

# Financial Sector

January 2016

# Newsletter

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# Key Impacts in 2016

## Key topics for Compliance Officers in 2016

### Personal liability

- ✓ Individual accountability
- ✓ Personal liability
- ✓ Need to manage personal regulatory risk

### Job descriptions

- ✓ Need for job descriptions to become much more detailed
- ✓ Review and document roles and their responsibilities and keep them up-to-date

### Suitability

- ✓ Need to ensure that the composition of firm's portfolios truly reflect the investment needs and risk appetites of customers
- ✓ Need to ensure that governance, monitoring and assessment arrangements are sufficient to meet the regulatory requirements

### AML / CTF

- ✓ Enhance understanding of regulatory expectations
- ✓ Adopt more effective, risk-based and outcomes-focused approach to offset financial crime risk

### Line of sight

- ✓ To all risks arising in the firm
- ✓ To all activities under the firm's management
- ✓ Risk and control functions shall be kept informed of all activities
- ✓ To any assumptions, manual workarounds, incompatibilities and gaps regarding the IT and legacy systems to ensure that critical processes are operating as required

### Conflict of interest

- ✓ Review governance and control arrangements
- ✓ Review of conflict of interest identification, management and mitigation with regards to wholesales

### Product governance

- ✓ Ensure that the compliance function is part of the product design process

### Recordkeeping

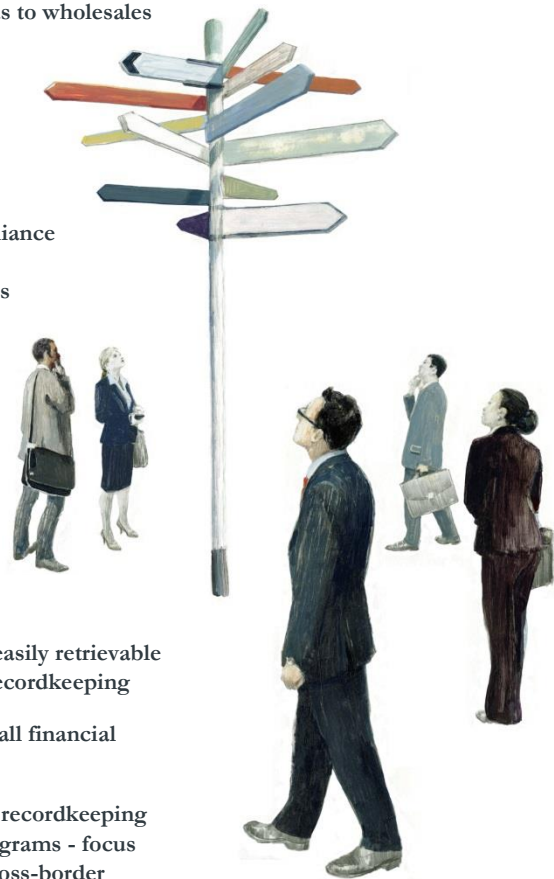
- ✓ Need for consistent, easily retrievable and comprehensive recordkeeping
- ✓ Core competency for all financial services firms
- ✓ Testing all aspects of recordkeeping in the monitoring programs - focus on data protection, cross-border access etc.

### Technology

- ✓ Being up-to-date with latest technology developments - Fintech, virtual currencies, big-data and Robo-Advice
- ✓ Enhanced involvement in every stage of new developments

### Outsourcing

- ✓ Consider all outsourcing arrangements → retain skills to manage outsourced activities
- ✓ Upfront due diligence on the outsourcer
- ✓ Annual visit of all major or material outsourcers



## Key risks for firms in 2016

### Conduct risk

- ✓ Identifying, managing and mitigating conduct risk
- ✓ Need for development of firm's specific definitions of conduct risk
- ✓ Need for senior managers to implement and embed a consistent approach to conduct risk

### Compensation practices

- ✓ Ban of rewards to individuals who failed to meet a threshold of acceptable behaviour
- ✓ Misconduct and violation of firm culture should result in compensation adjustments as bonus reduction or elimination, or claw backs



### Regulatory requirements

- ✓ Conflicts between jurisdictions in terms of requirements or timescales could cause interpretation issues
- ✓ Early adoption of regulatory changes will avoid double change in IT systems and procedures

### Data protection

- ✓ European General Data Protection Regulation will apply to all EU residents regardless where geographically they do business
- ✓ Firms have to review their data protection policies to ensure once the regulation comes into force most likely in 2018 they will be well prepared
- ✓ Poor data protection could result in fines up to 4% of international turnover including reputational damage



# AIFMD

## Questions and answers on AIFMD application

The ESMA has released an updated version of its questions and answers on the application of the AIFMD. The update includes new questions and answers on the depositary liability regime.

### Scrutiny on Risk Models

The AIFMD has transformed risk management into a holistic and central activity for firms. One of the significant changes within the risk management function is that managers now rely more on systems, processes,

procedures and personnel to remain compliant.

Under AIFMD, risk management will need to focus more on a systematic ex-ante approach. Risk models should be simply seen as a starting point and risk managers should apply a new standard of rigorous governance to their risk models.

Risk managers must consider the limitations of their risk models as the scrutiny placed on risk numbers is increasing. Therefore, risk managers are using risk models not only to understand what they do, but even more to assess what they don't.

## AIFMD passport to non-EU AIFMs and AIFs

The ESMA has issued a letter for the European Commission in relation to its advice on the application of the AIFMD to non-EU AIFMs and AIFs. The letter also includes ESMA's opinion on the functioning of the passport for EU AIFMs and on the national private placement regimes.



# AML/CTF

## Terror finance indicators

The FATF plans to develop an updated list of terror finance indicators.

In addition the FATF requires national authorities, operational agencies as well as the public and the private sector to share more information and to improve the exchange of information.

## AML & Cybersecurity overlap

In the future AML professionals should expect a greater involvement in cyber security matters as AML and cybersecurity are likely to see more overlap.

AML professionals will take more information like IP addresses and including them in suspicious activity reports. But AML experts are usually not also experts in IT.

The synergy between IT and compliance is still small but, in the future, these experts will have to deal with the matters of the other with more knowledge and information sharing.



# Blockchain

## Enhancement of regulatory reporting

Blockchain could not only streamline the trading and clearing operations, but also enhance the regulatory reporting needs.

There are numerous benefits arising from blockchain based securities

trading and settlement systems. Building an end-to-end process in blockchain could help firms to be more efficient when complying with MiFID II or any other regulatory reporting.

Regulators see it as a source of high quality information as it could be integrated as part of the chain for regulatory reporting. However, for

regulatory purposes, blockchain must become embedded into firms' technology infrastructure.



# BRRD

## Recovery plan scenarios

The EBA published a comparative report on the approaches taken by European banking groups on scenarios in recovery plans.

The aim is to provide national authorities and institutions with an overview of recovery plan scenarios, mainly because it allows them to test the feasibility of recovery options and the adequacy of recovery indicators.

## Q&A on prospectus related issues

The ESMA has updated its Q&A document on prospectus related issues adding a new question regarding the level of disclosure which should be included in a prospectus related to securities which may be subject to write-down or conversion powers under the BRRD.

## Valuation of derivatives

The EBA has published final draft Regulatory Technical Standards (RTS) on the valuation of derivatives pursuant to Article 49 (4) of the BRRD.

These draft RTS provide resolution authorities with the necessary tools in order to have the effective power to bail-in liabilities resulting from the close-out of derivative contracts and therefore ensure that the objectives of the BRRD are fulfilled.

## Business reorganisation plans

The EBA has published final draft Regulatory Technical Standards (RTS) on the content of business reorganisation plans under the BRRD.

The draft RTS require a complete and prudent business reorganisation plan that identifies and addresses the causes of the institution's failure and sets out how the institution will be restored to long-term viability.

The guidelines are addressed to both resolution authorities and competent authorities which should assess the credibility of the business reorganisation plan, the appropriateness of the strategy and its consistency with other public policy objectives and rules.

## Detailed records of financial contracts

The EBA has published final draft Regulatory Technical Standards (RTS) on a minimum set of information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed (Article 71 (8) BRRD).

The common framework prescribed in the draft RTS is expected to achieve a consistent and systemic approach ensuring that, if needed, authorities are quickly and directly able to obtain relevant information from the institutions and relevant entities to

support the application of resolution powers or resolution tools. It is also expected to facilitate cooperation and a common understanding among authorities, in particular with regards to institutions and entities with cross-border operations.

## Single Resolution Mechanism

The Single Resolution Mechanism (SRM) implements the EU-wide BRRD in the euro area, aims at bolstering the resilience of the financial system and at avoiding future crises by providing for the timely and effective resolution of cross-border and domestic banks.

The SRM Regulation establishes the framework for Member States participating in the Banking Union when banks need to be resolved.

Since 1 January 2016, the SRM is fully operational together with the full resolution powers of the Single Resolution Board.





# CRR / CRD IV

## Commission Implementing Regulation (EU) 2015/2326

The European Commission has adopted Commission Implementing Regulation (EU) 2015/2326 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in the CRR and EMIR.

### Report on investment firms

The EBA has issued a report on investment firms responding to the Commission's call for advice on the suitability of certain aspects of the prudential regime for investment firms.

The report includes findings and recommendations which shall lead to a more proportionate and risk-based prudential regime. Within these recommendations, a new categorization of investment firms would distinguish between: "bank-like" firms to which full CRD/CRR would apply; "non-systemic", with a limited set of prudential requirements; and "not interconnected", with specific requirements.

### EBA opinion on cooperation with third countries

The EBA has published an Opinion addressed to the European Commission on the application of legal provisions on cooperation and information sharing between EU and non-EU supervisory authorities.

The EBA believes that a clear legal mandate on equivalence assessments in the CRD and CRR will clarify its role and will enable coordinated, consistent and continued equivalence assessments. Furthermore, the EBA proposes to align the CRD with the BRRD.

## Commission Implementing Regulation (EU) 2015/2344

The European Commission has adopted the Commission Implementing Regulation (EU)

2015/2344 laying down implementing technical standards with regard to currencies with constraints on the availability of liquid assets in accordance with the CRR.

### EBA report on Net Stable Funding Requirements

The EBA has published its report on the impact assessment and calibration of the Net Stable Funding Ratio (NSFR), recommending the introduction of the NSFR in the EU to ensure stable funding structures. The analysis did not find strong statistical evidence of significant negative impacts of the NSFR on bank lending, financial assets markets or trading book positions.

### Calculation of the Maximum Distributable Amount

The EBA has published an opinion on the trigger, calculation and transparency of the Maximum Distributable Amount (MDA).

Thus, the calculation of the MDA should take into account both minimum and additional capital requirements which should be met at all times, as well as the combined buffer requirement.

### Guidelines on implicit support for securitisation transactions

The EBA has issued for consultation draft Guidelines on implicit support for securitisation transactions.

The intention is to outline what constitutes arm's length conditions and when a transaction is not structured to provide support for securitisations.

### Final Guidelines on sound remuneration policies

The EBA has published its final Guidelines on sound remuneration policies together with its Opinion on proportionality, recommending

exemptions from the remuneration principles in the CRD IV.

The guidelines ensure that institutions calculate correctly and consistently the so called 'bonus cap' by setting out specific criteria for mapping all remuneration components into either fixed or variable pay and detailing how specific remuneration elements such as allowances, sign-on bonuses, retention bonuses and severance pay are to be recognised over time. Finally the regulator decided on a 12-month delay introducing the bonus cap as of 2017.

### One year delay for bonus cap

Banks don't need to change their existing pay practices for the 2016 performance year following the recently published EBA's guidelines on sound remuneration principles.

The one year delay has been decided due to amendments in the CRD IV exempting smaller firms from other aspects of the European remuneration regime.

The guidelines are effective from 1 January 2017.

### Q&A: Clarification regarding the reference year for the collection of remuneration data

The EBA has published an answer on the amounts and year to which the guidelines on data collection refer exactly with regard to the collection of the fixed and variable component of remuneration.

The EBA stated that competent authorities are required to collect information on the number of natural persons, who are remunerated  $\geq$  EUR 1 million per financial year. Reporting data should comprise fixed and variable remuneration awarded for the performance year preceding the year of submission of the information.

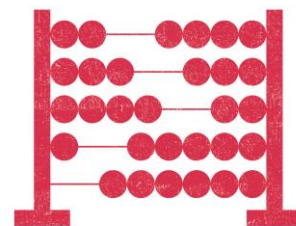
# CRS

## Automatic exchange of information in the field of taxation

Directive (EU) 2015/2376 has been adopted by the European Commission amending Directive 2011/16/EU with

regards to mandatory automatic exchange of information in the field of taxation.

Member States are now required to comply with the Directive by the end of 2016. Measures will apply from the beginning of 2017.



# Cybersecurity

## Member States agreement

The European Parliament and the Permanent Representatives Committee have endorsed an agreement on the network and information security directive.

The text will have to be approved by the Council and the Parliament (estimated date: spring 2016).



# Data protection

## Fines for violating data protection regulations

The new EU data protection regulation will enable the national authorities to levy up to 4 % of revenues on firms violating this law. The law will force firms to report breaches to national authorities within 72 hours. The final text will be adopted by the EU at the beginning of 2016.



## Data protection package

The European Parliament and the Council reached an agreement on the Commission's proposed data protection package.

The final texts will be adopted shortly and become applicable two years after that.

## Data protection reform: Q & A

The European Commission has released a set of Q&A's on the data protection reform package.

## Restriction of personal data transfers to the United States

The restrictions of personal data transfers to the United States will be discussed at a plenary meeting of EU's privacy regulators at the beginning of February 2016.

Companies are not allowed under the EU data protection law to transfer Europeans' data to countries outside the EU that are deemed to have insufficient privacy safeguards.

The range of possible outcomes includes "freezing" all new authorisations for U.S. data transfers.







# Insurance Mediation Directive

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## Insurance distribution rules adopted

The EU Council adopted a directive establishing new rules on insurance distribution, improving consumer protection for insurance products.

The directive seeks to improve retail insurance regulation in a manner that will facilitate market integration, to establish the conditions necessary for fair competition between distributors of insurance products and to strengthen policyholder protection, in

particular with regard to life insurance products with an investment element.

Transposition time for member states will be two years.

## ICAAP

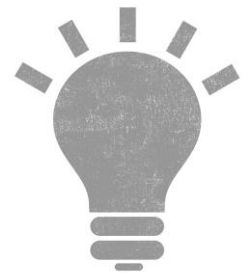
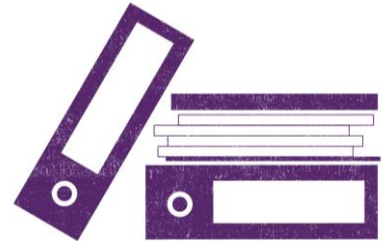
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### Consultation draft Guidelines on the collection of information related to ICAAP

The EBA has issued a consultation on draft Guidelines on the collection of information related to the internal capital adequacy assessment process (ICAAP) and the internal liquidity adequacy assessment process (ILAAP).

In particular, these Guidelines specify what information regarding ICAAP and ILAAP competent authorities should collect from the institutions in order to perform their assessments following the criteria specified in the supervisory review and evaluation process Guidelines (SREP).

The Guidelines will be finalised in the first half of 2016 and will apply from 30 June 2016.



## MAR / MAD

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### Reporting to competent authorities of actual or potential infringements

The European Commission has adopted the Implementing Directive 2015/2392 on the Market Abuse Regulation (MAR) with regards to reporting to competent authorities of actual or potential infringements of the MAR.

The Directive lays down rules specifying the procedures including the arrangements for reporting and for

following-up reports, as well as measures for the protection of persons working under a contract of employment as well as measures for the protection of personal data.

### Second Market Abuse Directive peer review

The ESMA has issued the results of its follow-up review of national competent authorities' supervisory regimes with regard to the Market Abuse Directive (MAD).



# MiFID II / MiFIR

## Flexibility on asset manager payments

Within the EU, more and more asset managers have started to use commission sharing agreements.

The ESMA wanted a “full unbundling” of the cost of research and trading to give investors a more clear view about what they are paying for at the end. This would have resulted in asset managers paying for research out of their own resources, from a separate research payment account, with charges agreed in advance and disclosed to the investor.

But the EU has chosen a more flexible approach on commission sharing arrangements, setting out conditions by which a single payment could continue being allowed. This means that commission sharing agreements won't be completely banned under MiFID II.

## Draft Implementing Technical standards

The ESMA has released draft Implementing Technical Standards (ITS) regarding MiFID II.

The draft ITS specify standard forms, templates and procedures to be used for areas such as authorization of data reporting providers, position reporting and submission of information on sanctions, among others.

## Guidelines: knowledge & competence

The ESMA has released its Guidelines for the assessment of knowledge and competence of natural persons within investment firms in order to meet the requirements of MiFID II.

The guidelines include an overview of the responses received, as well as ESMA's commentaries on them.

All requirements for employees giving investment services have been tightened.

The ESMA has removed a proposal saying that existing staff within firms with at least 5 consecutive years of appropriate experience could be considered as having an appropriate qualification.

New and existing staff members need to have an appropriate qualification but also need to meet the experience requirements. Otherwise they would have to work under supervision for up to four years until requirements have been achieved.

The definition of appropriate experience has also changed; it must be of at least 6 months. These guidelines do not apply for back-office staff.

National regulators will have to tell ESMA if they will comply or not with these guidelines within two months of publication of the translated versions.

The guidelines will come into effect on 3 January 2017.

## Guidelines on transaction reporting, reference data, order record keeping and clock synchronization

The ESMA has released for consultation draft MiFIR Guidelines setting out individual scenarios applicable to a certain transaction or order activity together with a sample XML ISO 20022 format.

The consultation seeks stakeholders' feedback on future guidance regarding the transaction reporting, instrument

reference data, order record keeping and clock synchronisation. The guidance complements the technical standards and will be essential for the consistent implementation of the new MiFIR rules.

The paper also clarifies on the application of the relevant MiFID II requirements which could not be addressed by the final technical standards due to the level of detail of such requests.

These guidelines, which were published on December the 23<sup>rd</sup>, will raise regulator's expectations for high quality reporting.

ESMA's guidelines include many scenarios as well as complex guidance on everything from reportable transactions, branch reporting and short-selling flags to buyer/seller identification.

Firms could submit comments until March 23, 2016.

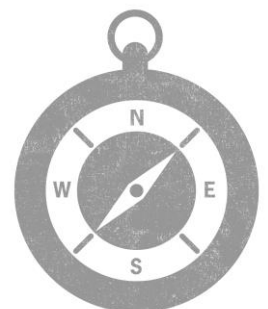
## Cross selling Guidelines

The ESMA has released its Guidelines on Cross-Selling Practices under MiFID II to ensure that investors are treated fairly when an investment firm offers two or more financial products or services as part of a package.

The guidelines are addressed to national regulators and will apply from 3 January 2017.

## Responses to the consultation on indirect clearing

The ESMA has published the responses to its consultation on indirect clearing under EMIR and MiFIR.



# Payment Services

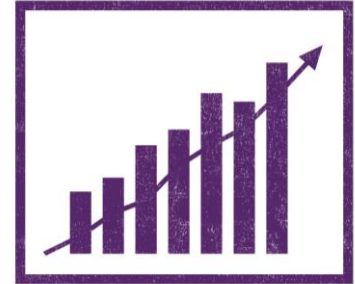
## Payment services in the internal market

The European Commission has adopted Directive (EU) 2015/2366 of the European Parliament and of the

Council on payment services in the internal market.

The Directive establishes the rules in accordance with which Member States shall distinguish between different categories of payment service providers. Member States have time

until 13 January 2018 to transpose the Directive into national law.



## PRIIPs

### Consultation paper on PRIIPs KID

The ESAs has identified errors in two formulas on page 37 of the Joint Consultation Paper on PRIIPs KID's

published on 11 November 2015. The corrected formulas were published in the Errata Consultation Paper.

Comments on this consultation paper can be sent until 29 January 2016.

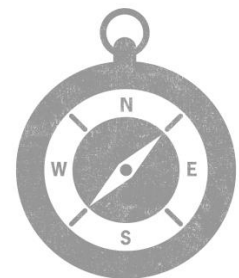


## Proxy Voting

### Best Practice Principles for Providers of Shareholder Voting Research and Analysis

The ESMA has published a follow-up report on the development of the "Best Practice Principles for Providers of Shareholder Voting Research and

Analysis" addressing the proxy advisory industry's progress in establishing and following a self-regulatory code of conduct.



## RAIF

### New Luxembourg alternative fund structure

The draft law of the new Luxembourg fund structure, the Reserved Alternative Investment Fund (RAIF), has been recently published. The final text of the law might be adopted on June 2016.

The new RAIF is an AIF and is very similar to the Luxembourg SIFs and SICARs. However, the RAIF does not need to be approved and is not supervised by the CSSF.

The RAIF must be managed by an authorised external AIFM. Presumed the AIFM is fully compliant with the

AIFMD, thus the RAIFs shares or units can be marketed on a cross-border basis and can only be sold to well-informed investors.



# Shadow Banking

## Flexible approach for “shadow banking”

The EBA has published final Guidelines giving banks the opportunity to set their own limits on total exposure and exposure to individual shadow banking entities. Thus EBA desires not to strangle shadow banking as a growing alternative source of funds for the economy.

Under the new regulations, exposures to shadow banking worth more than 0.25% of a bank's capital must be added up and must be subject to risk controls and oversight by management.



# Solvency II

## Additional EIOPA Guidelines on Solvency II

The CAA has published Circular 15/13 to provide clarifications on the additional EIOPA Guidelines for Solvency II, explaining that the guidelines have been grouped according to the three pillars of Solvency II and that there are additional guidelines available for national competent authorities.

## New technical standards according to Solvency II

The EU Commission has adopted new Implementing Regulations establishing implementing technical standards in accordance with Solvency II with regard to:

- 2015/2450: the templates for the submission of information to the supervisory authorities;
- 2015/2451: the templates and structure of the disclosure of specific information by supervisory authorities;

- 2015/2452: the procedures, formats and templates of the solvency and financial condition report.

All regulations entered into force on 20 January 2016.

## Update December 2015

The EIOPA has published the technical information on the symmetric adjustment of the equity capital charge for Solvency II with reference to the end of December 2015.

## First Solvency II relevant risk-free interest rate term structures

The EIOPA has published technical information on the relevant risk free interest rate term structures (RFR) to be applied by (re)insurance undertakings in the calculation of their technical provisions with reference to the end of December 2015.

## Conditions for exemption to the quarterly reporting requirement under Solvency II

The CAA has issued Circular 16/1 which establishes conditions for exemption to the quarterly reporting requirement under Solvency II.

The Circular aims to outline the conditions for solo and group companies. The exemption status will be valid for reporting periods 2016 - 2018. However, all companies have to calculate and report the minimum capital requirement. Therefore, exemptions do not apply hereunder.

## Report on systemic risks in the EU insurance sector

The European Systemic Risk Board (ESRB) has published a report on the systemic risks arising from the activities of European insurers and re-insurers identifying four main ways as to how insurers and re-insurers can be the source of systemic risks and amplify these.

# UCITS V

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## Obligations of depositaries

The European Commission has published a proposed Delegated Regulation supplementing the UCITS V Directive. It contains detailed provisions about the obligations and rights of depositaries. In addition it provides details on the depositary

contract, it further regulates the loss of financial instruments and the liability discharge as well as independence requirements for the management and the supervisory body.



# CSSF

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## Circular 15/628

The CSSF has issued Circular 15/628 providing information on the BRRD requirement for EU member states to establish one or more national resolution financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers.

## Circular 15/629

The CSSF has issued Circular 15/629 on the supplementary supervision to be applied to financial conglomerates and the definition of structure coefficients to be observed by the regulated entities belonging to these financial conglomerates pursuant to Article 56 of the law of 5 April 1993 on the financial sector, as amended.

## Circular 15/630

The CSSF has issued Circular 15/630 including a survey on the amount of guaranteed deposits as at 31 December 2015.

## Circular 15/631

The CSSF has issued Circular 15/631 providing guidelines for the definition and treatment of dormant accounts. It entered into force on 28 December 2015.

## Circular 15/632

The CSSF has issued Circular 15/632 that provides details on the technical

specifications regarding the submission of documentation to the CSSF for offers to the public of securities traded on a regular market.

## Circular 15/633

The CSSF has issued Circular 15/633 on the financial information to be provided by investment fund managers and their branches on a quarterly basis. The circular entered into force with immediate effect.

## Regulation 15-06

The CSSF Regulation 15-06 provides a list of systematically important banks. The countercyclical buffer will apply for these institutions from 1 January 2016, increasing gradually until 2019.

## Regulation 15-07

The CSSF Regulation 15-07 lays down the application measures relating to specialised investment funds as regards the requirements in relation to risk management and conflicts of interest for specialised investment funds which are not referred to in the specific provisions of Part II of the law of 13 February 2007.

## Regulation 15-08

The CSSF Regulation 15-08 lays down the application measures relating to SICARs as regards the requirements in relation to the management of conflicts of interest for SICARs which are not

referred to in the specific provisions of Part II of the law of 15 June 2004.

## Regulation 13-02

The CSSF has amended Regulation 13-02 relating to the out-of-court resolution of complaints.

## Newsletter 180

The CSSF has released the latest version of its newsletter.

## Audit of public interest entities

The CSSF has released a communication confirming that the period for the external rotation of audit firms for public interest entities should not generally exceed 10 years. This is in accordance with Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities.

## Press release 16/02

The CSSF has released information regarding enforcement of the 2015 financial information published by issuers of securities subject to the Transparency Law.







# EIOPA

## Consultation paper on Good Practices on communication tools

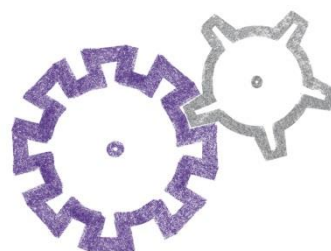
The EIOPA has issued a consultation paper putting forward Good Practices with regard to the use of different communication tools and channels to communicate to pension scheme members of occupational pension schemes operated by Institutions for

Occupational Retirement Provision (IORPs) and insurance undertakings.

The EIOPA has reviewed existing communication tools to identify opportunities for improving communications. Deadline for submitting comments is March 22, 2016.

## Fourth Consumer Trends Report

The EIOPA has issued its fourth annual Consumer Trends Report for the European Economic Area where an analysis of the occupational and personal pensions sectors as well as the insurance sector was included.



# IASB

## New lease accounting rule for a clearer light on debt

The International Accounting Standards Board (IASB) published recently a new rule requiring leases of more than a year to be placed on balance sheets from January 2019.

It aims at clearer view of company health. The new lease accounting rule will affect around half of all companies, especially airlines, shipping and retail which will have significantly different financial statements, IASB Chairman said.



# Our Regulatory Watch Services:

Grant Thornton offers a dedicated service which permits to stay informed on ever-changing regulatory evolutions and related guidelines, best practices and opinions. The service is based on a solution that scans information from hundreds of sources. A dedicated team of regulatory experts filters and analyses collected information. Depending on needs and service levels, it then provides raw information, high-level or detailed analysis.

Sources of information include:

- Central banks: ECB, BCL, BoE...
- Regulators: CSSF, ACPR, AMF, FCA, BaFin...
- International and regional bodies: EC, EBA, ESMA, ALFI...
- Government departments and ministries: HMRC...
- Exchanges/clearing agencies: LuxSE, Eurex...
- Trade associations, legislative bodies, courts and tribunals



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