

November 2017

PwC Regulatory Update



1

Legislative/Government developments

Royal Commission into banks and financial services

The Turnbull Government has announced it will establish a Royal Commission into the banking, superannuation and financial services industries to ensure the Australian financial system is resilient, efficient and fair.

The proposed [terms of reference](#) will form the basis of the enquiry, pursuant to the *Royal Commissions Act 1902*, requiring the Commission to inquire into the following matters:

- Nature, extent and effect of the misconduct by financial services entities;
- Any conduct, practices, behavior or business activity by a financial services entity that falls below community standards and expectations;
- Any misuse of superannuation members' retirement savings by a financial services entity;
- Particular culture, and governance and other practices of a financial services entity, the industry or a subsector contributing to misconduct;
- Effectiveness of remediation mechanisms for consumers of financial services; and
- Adequacy of existing legislation, regulation, industry self-regulatory systems, and internal systems of financial entities in identifying and addressing misconduct, meeting community standards and expectations, and providing appropriate redress to consumers and businesses.

The Commission will not inquire into macro-prudential policy, regulation or oversight concerned with the financial system as a whole, beyond the banking system.

The Commission is required to submit a final report containing findings and recommendations to the Government by February 2019.

Any recommendations must consider the implications for the economy generally, for access to and the cost of financial services for consumers, for competition in the financial sector, and for financial system stability.

The Government has confirmed former High Court judge, Kenneth Hayne as the Royal Commissioner.

Source: [Treasurer](#)

ABA [commented](#) that Australian Banks have welcomed the Royal Commission and expressed a willingness to fully cooperate. ABA states that Australian banks do not fear scrutiny or accountability, having actively participated in 51 substantial inquiries and investigations since the GFC.

ASFA has expressed [disappointment](#) that the Government has included superannuation in the scope of the Royal Commission.

COBA [welcomed](#) the Government's decision, recognising that the Royal Commission will promote sustainable banking competition.

1

Legislative/Government developments

ASIC industry funding model consultation on regulatory fees-for-service activities

A [consultation paper](#) on phase 2 of ASIC's industry funding model, fees-for-service has been released. Under the revised model, fees-for-service will be introduced from 1 July 2018 to recover ASIC regulatory costs that are directly attributable to a single, identifiable, entity. Fees associated with registry activities are excluded from the scope of this proposal.

The Government is seeking feedback on the following:

- Proposed fees-for-service model;
- Methods of ASIC stakeholder engagement and accountability; and
- Competition and innovation aspects.

The consultation paper outlines model enhancements including:

- Introduction of a tiered fee system for many activities; and
- Removal of the increased fee for novel relief applications.

Submissions are due by 15 December 2017.

Source: [Treasury](#)

ASIC has [supported](#) consultation on changes to fees-for-service.

ASIC Enforcement Review Taskforce consults on ASIC's directions power

The ASIC Enforcement Review Taskforce has released a [position paper](#), *ASIC Enforcement Review*, seeking feedback on its proposal to trigger ASIC directions power where there is or will be a breach of financial services or credit law. This power would facilitate ASIC to give direction to a licensee relating to the conduct of its business, including ceasing to accept new clients or requiring an audit of records.

Source: [Treasury](#)

Australian Financial Complaints Authority (AFCA)

The Government has released a [consultation paper](#), *Establishing of the Australian Financial Complaints Authority (AFCA)*, seeking feedback on the terms of reference, governance and funding arrangements for AFCA to assist the Minister for Revenue and Financial Services in her decision to authorise the AFCA scheme.

The Government has introduced a [Bill](#) to establish AFCA into Parliament and, has also created a transition team to facilitate a smooth transition from the existing framework to AFCA and assist the Minister. AFCA will commence from 1 July 2018 and will provide dispute resolution for consumers and small businesses.

Source: [Treasury](#)

1

Legislative/Government developments

Cheques Regulations 2017

The Government is seeking feedback on the [proposed regulation](#), *Cheques Regulations 2017*, remaking the [Cheques Regulations 1987](#). The exposure draft is due to be ineffective as of 1 April 2018.

The draft proposes design changes to the regulation to simplify provisions, remove redundant provisions and use language more consistent with the Act to align with current practices without altering the substantive meaning or operations of the relevant provisions.

Source: [Treasury](#)

2

What have the regulators been up to?

APRA

Australian Prudential
Regulation Authority

ASIC

Australian Securities and
Investments Commission

ASX

Australian Securities
Exchange

AUSTRAC

Australian Transaction
Reports and Analysis
Centre

RBA

Reserve Bank of Australia

APRA proposes revisions to public disclosure standard

APRA has released a letter to authorised deposit-taking institutions (ADIs), seeking feedback in relation to the revised [prudential standard](#), *APS 330 – Public Disclosure* (including Net Stable Funding Ratio (NSFR) disclosures). This proposal consolidates the liquidity ratios disclosure requirements in APS 330.

The Basel Committee's Pillar 3 framework are likely to be further revised following finalisation of the Basel III reforms. APRA is proposing that the revised APS 330 would be effective 1 July 2018.

See [letter](#)

APRA releases changes to the capital framework for mutual ADIs

APRA has released its final revisions to the capital framework for mutually owned ADIs which provide them with more flexibility in their capital management.

APRA has released its [response](#) to the consultation, *Common Equity Tier 1 capital instruments for mutually owned ADIs* as well as the [prudential standard](#), *APS 111 - Capital Adequacy: Measurement of Capital*. APRA has received a number of submissions in response to its proposals. Submissions were supportive of the direction of the proposed changes in improving the capital management flexibility available to mutually owned ADIs. The revised prudential standard APS111 will come into effect from 1 January 2018.

See [media release](#)

APRA consults on reinsurance standard

APRA has released a letter to ADIs, seeking feedback on the proposal to amend the requirements of [prudential standard](#), *LPS 230 – Reinsurance*, to align the financial reinsurance approach with the approach taken in the general insurance industry, under [prudential standard](#), *GPS 230 - Reinsurance Management*. The draft standard takes a principles-based approach to determining when approval is required instead of current prescriptive criteria.

The proposed approach is expected to:

- Provide clearer focus on the economic substance of reinsurance arrangements;
- Improve the quality of discussions between life insurers and APRA supervisors regarding the key issues in reinsurance arrangements; and
- Be more responsive to developments in the reinsurance market.

Submissions are due by 22 December 2017.

See [letter](#)

2

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ASIC releases consolidated market integrity rules

ASIC has released a [response](#) in relation to submissions on [consultation paper, CP 277 - Proposals to consolidate the ASIC market integrity rules](#), proposing to consolidate 13 of the 14 market integrity rule books into four rule books to create a single point of reference for market integrity rules that are common between markets:

- The [ASIC Market Integrity Rules \(Securities Markets\) 2017](#) sets out obligations and prohibitions applying to activities and conduct on the ASX, Chi-X, NSXA, SSX, IR Plus securities markets as well as competition between securities markets;
- The [ASIC Market Integrity Rules \(Futures Markets\) 2017](#) applies to activities and conduct on the ASX 24 and FEX futures markets;
- The [ASIC Market Integrity Rules \(Securities Markets – Capital\) 2017](#) sets out capital and reporting requirements for participants of the securities markets; and
- The [ASIC Market Integrity Rules \(Futures Markets – Capital\) 2017](#) sets out capital and reporting requirements for participants of the futures markets.

As of 17 November 2017, ASIC has implemented the proposed consolidation of market integrity rules into the aforementioned rule books.

See [media release](#)

ASIC releases report on cyber resilience of firms in financial markets

ASIC has released a [report](#), *Cyber resilience of firms in Australia's financial markets*, collating and analysing the results of self-assessments from over 100 firms operating across financial markets, to:

- raise awareness of cyber risks;
- highlight existing good practices and areas for improvement; and
- monitor and assess the cyber preparedness of financial markets firms.

Key insights from the report include:

- There is a growing understanding that cyber risk is a strategic, enterprise-wide issue that is on all organisations' radars and is attracting increasing investment.
- The disparity between large firms and small-and-medium firms is reflective of their investment in cyber security, the period of time cyber security has been an investment priority, and the ability to acquire highly specialised skills.
- Larger firms have demonstrated a relatively high degree of cyber resilience.
- Small-and-medium firms are working towards developing their cyber resilience by investing in cyber security, but there is a long way to go.

See [media release](#)

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Recent regulatory guidance

ASIC has [released](#) updated [regulatory guide](#), *RG 175 - Licensing: Financial product advisers – conduct and disclosure*, providing financial product advice to retail clients, and their professional advisers. It considers how certain conduct and disclosure obligations under the *Corporations Act 2001* apply to the provision of financial product advice.

ASIC has [released](#) a [regulatory guide](#), *RG 263 - Financial Services and Credit Panel*, setting out the principles and processes of the newly established Financial Services and Credit Panel (FSCP). The FSCP assists ASIC with making administrative decisions on certain matters relating to retail financial services and credit activities. ASIC has also [announced](#) the initial members of the panel.

Updates from ASIC

ASIC has [appointed](#) Darren McShane, with extensive experience in superannuation and managed investments to review fees and costs disclosure settings in superannuation and management investments. The purpose is to ensure ASIC is meeting its objective of providing greater transparency for consumers. Mr McShane will commence the review from December 2017, to be completed by the end of the first half of 2018.

ASIC and the Dubai Financial Services Authority (DFSA) have [signed](#) a [FinTech cooperation agreement](#), aiming to help FinTech companies in Australia and Dubai to expand into each other's markets. ASIC and the DFSA will cooperate for potential FinTech innovation projects to establish frameworks of mutual assistance.

ASIC has [released](#) new webpage guidance and information sheets to help limited Australian Financial Services (AFS) licensees and their representatives understand their key obligations, covering the main issues that limited AFS licensees requested additional guidance on.

ASIC and the China Securities Regulatory Commission (CSRC) have [signed](#) a [FinTech cooperation agreement](#), aiming to help FinTech companies in Australia and China to expand into each other's markets. The ASIC and the CSRC will cooperate for potential FinTech innovation projects to establish frameworks of mutual assistance.

The ASX responds to consultation on proposed amendments to ASX Clear (Futures) operating rules

The ASX has released a [response](#) to [consultation](#) on proposed amendments to the ASX Clear (Futures) operating rules and procedures related to clearing of NZD OTC interest rate derivatives. The proposed amendments are:

- Expansion of OTC product coverage to include NZD OTC interest rate derivatives; and
- Payment of OTC daily variation margin.

The response document also includes the revised and final operating rules that are subject to regulatory approval.

See [media release](#)

2

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Regional not-for-profit sector risk assessment 2017

AUSTRAC has released a [report](#), *Non-Profit Organisations & Terrorism Financing Regional Risk Assessment 2017*, examining terrorism financing (TF) risks facing non-profit organisations (NPOs) in Australia, New Zealand and South-East Asian countries. The report is intended to develop the understanding of the countries involved in regards to TF and how to develop responses to mitigate TF risks. The regional risk assessment was coordinated by AUSTRAC, Bank Negara Malaysia and Indonesia's financial intelligence unit, Pusat Pelaporan dan Analisis Transaksi Keuangan.

See [media release](#)

Speech: Mortgage Insights From Securitisation Data

Marion Kohler, head of Domestic Markets Department at RBA, addressed the Australian Securitisation Forum at Sydney. Her speech focussed on the mortgage insights gained from the securitization data.

She discussed the coordination and collection of industry data, which is referred to as the Securitisation Dataset, as well as how this data has been useful in three areas:

- To assess risks on the Reserve Bank's balance sheet;
- To assess trends in the characteristics and quality of housing lending; and
- To assess the competitive environment in the mortgage market.

The full speech can be found [here](#).

3

Industry bodies

ABA

Australian Bankers'
Association

AFMA

Australian Financial
Markets Association

APCA

Australian Payments
Clearing Association

Review of existing electronic accessibility standards in banks

The ABA has appointed former Disability Discrimination Commissioner, Mr Graeme Innes AM, to head up a review of existing electronic accessibility standards to ensure that bank staff are receiving appropriate training and that all Australians are able to access banking services such as ATMs, EFTPOS, online banking and banking apps.

The review will look into:

- Existing standards;
- Accessible authentication principles;
- Existing bank accessibility plans; and
- Domestic and international best practices.

See [media release](#)

AFMA issues notice to amend NTI Conventions

AFMA has released a [notice](#) in relation to introduction of the rolling maturity pool to the *Negotiable/Transferable Instruments (NTI) Conventions*, replacing the early and late bucket pooling convention, effective 4 December 2017 onwards.

Securities will be grouped and traded daily, rolling maturity pools for each tenor to promote liquidity in secondary market. The extensiveness of the pool will be determined by the range of consecutive business days to be included in the pool, centered on the straight run maturity date for the tenor.

APCA releases report on digital payments taking over from cheques and cash

APCA has released the eighth Milestones [report](#), showing that the growing digital economy is accelerating the decline in the use of cheques and cash. According to the report, Australians used 21% fewer cheques in 2017 than 2016, compared to a 17.2% and 15.7% drop in 2016 and 2015 respectively.

Cash use also continues to decline, with the number of ATM withdrawals down by 7.5% in 2017 and 6.6% in 2016, having dropped 4.9% in 2015. The value of ATM withdrawals dropped by 4%, the single largest ever decrease. Over the last five years, values have dropped by 12% to a total of \$17.5billion.

The use of digital payments is growing:

- Cards now accounting for 52% of payments.
- Debit card payments increased by 14.2% to 5.2 billion payments.
- Credit card payments increased by 9% to 2.6 billion payments.

The report provides an update on the Black Economy Taskforce, open banking, and card surcharging reforms.

See [media release](#)

4

Overseas developments – Global

IOSCO: Recent consultations

The Monitoring Group has released a [consultation paper](#), seeking feedback on options to enhance governance, accountability and oversight of the international audit standard-setting process to underpin both public accountability and wider accountability to stakeholders.

The consultation includes options in relation to standard-setting boards:

- Changes to the number of standard setting boards and their composition;
- Their strategic focus, geographical balance and remit; the process to nominate their members; and
- their current oversight arrangements, among other elements.
- Submissions are due by 9 February 2018.

Source: [IOSCO](#)

IOSCO: Recent reports

The International Organisation of Securities Commissions (IOSCO) has released a [report](#), *IOSCO Report on Good Practices for the Termination of Investment Funds*, setting out good practices on the voluntary termination process for collective investment schemes (CIS) and other fund structures such as commodity, real estate and hedge funds (together, called investment funds). The good practices do not outweigh national or regional legal or regulatory requirements and/or insolvency regimes.

The 14 good practices are categorised under the following five headings:

- Disclosure at Time of Investment;
- Decision to Terminate;
- Decision to Merge;
- During the Termination Process; and
- Specific Types of Investment Funds.

IOSCO: Recent reports (cont'd)

The IOSCO has published an [implementation report](#), *G20/FSB recommendations related to securities markets*, providing additional insights and analysis of the status of implementation of reforms in the below areas based on self-reporting by national authorities in FSB jurisdictions:

- Hedge funds;
- Structured products and securitisation;
- Oversight of credit rating agencies (CRAs);
- Measures to safeguard the integrity and efficiency of markets; and
- Commodity derivative markets.

Implementation is most advanced with respect to hedge funds, structured products and securitisation, and the oversight of CRAs, like last year. Progress lagged in the area of safeguarding the integrity and efficiency of markets, where jurisdictions reported that they have undertaken some work to harmonise and strengthen rules.

Source: [IOSCO](#)

4

Overseas developments – Europe

EBA: Recent guidelines

The European Banking Authority (EBA) has published its final [guidelines](#) on the estimation of risk parameters for non-defaulted exposures and on the treatment of defaulted exposures under the advanced IRB Approach, in order to restore market participants' trust in internal models.

The EBA has published its [guidelines](#) on the treatment of connected clients, under the *Capital Requirements Regulation*, to support institutions in identifying all possible connections among their clients, in particular when control relationships or economic dependency should lead to the grouping of clients.

The guidelines will apply from 1 January 2019.

The EBA has [decided](#) to formally repeal its guidelines on retail deposits subject to different outflows for the purpose of liquidity reporting as they have been superseded by the *LCR Delegated Regulation*.

Source: [EBA](#)

EBA: Recent consultation

The EBA is seeking feedback on a [Consultation Paper](#); Draft Regulatory Technical Standards (RTS), specifying the different methods of prudential consolidation (full consolidation, proportional consolidation, aggregation method, equity method), which can be applied when certain conditions and criteria are met to ensure that the appropriate method of consolidation is applied for the calculation of the *Capital Requirements Regulation* (CRR) requirements on a consolidated basis. Submissions are due by 9 February 2018.

Source: [EBA](#)

4

Overseas developments – UK

Bank of England: Recent consultation

The Bank of England has released a [consultation paper](#), *Procedure for the Enforcement Decision Making Committee (EDMC)*, seeking feedback on the detailed statement of procedure related to operation of the EDMC, together with the detailed amendments to the existing statements of policy and procedure in place. Submissions are due by 2 February 2018.

Source: [Bank of England](#)

PRA: Authorisation and supervision of insurance special purpose vehicles

The Prudential Regulation Authority (PRA) has released a [policy statement](#), providing feedback in relation to the consultation paper, *CP42/16 - Authorisation and supervision of insurance special purpose vehicles*, setting out the PRA's final approach and expectations in relation to the authorisation and supervision of insurance special purpose vehicles (ISPVs), subject to the *Risk Transformation Regulations 2017* (RTR) being passed through the UK Parliament.

The statement includes:

- [Supervisory statement](#), *SS8/17 - Authorisation and supervision of insurance special purpose vehicles*;
- Amendments to the ISPVs Part of the PRA rulebook;
- An application form for the authorization and supervision of IPSVs; and
- Notification forms for MISPVs.

Source: [PRA](#)

PRA: Recent consultations

The PRA has released a [consultation paper](#), *CP24/17 - Solvency II: Internal models - modelling of the matching adjustment*, seeking feedback on a draft supervisory statement (SS), setting out the proposed expectations of firms regarding the application of the Solvency II matching adjustment within the calculation of the Solvency Capital Requirement. Submissions are due by 9 March 2018.

The PRA has released a [consultation paper](#), *CP23- Financial management and planning by insurer*, seeking feedback on a draft supervisory statement on effective financial management and planning by insurers, setting out how the application of effective risk management and governance may be linked together with the need for insurers to maintain a sound financial condition in future. Submissions are due by 9 February 2018.

Source: [PRA](#)

4

Overseas developments – US

CFTC: Recent announcement

The Commodity Futures Trading Commission's (CFTC) division of market oversight has extended time-limited no-action relief to swap execution facilities (SEFs) from certain requirements in the definition of "block trade" in *CFTC regulation* until 15 November 2020, in order to provide staff time to continue to review and evaluate SEF trading practices and functionalities.

Source: [CFTC](#)

FRB: Recent announcements

The Consumer Financial Protection Bureau (CFPB), Board of Governors of the Federal Reserve System (Board), and Office of the Comptroller of the Currency (OCC) have [increased](#) the threshold for exempting loans from special appraisal requirements for higher priced mortgage loans from \$25,500 to \$26,000, effective from 1 January 2018.

The OCC, Board, and the Federal Deposit Insurance Corporation (FDIC) have [amended](#) the *Community Reinvestment Act* (CRA) regulations, effective from 1 January 2018. The definitions of "home mortgage loan" and "consumer loan", related cross references, and public file content requirements have been revised to conform with changes to Regulation C, which implements the *Home Mortgage Disclosure Act* (HMDA).

Source: [FRB](#)

FRB: Recent announcements

The federal banking agencies has [finalised](#) a [rule](#) for certain banking organisations by extending the existing capital requirements for mortgage servicing assets and certain other items to prevent different rules from taking effect while the agencies consider a broader simplification of the capital rules, effective from 1 January 2018.

The rule would apply only to banks that are not subject to the advanced approaches capital rules, which are generally firms with less than \$250 billion in total consolidated assets and less than \$10 billion in total foreign exposure. Banks, that are subject to the advanced approaches rules, are not affected by this rule.

The Federal Reserve Board (FRB) has [extended](#) the comment periods for two proposals until 15 February 2018:

- Enhancing the effectiveness of boards of directors; and
- Implementing a new ratings system for large financial institutions, aligned with the post-crisis supervisory program.

Source: [FRB](#)

4

Overseas developments – Asia

Hong Kong: Recent announcement

The Securities and Futures Commission (SFC) has released a [consultation conclusions](#) on proposals to enhance asset management regulation and point-of-sale transparency:

- Implementation of enhancements to the Fund Manager Code of Conduct (FMCC) with certain modifications and clarifications.
- Implementation of the proposed approach to govern the use of the term "independent" by intermediaries and to enhance disclosure of trailer fees, commissions and other monetary benefits.
- Amendments to the Code of Conduct and the revised FMCC will become effective 9 and 12 months respectively after it is gazetted.

The SFC has also issued further consultation on proposed disclosure requirements applicable to discretionary accounts.

Source: [SFC](#)

Singapore: Recent announcements

The Monetary Authority of Singapore (MAS) is seeking feedback on the [proposed Payment Service Bill](#), in the following three areas:

- Implementing a single payment services licence to regulate existing and new payment services;
- Establishing a regulatory structure for significant payment systems and retail payment services; and
- Addressing regulatory risks and concerns.

Submissions are due by 8 January 2018.

The MAS and the HKMA has [signed](#) a Memorandum of Understanding (MoU) to jointly develop the Global Trade Connectivity Network (GTCN), a cross-border infrastructure based on distributed ledger technology (DLT), linking the digital trade platform in two centres.

Singapore: Recent announcements (cont'd)

The MAS and the China Securities Regulatory Commission (CSRC) has [agreed](#) to strengthen supervisory cooperation and facilitate their capital markets development.

The MAS and the Polish Financial Supervision Authority (KNF) have [signed](#) a FinTech cooperation agreement, aiming to help FinTech companies in Singapore and Poland to expand into each other's markets. The MAS and the KNF will cooperate for potential FinTech innovation projects to establish frameworks of mutual assistance.

The MAS and the Bangko Sentral ng Pilipinas (BSP) have [signed](#) a FinTech cooperation agreement, aiming to help FinTech companies in Singapore and Philippines to expand into each other's markets. The MAS and the BSP will cooperate for potential FinTech innovation projects to establish frameworks of mutual assistance.

5

PwC publications

PwC HK: IFRS 17 Implementation Insights

The International Accounting Standards Board (IASB) has published IFRS 17 in May 2017, an update and replacement of the current standard, IFRS 4, on insurance contracts. IFRS 17 will require insurers to bring additional transparency, granularity and comparability to stakeholders according to the new specified requirements. While IFRS 17 will be effective for annual periods from or after 1 January 2021, a simulation and parallel run is desired, potentially pushing the “readiness date” as early as 1 January 2019.

PwC Hong Kong has published a report, summarising its experience on developing business cases and implementing project planning in the past 6 – 9 months for the subject owners, project leaders and other stakeholders in the insurance space in Asia who are impacted by the implementation of IFRS 17.

See [publication](#)

PwC US: Treasury’s third financial regulation report

In response to President Trump’s February Executive Order, the Treasury Department has released its third report on financial regulation. The report analyses current requirements that apply to asset management and insurance industries, and makes recommendations to align the requirements with the Administration’s “Core Principles”. The recommendations closely align to industry pain points rather than statutory requirements of the *Dodd-Frank Act*, enabling a majority of the recommendations to be directly enacted by the relevant regulatory agencies.

PwC has published a first take, bringing out ten key points from the recommendations.

See [publication](#)

PwC US: Get ready for RegTech

Banks have demonstrated a growing interest in regulatory technologies, commonly referred to as RegTech, in response to the current competitive environment and post-crisis regulatory costs. RegTech enables banks to be cost-efficient by using machine learning, advanced analytics, and natural language processors to gain insights into business lines and customers. Although most banks have been reluctant to adopt RegTech solutions due to the seemingly nascent state of many offerings, forward-thinking banks have embraced RegTech to develop solutions specific to their market and organisational needs.

PwC US has issued a regulatory brief, discussing:

- How banks are using RegTechs;
- The current RegTech landscape; and
- What banks should do to prepare for RegTech.

See [publication](#)

5

PwC publications

PwC US: MiFID II – The final countdown

Though a European Union (EU) initiative, the Markets in Financial Instruments Directive (MiFID) II does not only impose obligations for legal entities and staff based in the EU. MiFID will also extend to entities that trade with either EU counterparties or in financial instruments traded on EU-regulated venues.

Despite the time that has passed since MiFID II was introduced, ongoing uncertainties surrounding regulator expectations have complicated firms' compliance efforts. Regardless, the coming deadline of 3 January 2018 will bring an end to speculation over industry standards in a post-MiFID II world.

PwC US has released a regulatory brief outlining:

- The known industry challenges of complying with MiFID II;
- The remaining regulatory uncertainties; and
- The outlook for 2018.

See [publication](#)

6

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