorporated into chapter 6 of the AUSTRAC compliance guide (customer due diligence procedures). The guidance covers:

- the meaning of the term 'as soon as practicable'
- the meaning of a number of key terms used in the AML/CTF Rules, such as 'prominent public position or function' and 'senior government official'
- the interaction between the PEP obligations imposed by the AML/CTF Rules and those imposed by other legislation (such as superannuation legislation)
- reporting entity use of external databases to determine whether a customer or beneficial owner is a PEP
- the meaning of the term 'sensitive information'.

See media release

3 Industry bodies

ASFA
Association of Superannuation Funds of Australia

ABA
Australian Bankers' Association

FSC
Financial Services Council

FINSIA
Financial Services Institute of Australasia

Discussion Paper: The future interaction of superannuation with aged care and health care

ASFA has released a research discussion paper, *The future interaction of superannuation with aged care and health care*, to discuss the role that superannuation could play in ensuring adequate aged and health care provision in retirement.

The key findings include:

- There will be greater pressure for individuals to fund health and aged care.
- The probability of requiring aged care is high: the likelihood that a female aged 65 will enter permanent residential aged care in her lifetime is 54%, and for a male this risk is 37%.
- There is a high degree of interaction with the aged care system: a survey of those over the age of 45 shows more than half (54%) are dealing with the system, or have dealt with it in the past for themselves or a family member.
- At the same time there is a high degree of uncertainty around the aged care system: the majority of those interacting with the aged care system find it difficult to deal with—58% find it “difficult” or “very difficult” to deal with the aged care system.
- There is a gap in advice on aged care and many consumers consider that superannuation funds could fill this gap: 46% think their superannuation fund could play a role in helping to organise this, with 60% indicating demand for financial advice and educational tools.

Submissions close on 1 March 2016.

See media release

3 Industry bodies (cont'd)

ASFA
Association of Superannuation Funds of Australia

ABA
Australian Bankers' Association

FSC
Financial Services Council

FINSIA
Financial Services Institute of Australasia

ABA report on key areas to support economic growth and living standards

ABA has released an economic opinion, *The outlook for Australia is strong - if we all pull together*. ABA has identified key areas to support economic growth and maintain Australians' high living standards in the future. These include fiscal repair, boosting productivity and workforce participation and focusing on reforms that improve the tax system's efficiency and international competitiveness.

They have also identified other key areas in the economic environment that will need to be addressed over the longer term including:

- ageing of the Australian population
- continued growth and importance of the Asian region
- growing impact of technological advances
- increasing scarcity and cost of natural resources.

See media release

3 Industry bodies (cont'd)

ASFA
Association of Superannuation Funds of Australia

ABA
Australian Bankers' Association

FSC
Financial Services Council

FINSIA
Financial Services Institute of Australasia

Report: Foreign investment into Australia has doubled in five years

The 2015 Australian Investment Managers Cross-Border Flows Report by the FSC has revealed that foreign investment into Australia through managed investment trusts (MITs) has more than doubled from $20.3 billion at 1 January 2010 to an estimated $43.6 billion at 31 December 2014.

Despite this increased investment, there remains untapped potential due to the lack of growth in financial services exports, which has remained steady at 3.6% during the same five-year period.

It was noted that the opportunities to export Australian financial services are significant and that ensuring that the correct regulatory architecture is in place will maximise the level of success.

See media release

3 Industry bodies (cont'd)

ASFA
Association of Superannuation Funds of Australia

ABA
Australian Bankers' Association

FSC
Financial Services Council

FINSIA
Financial Services Institute of Australasia

Anti-monopoly law impedes market entry in China

A recent study funded by the Centre of International Finance and Regulation (CIFR) has compared the approaches of competition law to bank mergers in China and Australia.

Some of the key findings of the CIFR study include:

- Competition is unlikely to be the main determinant in allowing or limiting bank mergers with China placing a particular emphasis on political, economic and financial stability.
- Despite a lessening of entry requirements in recent years, there are still significant regulatory barriers for foreign banks which affected market entry, competition and innovation.
- The rigid nature of banking regulation in China has created a very stable system but it has also driven more conduct into the shadow banking system, increasing systemic risk.

See media release

4 Overseas developments – Global

FSB: Publishes report on the G20 financial regulatory reforms

The Financial Stability Board (FSB) has published its first annual report to the G20 on the implementation and effects of the G20 financial regulatory reforms. The report concludes that the most tangible effect of the reforms has been to make the global banking sector more resilient.

The report identified three areas that needs close ongoing attention:

- spill-overs on some emerging market and developing economies from the implementation of reforms in home jurisdictions of global financial institutions
- the maintenance of an open and integrated global financial system in the aftermath of the financial crisis
- the causes and financial stability consequences of recent shifts in liquidity in fixed income markets.

Source: FSB

FSB: Issues final TLAC standard for G-SIBs

The FSB has issued the final Total Loss-Absorbing Capacity (TLAC) standard for global systemically important banks (G-SIBs).

G-SIBs will be required to meet the TLAC requirement alongside the minimum regulatory requirements set out in the Basel III framework. They will be required to meet a minimum TLAC requirement of at least 16% of the resolution group's risk-weighted assets (RWA) as from 1 January 2019 and at least 18% as from 1 January 2022.

The FSB will monitor implementation of the TLAC standard and will undertake a review of the technical implementation by the end of 2019.

The findings of the impact assessment studies conducted by experts at the FSB, Basel Committee on Banking Supervision (BCBS) and Bank for International Settlements (BIS) are published alongside the final TLAC standard in the form of the following reports:

- overview report summarising the findings of the TLAC impact assessment studies;
- quantitative impact study report conducted by the BCBS
- economic impact assessment report conducted by a group of experts chaired by the BIS
- historical losses and recapitalisation needs findings report.

The estimated costs for G-SIBs of meeting these requirements are found to translate into increases in lending rates for the average borrower from between 2.2-3.2 basis points.

Source: FSB

4 Overseas developments – Global (cont'd)

FSB: Releases reports on implementation of the reforms to OTC derivatives market

The FSB has released two reports on implementation of the reforms to over-the-counter (OTC) derivatives market agreed by the G20:

- *Thematic Review of OTC Derivatives Trade Reporting*: This report assesses the progress of FSB member jurisdictions in implementing trade reporting requirements together with issues on legal barriers and data quality.
- *OTC Derivatives Market Reforms - Tenth Progress Report on Implementation*: This report provides an update on the implementation of the agreed G20 reforms to OTC derivatives market.

FSB member jurisdictions will be asked to report by June 2016 on their planned actions to address remaining barriers to full reporting.

Source: FSB

IOSCO: Guidance on cyber resilience for financial market infrastructures

The Committee on Payments and Market Infrastructures (CPMI) and the Board of the International Organization of Securities Commissions (IOSCO) have released the consultative paper *Guidance on cyber resilience for financial market infrastructures.*

Key concepts include the following:

- Board and senior management attention is critical to a successful cyber resilience strategy.
- The ability to resume operations quickly and safely after a successful cyber attack is paramount.
- FMIs should make use of good-quality threat intelligence and rigorous testing.
- Cyber resilience requires a process of continuous improvements.
- Cyber resilience cannot be achieved by an FMI alone; it is a collective endeavour of the whole ecosystem.

Source: IOSCO

IOSCO: Publishes final report on standards for the custody of CIS assets

The Board of the IOSCO has published its final report on standards for the custody of Collective Investment Schemes' Assets (CIS Assets). The report seeks to clarify, modernise and further develop international guidance for the custody of CIS assets.

It sets out eight standards, aimed at identifying the core issues that should be kept under review by the regulatory framework to ensure investors' assets are effectively protected.

The report focuses on the custody function and standards related to the appointment and ongoing monitoring of custodians.

The report also identifies some of the key risks associated with the custody of CIS assets, such as operational risk, misuse of CIS assets, risk of fraud or theft, and information technology risk.

Source: IOSCO

4 Overseas developments – Global (cont'd)

BCBS: Finalises post-crisis reforms and Basel III implementation

The Basel Committee on Banking Supervision (BCBS) has published two reports for the G20 leaders:

- The first report *Finalising post-crisis reforms: an update* reviews the BCBS's work since the global financial crisis to strengthen the international regulatory framework for banks. The report also focuses on the Committee's substantial progress towards finalising its post-crisis reforms, which includes reducing excessive variability in risk-weighted assets.
- The second report *Implementation of Basel standards* is an update on the implementation of Basel III standards since the 2014 progress report to the G20 Leaders. All Committee member jurisdictions have implemented the Basel III risk-based capital regulations. Final rules on the LCR are in force in almost all member jurisdictions. Efforts are continuing to adopt the Basel III standards for the leverage ratio and the NSFR as well as for SIBs.

Source: BIS

BCBS: Publishes haircut floors for non-centrally cleared securities financing transactions

The BCBS has issued for public consultation a proposal for incorporating the FSB's policy framework for haircut floors for non-centrally cleared SFTs into the Basel III framework.

This proposal is based on the FSB's report on strengthening oversight and regulation of shadow banking, which recommended that its policy framework for haircut floors for non-centrally cleared SFTs be incorporated into the Basel III framework by the end of 2015.

The main purpose is to create incentives for banks to set their collateral haircuts above the floors rather than hold more capital.

Source: BIS

IAIS: Public consultations on assessment methodology for G-SIIs, NTNI activities

The International Association of Insurance Supervisors (IAIS) has begun two consultations.

The first report is proposing changes to the assessment methodology:

- use of a five-phase approach to the assessment process that integrates a structured use of both quantitative and qualitative elements
- adjustments to certain indicators to address issues related to indicator responsiveness, normalisation and data quality (including reliability) across both insurers and jurisdictions
- establishment of specific procedures for an insurer's entry and exit from the G-SII list.

The second consultation focuses on NTNI activities and products, which play an important role in the assessment methodology as well as the determination of the Basic Capital Requirement (BCR) and Higher Loss Absorbency (HLA) requirement applicable to G-SIIs.

Source: IAIS

4 Overseas developments – Europe

EBA: Consults on draft guidelines on the treatment of CVA risk under SREP

The European Banking Authority (EBA) has launched a public consultation on guidelines on the treatment of credit value adjustment (CVA) risk under the supervisory review and evaluation process (SREP), as well as a data collection exercise for the quantitative impact study (QIS) to calibrate the threshold values.

These guidelines are based on a policy recommendation contained in the EBA's CVA report and aims to provide a common European approach to the assessment of CVA risk under SREP, including adequacy of capital to cover for this risk, and the determination of any potential additional own funds requirements.

Source: EBA

EBA: Consults on stress tests for deposit guarantee schemes

EBA has launched a consultation on its draft guidelines on stress tests of deposit guarantee schemes (DGSs).

The proposed guidelines will provide the methodological principles to assess whether the operational and funding capabilities of DGSs are sufficient to ensure deposit protection in the event of a bank failure.

In line with the Deposit Guarantee Schemes Directive (DGSD), these guidelines will promote the quality and the consistency of these stress tests. The resulting data will also facilitate future peer reviews by the EBA.

The templates annexed to these guidelines will facilitate the collection of data in a consistent and comparable way.

Source: EBA

EBA: Provides assessment of banks Pillar 3 reports for 2015

EBA has released its assessment of the annual Pillar 3 reports of a sample of European banks. This is the first report since the entry into force of the Capital Requirements Regulation (CRR).

Improvements have taken place in areas like the provision of clear disclosure indices and the presentation of information on risk model parameters in a tabular format.

Certain areas of improvement were highlighted in the report:

- disclosures on own funds and capital requirements with regards to deductions due to prudential filters and the breakdown of capital requirements by exposure classes
- disclosures on internal ratings-based (IRB) models for the breakdown of IRB risk parameters by exposures and by geography
- disclosures on the assessment of the global systemically important institutions (G-SII) status, remuneration and asset encumbrance.

Source: EBA

4 Overseas developments – Europe (cont'd)

ESMA: Publishes guidelines on complex debt instruments and structured deposits in MiFID II

The European Securities and Markets Authority (ESMA) has published the final report on guidelines on complex debt instruments and structured deposits. These guidelines are intended to enhance investor protection by identifying complex financial instruments and structured deposits for which the provision of so-called execution-only services is not possible.

According to MiFID II, the guidelines are developed for the assessment of:

- bonds, other forms of securitised debt and money market instruments incorporating a structure which makes it difficult for the client to understand the risk involved
- structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term.

The guidelines also cover debt instruments embedding a derivative.

Source: ESMA

ESMA: Proposes central clearing for Norwegian, Polish and Swedish interest rate swaps

ESMA has published additional draft regulatory technical standards (RTS) regarding the central clearing of interest rate swaps (IRS) which ESMA is required to develop under the European Market Infrastructure Regulation (EMIR).

The draft proposes the mandatory central clearing of fixed-to-floating IRS and forward rate agreements denominated in Norwegian Krone (NOK), Polish Zloty (PLN) and Swedish Krona (SEK).

ESMA decided to propose central clearing to IRS denominated in NOK, PLN and SEK as significant trading volumes exist and these contracts are of important systemic relevance for both the specific local markets and the EU as a whole. The addition of those classes to the clearing obligation can be seen as an important step in reducing systemic risk.

Source: ESMA

ESMA: Consults on indirect clearing arrangements under EMIR and MiFIR

ESMA has launched a public consultation on draft requirements regarding indirect clearing, aiming to address issues raised by stakeholders in prior consultations and ensure consistency in the application of MiFIR and EMIR.

Indirect clearing is in practice understood as when clients of a clearing member sign up clients of their own.

ESMA's draft rules on indirect clearing both refer to EMIR and the Markets in Financial Instruments Regulation (MiFIR) as they cover arrangements for OTC derivatives and exchange-traded derivatives (ETD) respectively.

ESMA's draft RTS on indirect clearing cover:

- rules for ETDs that are developed under MiFIR
- rules for OTC derivatives to amend existing RTS under EMIR.

Source: ESMA

4

Overseas developments – Europe (cont'd)

European Commission: Proposes to overhaul prospectus rules

The European Commission has proposed to overhaul prospectus rules that allow companies to raise money on public markets or by means of a public offer with potential investors. The proposed rules will enable investors to make informed investment decisions, simplify the rules for companies that wish to issue shares or debt and foster cross-border investments in the Single Market.

The proposal will make the following changes:

- exempting the smallest capital raisings
- creating a lighter prospectus for smaller companies
- shorter prospectuses and better investor information
- simplifying secondary issuance for listed firms
- fast track and simplified frequent issuer regime
- single access point for all EU prospectuses.

Source: European Commission

ECB: Instant payments across Europe by November 2017

The Euro Retail Payments Board (ERPB), a group chaired by the European Central Bank (ECB) is to develop a scheme for instant payments in euro by November 2016 and to implement it by November 2017.

The scheme will be based on the Single Euro Payments Area (SEPA) credit transfer, and will be available for all payment service providers in Europe.

Currently, a credit transfer can take a whole business day. Using the new scheme will speed up credit transfers between accounts to a matter of seconds, even when banks are closed.

The scheme will lay the groundwork for innovative payment methods such as mobile person-to-person payments. Although the scheme will be voluntary, payment service providers that want to offer instant payments in euro based on SEPA credit transfers will be expected to adhere to it.

Source: ECB

European Council: Adopts updated rules on electronic payment services

The European Council has adopted a directive aimed at further developing an EU-wide market for electronic payments.

The revised directive adapts the rules to cater for emerging and innovative payment services, including internet and mobile payments. It sets out to ensure a more secure environment for payments, in particular for those using remote channels.

The directive promotes stronger security measures for internet payments and for the use of services provided by new market players. It will ensure strong customer authentication to identify the client for each transaction.

Source: European Council

4 Overseas developments – UK

FCA: Consults on changes to PPI complaint handling rules

The Financial Conduct Authority (FCA) has released a consultation paper, *Rules and guidance on payment protection insurance complaints*, setting the full detail of the proposed new rules and guidance, the reasons for proposing them, and an assessment of their costs and benefits.

This consultation paper aims at seeking feedback on:

- a new rule that would set a deadline by which consumers would need to make their payment protection insurance (PPI) complaints
- an FCA-led communications campaign designed to inform consumers of the deadline
- a new fee rule on funding this consumer communications campaign
- new rules and guidance on the handling of PPI complaints in light of the Supreme Court's decision in *Plevin v Paragon Personal Finance Ltd*.

Source: FCA

Bank of England: Announces extension to the FLS

The Bank of England and HM Treasury have announced a two-year extension to the Funding for Lending Scheme (FLS). This extension will provide participants with additional flexibility to draw unused drawing allowances earned for positive net lending, with funding remaining available to support further improvements in credit conditions for small and medium-sized enterprises (SMEs).

The extension will also ensure that the scheme is gradually phased out, with borrowing allowances reducing over time, thereby minimising risks to the economic recovery from the withdrawal of funding support.

The FLS has contributed to a substantial fall in bank funding costs since its launch in 2012. That has fed through to improvements in credit conditions for households and businesses.

Source: Bank of England

FRC: Publishes standard on providing assurance on client assets

The Financial Reporting Council (FRC) has published a new standard for audit firms on providing assurance on client assets to the Financial Conduct Authority (FCA). The standard covers the work auditors do when reporting to the FCA on the compliance by financial services firms, with the FCA's client asset (CASS) rules. These provide for the effective safekeeping of client assets and client monies.

The FCA has recently strengthened its client asset regime. The standard will help ensure that the strengthened regime is underpinned by sound assurance.

These standards will apply to periods starting on or after 1 January 2016.

Source: FRC

4

Overseas developments – US

Federal Reserve: Approves final rule to modify its capital plan and stress testing rules

The Federal Reserve Board has approved a final rule to modify its capital plan and stress testing rules. The changes would take effect for the 2016 capital plan and stress testing cycle.

The final rule is largely similar to the proposed rule and would modify the timing for several regulatory requirements that have yet to be integrated into the capital plan and stress- testing framework.

Firms subject to the supplementary leverage ratio would begin to incorporate it into their capital plan and stress testing for the 2017 cycle.

The Board continues to review a broad range of issues related to its capital planning and stress testing rules. Any modifications from that review will be undertaken through a separate rulemaking and would take effect no earlier than the 2017 cycle.

Source: Federal Reserve

SEC: Proposes rules to enhance transparency and oversight of ATSs

The Securities and Exchange Commission (SEC) has proposed rules to enhance operational transparency and regulatory oversight of alternative trading systems (ATSs) that trade stocks listed on a national securities exchange (NMS stocks), including dark pools.

The proposal would require an NMS stock ATS to file detailed disclosures on newly proposed Form ATS-N about its operations and the activities of its broker-dealer operator and its affiliates. These disclosures would include information regarding trading by the broker-dealer operator and its affiliates on the ATS, the types of orders and market data used on the ATS, and the ATS' execution and priority procedures.

The proposal would make Form ATS-N disclosures publicly available on the Commission's website, which could allow market participants to better evaluate whether to do business with an ATS.

Source: SEC

CFTC: Approves proposed rule on Automated Trading

The U.S. Commodity Futures Trading Commission (CFTC) has unanimously approved proposed rules that mark a comprehensive regulatory response to the evolution of automated trading on U.S. designated contract markets (DCMs).

The proposed rules, known collectively as Regulation Automated Trading (Regulation AT), represent a series of risk controls, transparency measures, and other safeguards to enhance the US regulatory regime for automated trading.

The proposed rules are intended to reduce potential risks arising from algorithmic trading activity, by requiring the implementation of risk controls such as maximum order message and maximum order size parameters, and the establishment of standards for the development, testing, and monitoring of ATSs, among other requirements.

Source: CFTC

4 Overseas developments – Asia

Hong Kong: Regulatory regime for stored value facilities commences operation

The regulatory regime for stored value facilities and retail payment systems under the Payment Systems and Stored Value Facilities Ordinance (the Ordinance) has commenced operation on 13 November 2015.

Under the Ordinance, the Hong Kong Monetary Authority (HKMA) is empowered to implement a mandatory licensing system for multi-purpose stored value facilities and perform relevant supervision and enforcement functions. A one-year period is allowed for existing issuers of stored value facilities or new market operators to apply for a licence from the HKMA.

The licensing system will enable the HKMA to exercise supervisory or enforcement actions to ensure the fitness and propriety of issuers, appropriate protection of the float stored in the facilities by users, as well as the reliable operation of such facilities.

Source: HKMA

Hong Kong: SFC proposes changes to the ATS guidelines

The Securities and Futures Commission (SFC) has released a consultation paper *Proposed Amendments to the Guidelines for the Regulation of Automated Trading Services*. The proposals reflect regulatory and market developments and mainly cover the implementation of the regulation of OTC derivative transactions.

It sets out more specific requirements for central counterparties that wish to provide clearing services for OTC derivative transactions. They also align the guidelines with international standards and practices and codify existing practices.

The SFC is planning to implement the revised ATS Guidelines at the same time as the implementation of the subsidiary legislation for mandatory clearing obligation for OTC derivatives transactions, which is expected to be in mid-2016.

Source: SFC

Hong Kong: SFC proposes to expand short position reporting

The SFC has launched a consultation on the scope of short position reporting, which the SFC proposes to extend to all securities that can be short sold under the rules of The Stock Exchange of Hong Kong Limited (SEHK).

Under the proposed expanded regime, which will also cover collective investment schemes (CIS), the reporting threshold for stocks will remain unchanged, while the threshold for CIS will be set at $30 million.

Source: SFC

4 Overseas developments – Asia (cont'd)

Japan: FSA publishes the policy approaches to strengthen cyber security in the financial sector

The Financial Services Agency (FSA) has published the policy approaches to strengthen cyber security in the financial sector. FSA has been conducting the supervision and inspection regarding cyber security management as a part of system risk control. The FSA is also introducing new policies in order to contribute to strengthening cyber security in the financial sector from the financial regulator's perspective.

The five policies include:

- constructive dialogue with financial institutions and grasp of their current condition regarding cyber security;
- improvement of the information sharing framework among financial institutions;
- continuous implementation of industry-wide cyber security exercises;
- cybersecurity human resource development in financial sector; and
- arrangement of cyber security initiatives in the FSA.

Source: FSA

Korea: FSC strengthens the role of policy banks

The Financial Services Commission (FSC) has outlined its plan to strengthen the role of Industrial Bank of Korea (IBK) and Korea Development Bank (KDB) as policy banks in a bid to support sustainable growth of start-ups and foster new growth drivers for the economy.

- The role of policy banks will be revamped in accordance with business growth stages of start-ups.
- The policy banks will increase financial support for new growth engine sectors.
- The policy banks will take the initiative in restructuring key sectors in accordance with the government's economic policy in relation to corporate restructuring.
- KDB will sell its non-financial companies.

Source: FSC

Korea: FSC determines direction for recovery and resolution regimes

The FSC has determined the basic direction for improving the recovery and resolution regimes, namely introducing recovery and resolution planning framework and bail-in-scheme:

- Recovery and resolution plan assuming crisis situation will be produced on an annual basis and retained for that year, for major financial institutions identified as SIFIs.
- The bail-in scheme is designed to require shareholders and creditors to bear losses when a financial institution becomes bankrupt, thereby addressing moral hazard.
- In the course of recovery and resolution, market sentiment may excessively deteriorate if early termination right is exercised by many trade counterparties to derivatives, RPs and other contracts. To prevent this from happening, the power to impose temporary stay on early termination rights, including early withdrawal, will be given to the FSC.

Source: FSC

5 PwC publications

PwC AUS: Risk Culture - Where to from here?

PwC Australia has released a report entitled "Risk Culture: Where to from here?".

PwC conducted a survey to ask clients their views on the level of maturity of risk culture and conduct risk in the Australian context.

The main purpose of the survey was to understand two main things:

- What companies are doing to positively influence culture
- The differences between perception and reality when it comes to the effectiveness of organisational systems, policies and procedures in driving cultural change.

Overall, the survey found that there were some disconnects between an organisation's commitment to and desire for a robust risk management culture, and its understanding of conduct risk and operational reality. Organisations need to look beyond the regulatory requirements and think about how culture and their conduct agenda will have a lasting impact on their reputation and competitiveness.

See publication

PwC US: How financial institutions can improve compliance testing

PwC US has released a report entitled "Making the grade: How financial institutions can improve compliance testing". According to the 2015 Financial Services Compliance Testing Survey, most financial institutions are improving their compliance testing programs, but more work remains to be done.

In PwC's view, to "make the grade," financial organizations should focus their efforts on aligning the testing that occurs across the three lines of defense, addressing resource constraints, and more fully leveraging technology and data analytics.

See publication

PwC US: Aligning data and reporting to insurance transformations

PwC US has released a report entitled "Core essentials: Aligning data and reporting to insurance transformations". The ability to significantly improve data gathering and to produce actionable reporting are "core essentials" for many complex, once-in-a-generation, core insurance system transformations.

PwC has identified the following four common mistakes insurers make upon completion of such transformations and provide key steps to steer their efforts toward success:

- insufficiently planning and executing analytics systems development
- falling back on legacy processes and outputs
- overlooking architecture and infrastructure
- underestimating the importance of data retention policies.

See publication

5 PwC publications

PwC US: Performance adjustment - improving the performance management model

PwC US has released a report entitled "Performance adjustment: Improving the performance management model".

PwC recommends six enhancements to the traditional performance management model.

- Coalesce leaders around the importance of performance management.
- Get goals right.
- Brand and promote performance management.
- Invest in real-time feedback.
- Improve execution of the performance review cycle.
- Implement a global framework that flexes to meet regional/local ways of working.

See publication

PwC China/Hong Kong: Asia insurance review - regulatory updates

In this update, PwC gives a roundup of key regulatory activities in Asia in the last few months:

- China: Family members of cadres barred from insurance business. Regulator issues internet insurance operation rules. Insurance intermediaries and third-party Internet platforms. Life insurance pricing fully liberalised.
- Hong Kong: Insurance Authority to be set up by next year.
- India: New investment rules proposed for insurance funds. Banks to be made liable for mis-selling of policies. Upfront commissions to distributors to be banned.
- South Korea: Insurance, banking, securities services under one roof.
- Pakistan: Insurers' minimum capital hiked by US$1.9 mn.

See publication

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