

## Financial Sector

December 2016

# Newsletter

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## Grant Thornton ABAX Investment Services Selects PFS-PAXUS Fund Administration Software

November 2016

Grant Thornton ABAX Investment Services (“GTAIS”) is pleased to announce the selection of PFS-PAXUS for the administration of its funds services.

After a thorough evaluation process, the management of GTAIS has identified that PFS-PAXUS was going to be a great fit for its business. The breadth of functionality available within the system is very extensive and will put GTAIS in an ideal position to administer almost any fund structure, in line with GTAIS strategy to concentrate on its core services and broaden the range of asset classes also to liquid funds.

Incorporated in 2009, Grant Thornton ABAX Investment Services is regulated by the CSSF and provides services such as transfer agent, central administration, AIFM set-up and support, compliance support, AML & KYC services, IT hosting, Directorships and Risk related services to its clients.

Summing up the successful selection of PFS-PAXUS, Philippe Lanciers added, “Grant Thornton ABAX Investment Services is focused on growing our fund administration offering, and we believe having PFS-PAXUS as our core technology platform will allow us to optimise the fund administration process and thereby drive growth in our business. We look forward to a long and mutually beneficial relationship with the team at PFS.”

Pacific Fund Systems (‘PFS’) is a leading provider of alternative fund administration software via its award winning PFS-PAXUS application, a fully integrated share registry and fund accounting system, and PFS-CONNECT, its real-time web portal. PFS services more than 70 client sites across multiple global jurisdictions with in excess of US\$400bn of assets managed on PFS-PAXUS.

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# Grant Thornton

## A multidisciplinary blockchain approach

### COMPANY SUMMARY

**Grant Thornton** is worldwide audit, tax, accounting and business advisor network that supports organisations to unlock their potential for growth.

**Grant Thornton Spain** has created a multidisciplinary Blockchain Team in order to perform research about new use cases, implementing distributed ledgers and cover the following areas: blockchain development, support in law & regulation pertaining to blockchain, economic models as well as consultancy.

**Grant Thornton Luxembourg** is an active player in the Fintech ecosystem since 2014. In Belgium, Finside Advisers has provided advisory services in the FS sector for the past five years and is also pitching for Blockchain initiatives with a large French banking client.

### PRODUCTS/SERVICES

The Grant Thornton blockchain lab is offering a wide range of services around blockchain to help clients to assess the value of the technology to their business. Services include training, diagnosis of business cases as well as the development of Proof of Concepts and prototypes.

We recently developed KYC-Start, a solution built to decrease the cost of KYC/AML processes by reducing on-boarding time and enabling to create value out of information verified during the process. Customers are registered into the blockchain through a Digital Identity that contains all collected information, and can be later shared with other participants.

### COMPANY PASSPORT

#### Keywords:

Financial Services Compliance and Regulatory support; AML / KYC Functional and Legal expertise; Cybersecurity; Blockchain Technology; Blockchain Training

#### Country:

Luxembourg, Spain

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### KEY DIFFERENTIATORS:

- When addressing blockchain challenges, we believe that not only technological expertise is needed, but also business and content knowledge.
- Our team has brought together experts in law, economics and technology to develop several concepts and prototypes for many different sectors.
- Thanks to our knowledge of the financial sector, we investigate how blockchain technology can replace legacy systems or create new business model.
- Our team draws on insight gained from working with many start-ups in the blockchain ecosystem to see how the technologies can be taken further.
- Different use cases could be built on the top of our KYC-Start platform, using the digital identity for registering connected objects (IoT), improving different compliance processes (such as FATCA) or building secure e-commerce platforms.

# AIFMD

## ESMA updates AIFMD Q&A

The ESMA has published an updated Q&A document on the application of the AIFMD.

The Q&A includes one updated question and answer on reporting obligations by non-EU AIFMs under Article 42 of the AIFMD, clarifying the circumstances under which information on EU master AIFs should be reported to competent authorities.



# AML/CFT/KYC

## Directive regarding the access to AML information by tax authorities

The Council of the EU has published a Directive granting access for tax authorities to information held by the authorities responsible for the prevention of money laundering.

The directive will require member states to provide access to information on the beneficial ownership of companies. It will enable tax authorities to access that information in monitoring the proper application of rules on the automatic exchange of tax information.

The Directive will apply from 1 January 2018 and will amend Directive 2011/16/EU.

Although the Directive is dated 24 November 2016 it was published on 5 December 2016 on the website of the Council of the EU.

## Changes to the 5th MLD

On 30 November 2016, a third Presidency Compromise text of the Fifth Money Laundering Directive (5th MLD) was published by the Council of the EU. Compared to the previous version, the text includes the following changes:

The transitional period to identify the customers for remote payment transactions of 50 euros and less has been extended from two to three years from the date the 4th MLD came into force (26 June 2015).

Card schemes issuing anonymous prepaid cards in third countries will be obliged to prove the application of customer due diligence measures which are equivalent to those in the EU. The previous text required those issuers only to provide sufficient proof.

The decision to ban anonymous prepaid cards can be based by the

member states on AML and CTF considerations while a consideration of wider payment issues such as competition law will not be required.

Instead of 26 June 2017 the 5th MLD will be transposed into national law within six months of its publication in the Official Journal.



# Benchmarks Regulation

## SMSG's response to ESMA's Consultation Paper

The Securities and Markets Stakeholder Group (SMSG) has published its response to ESMA's Consultation Paper on Draft technical

standards under the Benchmarks Regulation.

The SMSG provided high-level advice on the following topics: oversight function, input data, transparency of methodology, code of conduct of

contributors, governance and control requirements, criteria for significant benchmarks, compliance statement for administrators of benchmarks, authorisation, registration and recognition of administrators as well as pricing of critical benchmarks.

## FESE's response to ESMA's Consultation Paper

The Federation of European Securities Exchanges (FESE) has published its

response to ESMA's Consultation Paper on Draft technical standards under the Benchmarks Regulation.

FESE's response concentrated on the following topics: the definition of

regulated data, transitional provisions, third country provisions, exemptions to the benchmark methodology, code of conducts and compliance statements.

# BEPS

## OECD Guidance on Country-by-Country Reporting

The OECD has published its guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13. This guidance is intended to cover the following issues: transitional filing options for MNEs, country-by-country reporting (CbC) notification requirements for MNE Groups during transitional phase, the application of CbC reporting to investment funds, the

application of CbC reporting to partnerships and the impact of currency fluctuations on the agreed EUR 750 million filing threshold.

## Country-specific information on Country-by-Country Reporting Implementation

The Inclusive Framework on BEPS has released information on the domestic legal frameworks for CbC reporting around the world. This provides a high

level snapshot for tax administrations and MNE Groups as to the first reporting periods, availability of surrogate filing including in the parent jurisdiction, and local filing. The table published on the OECD website contains the information received from members so far and will be updated as Inclusive Framework members continue to finalise their CbC reporting frameworks.

# Blockchain/FinTech

## ESA's publish conclusions on automation in financial advice

The EBA, EIOPA and ESMA have published a report presenting the conclusions of its assessment on automation in financial advice. The ESAs will continue to monitor this phenomenon given its growth potential, but have decided not to take any cross-sectoral regulatory or supervisory actions at this stage.

The Report concludes that the proliferation of automated advice, often referred to as robo-advice, is still at an early stage and the phenomenon is not equally present across the insurance, banking and investment sectors, currently having a greater prominence in the investment sector. The ESAs

also note that financial advice in general is already addressed in various ways through a number of EU Directives.

## Regulation and Distributed Ledger technology

Patrick Armstrong, Member of ESMA's Innovation and Products Team, delivered a speech at the conference "Blockchain Technology: The Future for Financial Services Infrastructure" in London.

During the speech Armstrong discussed the challenges and opportunities that Distributed Ledger technology may potentially introduce, as well as the role of ESMA and how ESMA will approach the topic of

financial innovation and the attendant regulatory challenges.

## Virtual currencies and blockchain: between disruption and speculation

Carl-Ludwig Thiele, Member of the Board of Deutsche Bundesbank, delivered a speech at the Handelsblatt conference on banking technology in Frankfurt. During the speech Thiele discussed virtual currencies – a niche product, opportunities and risks of the blockchain technology, the application of blockchain in the financial sector and the call for digital federal funds.





# BRRD

## EC proposed amendments to the BRRD

The European Commission has published a proposal for a Directive of the European Parliament and of the Council on amending the BRRD as regards the ranking of unsecured debt instruments in insolvency hierarchy.

This proposal is part of the Commission's efforts to implement the Total Loss-absorbing Capacity (TLAC) standard in the Union. The proposal covers specifically the targeted amendments to the BRRD related to

the insolvency ranking of holders of debt instruments issued by Union banks for the purposes of complying with the BRRD and TLAC requirements concerning loss absorption and recapitalisation capacity of banks.

## EBA makes final recommendations for strengthening loss-absorbing capacity of banks in Europe

The EBA has published its final Report on the implementation and design of

the minimum requirement for own funds and eligible liabilities (MREL). The Report quantifies the current MREL stack and estimates potential financing needs of EU banks under various scenarios. It also assesses the possible macroeconomic costs and benefits of introducing MREL in the EU. Finally, the Report recommends a number of changes to reinforce the MREL framework and integrate the international standards on total loss-absorbing capacity (TLAC) in the EU's MREL.

# CRR / CRD

## EBA publishes list of EU public-sector entities with regards to the CRR

The EBA has published the list of public sector entities (PSEs) that may be treated as regional governments, local authorities or central governments in the area of credit risk, in accordance with the CRR. This list will assist EU institutions in determining their capital requirements for credit risk.

The EBA has compiled this list on its own initiative to enhance harmonisation in the treatment of exposures to EU PSEs using the standardised approach to capital requirements. In particular, the list includes those PSEs that are treated as regional governments, local authorities or central governments due to their reduced risk level. As a result of this treatment, exposures to the PSEs included in the list will qualify for the same risk weight as for the respective regional government, local authority or central government.

## EBA publishes final standards on assessment methodology to validate market risk models

The EBA has published its final draft Regulatory Technical Standards

(RTS) that specify the conditions under which Competent Authorities assess the significance of positions included in the scope of market risk internal models, as well as the methodology they shall apply when assessing an institution's compliance with the requirements to use an Internal Model Approach (IMA) for market risk. These draft RTS are a key component of the EBA's work to ensure consistency in models' outputs and comparability of risk-weighted exposures and will contribute to harmonise the supervisory assessment methodology across all EU Member States and, ultimately, to restore confidence in the use of such models for regulatory purposes.

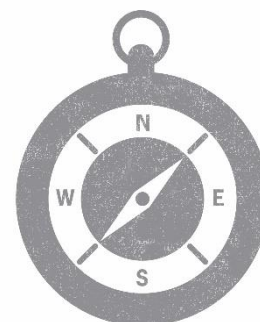
In particular, these final draft RTS provide objective criteria to be applied in the assessment of the significance of those positions included in the scope of the internal model and state two different methodologies for general and specific risk categories, both of them based on the standardised rules for market risk.

In addition, the final draft RTS set out the standards for the assessment by Competent Authorities of an institution's compliance with IMA requirements when the institution applies to use an internal model to

determine market risk capital requirements or introduces any material changes or extensions to the IMA approach already in use. They will also assist Competent Authorities in assessing whether an institution meets minimum IMA requirements on an ongoing basis following the regular review of its internal model.

## EBA updates list of CET1 instruments

The EBA has published its fourth updated list of capital instruments that Competent Supervisory Authorities across the EU have classified as Common Equity Tier 1 (CET1). Since the publication of the previous update in September 2016, some new CET1 instruments have been assessed and evaluated as compliant with the CRR. The list will be maintained and updated on a regular basis.



## EC adopts Commission Regulation (EU) 2016/2227

The European Commission has adopted Commission Implementing Regulation 2016/2227/EU on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in the CRR.

The Regulation has entered into force on 13 December 2016.

## EBA presentation on draft RTS and ITS on the authorisation of credit institutions

The EBA has published the public hearing presentation with regards to the EBA consultation paper on draft Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) on the authorization of credit institutions.

The presentation includes slides on the background of the RTS and ITS, the outline of the RTS and ITS, information to be provided, flexibility, requirements applicable to persons having qualifying holdings, obstacles which may prevent the effective exercise of the supervisory functions as well as the questions which were put forward for public consultation.

## EBA publishes final guidelines on revised Pillar 3 disclosures requirements

The EBA has published its final Guidelines on regulatory disclosure requirements following an update of the Pillar 3 requirements by the Basel Committee in January 2015. These Guidelines while not changing the requirements of the regulatory disclosures defined in Part 8 of the CRR, provide further guidance and support to institutions in complying with both the CRR and the revised Pillar 3 framework requirements.

# Data Protection

## General Data Protection Regulation

The Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) will apply from 25 May 2018. The Regulation aims at harmonising data protection procedures across the EU and non-compliance will be sanctioned with fines of up to 20 million or, if greater, 4 percent of annual worldwide revenues. The Regulation will have a significant impact on companies that conduct business in the EU requiring changes in policies, procedures and systems of legal, risk, compliance and operational

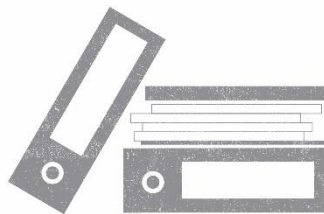
departments. The new rules will introduce the following:

- Coverage of data controllers located outside the EU offering goods and services to EU citizens;
- Provision of more information to data subjects;
- Consent to the processing of data;
- Greater rights of data subjects regarding the processing of their data;
- Regulatory liability for data controllers and data processors;
- Appointment of a data protection officer;
- More detailed requirements for data security;

- Notification requirement for data controllers in the case of data breaches;
- Codes of conduct and certifications.

## Data Protection updates by the AFME

The Association for Financial Markets in Europe (AFME) has published a list of Data protection updates including: legal challenges, General Data Protection Regulation developments and analysis articles, other developments, reported incidents of data breaches as well as global and miscellaneous issues and developments.



# EMIR

## EC final Report on OTC derivatives, central counterparties and trade repositories

The European Commission has issued a report under EMIR on OTC derivatives, central counterparties and trade repositories. This report provides a summary of the areas where consultation responses and specific input received from various authorities

have shown that action is necessary to ensure fulfilment of the objectives of EMIR in a more proportionate, efficient and effective manner.

The report highlights a number of issues that have been identified by

stakeholders relating to the implementation of those requirements which already apply (namely, reporting to trade repositories and operational risk mitigation requirements), as well as issues encountered in preparing for the clearing and margin requirements.

### ESMA recognises ICE Clear US Inc. as third-country CCP under EMIR

The ESMA has added ICE Clear US Inc. to its list of recognised third-country central counterparties (CCPs) under the EMIR. EMIR requires EU-based CCPs to be authorised and non-EU CCPs to be recognised in the European Union. Once a CCP has been authorised or recognised within the EU, EU firms can use these CCP to fulfil their clearing obligations.

The updated list of recognised CCPs established in a third country is available on ESMA's website.

### ESMA consults on extending aggregated trade repository data

The ESMA has opened a public consultation on the extension of data available to the public in trade repositories as stipulated in the EMIR.

ESMA is setting out several proposals to enhance the data made publicly available by trade repositories and to increase the transparency to the public in general as well as allowing to add the publication of certain figures that will be required by EU regulations such as MiFID II and the Benchmarks Regulation. The consultation is open for feedback until 15 February 2017.

### Commission Implementing Decisions of 15 December 2016 in accordance with EMIR

The European Commission has issued and adopted several decisions on the equivalence of:

- The regulatory framework for central counterparties in the Dubai International Financial Centre;
- The regulatory framework for central counterparties in Japan;
- The regulatory framework for central counterparties in India;
- The regulatory framework for central counterparties in the United Arab Emirates;
- Financial markets in Australia;
- Financial instrument exchanges and commodity exchanges in Japan and;
- Approved exchanges in Singapore.



## EuSEF/EuVECA

### Venture capital rules agreed by Council

The Council has agreed its negotiating stance on amendments to EU rules aimed at boosting investment in venture capital and social enterprises.

The proposal sets out to make European venture capital funds (EuVECA) and European social entrepreneurship funds (EuSEF) available to fund managers of all sizes.

Amending regulations 345/2013 and 346/2013, it expands the range of companies that EuVECA and EuSEF funds can invest in. It also makes the cross-border marketing of such funds cheaper and easier.

As agreed by the Council, the main amendments to regulations 345/2013 and 346/2013 involve:

- Enabling larger fund managers, i.e. those with assets under

management of more than EUR 500 million, to market and manage EuVECA and EuSEF funds;

- Expanding the range of companies in which EuVECA funds can invest, including unlisted companies with up to 499 employees (small mid-caps) and SMEs listed on SME growth markets.





# FINREP/COREP

## EBA amends supervisory reporting standards due to the new IFRS 9

The EBA has published its amended final draft implementing technical standards (ITS) on the reporting of financial information. The amended ITS follow the finalisation of IFRS 9 in July 2014 by the IASB and its endorsement into EU law on 22 November 2016 and aim at aligning the

reporting framework with the new IFRS 9 requirements while ensuring reporting institutions have adequate implementation time.

Most of the amendments to these final draft ITS reflect the changes brought about by the new IFRS 9 requirements although the EBA deemed necessary to review also some parts of the FINREP framework based on the experience gained through the submitted data and

the feedback received from compiling banks.

## Annex V – FINREP instructions

The EBA has published Annex V containing additional instructions regarding the reporting on financial information (“FINREP”).

# IFRS

## EBA launches second impact assessment of IFRS 9 on EU banks

The EBA has launched a second impact assessment of IFRS 9, which builds on the results of its first exercise published on 10 November 2016. The EBA expects that institutions will be able to provide more detailed and accurate insights into their

implementation of IFRS 9 as the information provided by the respondents in the first exercise reflected the early stage of implementation.

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# MiFID/MiFID II/MiFIR

## Commission Delegated Regulation (EU) 2016/2020

The European Commission has issued the Delegated Regulation (EU) 2016/2020 of 26 May 2016 supplementing MiFIR with regard to regulatory technical standards (RTS) on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation.

The RTS regulates the following: sufficient third party buying and selling interest, average frequency of trades, average size of trades, number and type of active market participants as well as

the average size of spreads. The Regulation entered into force on 9 December 2016.

## Commission Delegated Regulation (EU) 2016/2021

The European Commission has issued the Delegated Regulation (EU) 2016/2021 of 2 June 2016 supplementing MiFIR with regard to regulatory technical standards (RTS) on access in respect of benchmarks.

The RTS regulates the following: the information to be made available to CCPs and trading venues, general conditions for the information through

licensing to be provided to CCPs and trading venues, differentiation and non-discrimination, other conditions under which access is granted as well as standards guiding how a benchmark may be proven to be new. The Regulation entered into force on 9 December 2016.



## Commission Delegated Regulation (EU) 2016/2022

The European Commission has issued the Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards (RTS) concerning the information for registration of third- country firms and the format of information to be provided to the clients.

The RTS regulates the following: the information necessary for the registration, information submission requirements as well as information concerning type of clients in the Union. The Regulation entered into force on 9 December 2016.

## ESMA publishes compliance table for Guidelines for the assessment of knowledge and competence

The ESMA has published the compliance table listing the competent authorities that have informed ESMA that they comply, do not comply or intend to comply with the ESMA's guidelines for the assessment of knowledge and competence.

## ESMA publishes compliance table for Guidelines on cross-selling practices

The ESMA has published the compliance table listing the competent authorities that have informed ESMA that they comply, do not comply or intend to comply with the ESMA's guidelines on cross-selling practices.

## ESMA updates MiFID II Q&A on Investor Protection

The ESMA has added new Q&A's to its Questions and Answers document on the implementation of investor protection topics under MiFID II and MiFIR.

This Q&A provides clarifications on the following topics:

- Best execution
- Suitability
- Post sale reporting
- Inducements (research)
- Information on charges and costs
- Underwriting and placement of a financial instrument.

## ESMA publishes MiFID II Q&A's on commodity derivatives topics

The ESMA has published a Q&A documents regarding commodity derivatives topics under the MiFID II/ MiFIR. The documents provide clarifications on the following topics:

- Position limits; and,
- Ancillary activities.

## The use of identifiers for individuals under MiFID II

Under MiFID I non-financial firms, partnerships and individuals were identified using firm's internal identifiers. This will change under MiFID II.

RTS 22 specifies the identification of individuals under MiFID II which will require identifiers by nationality. Some countries elected to use passport numbers or tax numbers to identify individuals whereas some other countries opted to use the CONCAT method. The CONCAT approach is the concatenation of the country code, the first name, the surname and the date of birth of the individual. This method has been criticised as it is lacking the feature of uniqueness of the identifier.

Concerning the nationality of the client ESMA provided a specific approach where individuals have multiple nationalities:

- For EEA countries, they have to be sorted in alphabetical order and the first ISO country code has to be selected;
- For EEA and non-EEA countries, the EEA countries take precedence;
- For non-EEA countries, they have to be sorted in alphabetical order and the first ISO country code has to be selected.

Therefore for new and existing clients with multiple nationalities have to be recorded and monitored over time.

Apart from this approach ESMA has not provided any guidance if citizenship, tax residence, domiciles, place of birth or a passport would constitute the nationality of an individual.

## Collaboration and mutualisation for MiFID II reporting

As firms have suffered in the past from transaction reporting fines trade associations and other stakeholders around Europe are collaborating to develop and share some reporting best practices and standards with ESMA. This will provide some assurance to the firms that they are fulfilling the expectations of ESMA with regards to transaction reporting.

In addition nine large banks have created a technology initiative called Project Sentinel in order to mutualise the costs and efforts regarding transaction reporting requirements under MiFID II. In the future the market expects more banks to join Project Sentinel or to set-up their own collaboration initiatives.

## Best execution under MiFID II

MiFID II will introduce tougher best execution rules compared to MiFID I. Under MiFID I institutions were required, when executing orders, to take all reasonable steps to obtain the best possible result for their clients. As confirmed by ESMA MiFID II will raise this standard from "reasonable steps" to "sufficient steps".

In the ESMA Q&A document on MiFID II and MiFIR investor protection topics ESMA said:

"When designing their execution policies and establishing their execution arrangements, firms will have to ensure that the intended outcomes can be successfully achieved on an on-going basis. This is likely to involve the strengthening of front-office accountability and systems and controls according to which firms will ensure that their detection capabilities are able to identify any potential deficiencies. This will require firms to monitor not only the execution quality obtained but also the quality and appropriateness of their execution arrangements and policies on an ex-ante and ex-post basis to identify circumstances under which changes may be appropriate. Firms' processes might involve some combination of front office and compliance monitoring and could use systems that rely on random sampling or exception reporting. There should be channels in place to ensure that the results of ongoing execution monitoring are escalated to senior management

and/or relevant committees, and fed back into execution policies and arrangements to drive improvements in the firm's processes. This overarching requirement should not be interpreted to mean that a firm must obtain the best possible results for its clients on every single occasion. Rather, firms will need to verify on an on-going basis that their execution arrangements work well throughout the different stages of the order execution process. ESMA expects firms to take all appropriate remedial actions if any deficiencies are detected so that they can properly demonstrate that they have taken "all sufficient steps" to achieve the best possible results for their clients."

In December 2016 ESMA has updated its MiFID II Q&A's on investor protection and provided the following additional guidance on best execution:

MIFID II does not prohibit firms from selecting only one execution venue to execute client orders in a given class of financial instruments where they are able to demonstrate that such a choice enables them to consistently get the best results for their clients.

Firms will need to regularly assess the market landscape to determine whether or not there are alternative venues that they could use. Specific analysis must be carried out to determine whether or

not other suitable venues exist. Using a single venue should not lead firms to be "over-reliant" on the single venue. Using a single venue does not diminish a firm's responsibility to monitor the quality of execution. Nor does it mean that merely executing client orders on that venue will allow the firm to discharge its best execution obligations.

Where execution venues and firms publish reports as required under RTS 27 and 28 ESMA considers it suitable for firms to keep each report available in the public domain for a minimum period of two years.

Firms executing or transmitting client orders, or portfolio managers, should publish the report showing their top five execution venues or firms where they have sent client orders and information about the quality of the execution they obtained on or before the 30th of April following the end of the period to which the report relates.

ESMA considers that where firms provide both the services of order execution and reception and transmission of orders, they will need to provide two separate reports in relation to these services. It is important that these reports are distinct so that investment firms disclose on one hand the top five execution venues

and on the other hand the top five entities (brokers) to which client orders were routed during the relevant period.

Execution venues and firms are required to make the RTS 27 and 28 reports available to the public, without any charges, in a machine-readable electronic format.

Furthermore Article 5 of RTS 27 requires venues to publish for each financial instrument quarterly information on the costs applied by the venue to its members or users.

Although the ESMA Q&A document on investor protection topics answered some open questions, some others still remain open. For example what's about best execution of bond trades? The EFAMA has recently responded to an ESMA consultation paper asking ESMA to also consider the need of asset managers to achieve best execution for very large bond trades to the benefit of end investors. EFAMA in particular criticised ESMA's proposed approach by which the publication of transaction details would be delayed for public disclosure for up to four weeks without requiring an ex-ante agreement from national competent authorities in the case of illiquid bonds which would benefit from specific waivers (large-in-scale and size-specific-to-the-instrument).

## MMF Regulation

### Money market funds: Council confirms deal with EP

On 30 November 2016 the Council of the European Union has published the final compromise text of the proposal

for a regulation on Money Market Funds.

On 7 December 2016, the Permanent Representatives Committee approved, on behalf of the Council, an agreement with the European Parliament on money market funds (MMFs).

The regulation is expected to be approved by the Parliament at first reading. It will then be submitted to the Council for adoption.



# PRIIPs

## PRIIPs rules delayed by one year

On 8 December 2016, the Council adopted a regulation postponing the application date of rules on PRIIPs by 12 months.

Regulation 1286/2014 will now be applied from 1 January 2018, instead of 31 December 2016 as initially stipulated.

The one-year delay will enable regulatory technical standards to be defined, leaving sufficient time for the industry to adapt to the new rules. This

comes after the European Parliament objected to regulatory technical standards that were initially adopted by the Commission.

# PSD 2

## EBA consults on Guidelines on the reporting of operational or security incidents under the PSD2

The EBA has launched a consultation on its draft Guidelines developed in close cooperation with the ECB under the revised Payment Services Directive (PSD2). The draft Guidelines specify (i) the criteria for classifying operational or security incidents as major, (ii) the template to be used by payment service providers when notifying them to the Competent Authorities (CAs,) and (iii) the indicators CAs need to use when assessing the relevance of such incidents. These Guidelines are in support of the objectives of the PSD2 of strengthening the integrated payments market across the EU, ensuring a consistent application of the legislative framework, promoting equal conditions for competition, providing a secure framework on the payments environment and protecting consumers. The consultation runs until 7 March 2017.

## Public Hearing on the Draft EBA Guidelines on Authorisation and Registration under the PSD2

The EBA has published the public hearing presentation with regards to the EBA guidelines on authorisation and registration under the PSD2.

The presentation includes amongst others slides on the wording of the EBA mandate under PSD2, issues identified in the authorisation process under PSD1, objectives of the guidelines under PSD2, structure of the guidelines, information requirements specified in the guidelines, the Guidelines and proportionality as well as general principles set out in the guidelines.

## EBA publishes final draft technical standards on cooperation and exchange of information for passporting under PSD2

The EBA has published its final draft Regulatory Technical Standards (RTS) specifying the framework for cooperation and exchange of information between Competent Authorities for passport notifications under the PSD2. The technical standards will ensure that information about payment institutions and e-money institutions that carry out business in one or more EU Member States is exchanged consistently between the national authorities of the home and host Member States.

The final draft RTS set out a harmonised framework for cooperation and exchange of information between Competent Authorities to facilitate cross-border provision of payment services in the EU internal market. They also address some of the concerns that had been raised by the

industry during the consultation period.

## New regulated services under PSD2

The PSD2 requires all EU Member States to transpose the Directive into national laws by January 2018. In addition to introducing new regulatory requirements for payment service providers it also introduces two new regulated payment services: payment initiation services and account information services.

Payment initiation services include the initiation of payment orders at the request of the payment service user concerning payment accounts held at another payment service provider.

Account information services are online services providing consolidated information on payment accounts held by the payment service user with other payment service providers.

Compared to other payment service providers payment initiation service and account information service providers do not manage the account of the payment service user. Currently they do not have access to account information on the availability of funds for accounts held by other financial institutions.

These two new payment services described above will be required to be authorised and regulated under the PSD2.



# Solvency II

## EIOPA Discussion Paper on the review of specific items in the Solvency II Delegated Regulation

The EIOPA has published a discussion paper on the review of specific items in the Solvency II Delegated Regulation.

EIOPA has launched a project dedicated to the review of the Delegated Regulation and in particular of the Solvency Capital Requirement (“SCR”) standard formula. The main goals are:

- To ensure a proportionate and technically consistent supervisory regime for (re)insurance undertakings;
- To look for possible simplifications in the SCR standard formula and to ensure the proportionate application of the requirements.

The Discussion Paper intends to engage in a dialogue with stakeholders on all items in the scope of the review. The responses provided in this discussion paper will help EIOPA in narrowing down its policy approach.

In light of the feedback received, EIOPA will develop consultation papers on its advice to the European Commission during 2017.



# UCITS

## Relief by the ASIC for foreign financial service providers from Luxembourg

The Australian Securities & Investments Commission (ASIC) has extended its relief for foreign financial service providers (FFSPs) from the requirement to hold an Australian financial services license when providing financial services to Australian wholesale clients by Luxembourg fund managers.

The relief in ASIC Corporations (CSSF-Regulated Financial Services Providers) Instrument 2016/1109

applies to Luxembourg fund managers who are either:

- Management companies, which can manage undertakings for collective investment in transferable securities relating to the undertaking for collective investment of Luxembourg (2010 Law) that come under Chapter 15 of the 2010 Law (Chapter 15 Management Company), or
- Investment companies established under Part I of the 2010 Law that have designated themselves as “self-managed” (Self –Managed UCITS).

The relief applies until 28 September 2018.

Luxembourg fund managers who meet the terms of the legislative instrument should apply for reliance in the same way as for other foreign financial services providers as set out in Regulatory Guide 176 Foreign financial service providers (RG 176) and 15-051MR ASIC facilitates foreign financial services providers applying for exemptions.





# Basel Committee

## Further details on the assessment of global systemically important banks

In connection with today's publication by the Financial Stability Board of the updated list of global systemically important banks (G-SIBs), the Basel Committee on Banking Supervision has released further information related to the 2016 G-SIB assessment. The information includes:

- A list of all banks in the assessment sample;
- The denominators of each indicator used to calculate the bank's scores;

- The cutoff score that was used to identify the G-SIBs in the updated list;
- The thresholds used to allocate G-SIBs to buckets for the purpose of calculating the specific higher loss absorbency requirements;
- Links to disclosures of all banks in the assessment sample.

The higher loss absorbency requirements published today will take effect from 1 January 2018 subject to phase-in arrangements. The full amount of the higher loss absorbency requirement will come into force from 1 January 2019, consistent with the

implementation schedule for the Basel III capital conservation buffer.



# CSSF

## Update of the reporting requirements for credit institutions

The CSSF has issued an updated version of its document "Reporting requirements for credit institutions" dated 5 December 2016. The document provides the following updates:

- An up-date of Chapter 1, Section 4 Future evolution of the reporting requirements;
- An update of Chapter 2, Part 1, Sections 1 and 2: (i) delete SLEVR, SLCR, CLEVR and CLCR and (ii) delete exception SALMM and CALMM;
- An up-date of Chapter 2, Part 1, Section 1: (i) align remittance date of B2.4 to the remittance date of the EU harmonised reporting and (ii) up-date reporting requirements B2.5 E;
- An up-date of Chapter 2, Part 2, Section 2: delete C104.00; and
- New section 3 in Chapter 2, Part 2: declaration of liquidity related products and services referred to Article 23 (2) of LCRDA.

## Update of the reporting requirements for investment firms

The CSSF has issued an updated version of its document "Reporting requirements for investment firms" dated 12 December 2016.

In addition the CSSF has published an updated version of its document "ITS on Supervisory Reporting - Reporting requirements for investment firms on an individual and consolidated basis".

### CSSF Circular CPDI 16/04

The CSSF has published Circular CSSF-CPDI 16/04: Survey on the amount of covered deposits held quarterly during 2016.

The aim of this circular is to carry out a survey on deposits, and more particularly on covered deposits, as held by credit institutions incorporated under Luxembourg law, the Entreprise des postes et télécommunications, and Luxembourg branches of credit institutions having their head office in a third country as at 31 March 2016, 30 June 2016, 30 September 2016 and 31

December 2016. The collected data shall enable the Conseil de protection des déposants et des investisseurs ("CPDI") to establish the Fonds de garantie des dépôts Luxembourg's ("FGDL") annual target level for 2017.

### CSSF Regulation No. 16-08

The CSSF has CSSF Regulation No. 16-08 concerning systemically important institutions authorised in Luxembourg.

### CSSF Regulation No. 16-09

The CSSF has published Regulation No. 16-09 concerning the establishment of a consultative committee for access to the audit profession. The Regulation repeals Regulation CSSF No. 13-05 on the training log to be presented by auditor candidates when applying for registration for the examination of professional competence.

## CSSF Regulation No. 16-10

The CSSF has published Regulation No. 16-10 on organising continuing education of statutory auditors and approved statutory auditors. It regulates the training courses that statutory auditors will need to complete for the purpose of maintaining and improving theoretical knowledge, professional skills and values.

## CSSF Regulation No. 16-11

The CSSF has published Regulation No. 16-11 on requirements for the professional qualification of auditors listing Master's degrees or diplomas corresponding to equivalent training which satisfy the requirements of Grand-Ducal Regulation of 9 July 2013.

## CSSF Regulation No. 16-12 and the required standards

The CSSF has published Regulation No. 16-12 on the adoption of auditing norms relating to the legal audit of accounts, conduct, and internal quality control according to the Law of 23 July 2016 on the audit profession.

Moreover the CSSF has published a set of standards required by the Regulation No. 16-12 mentioned above.

## CSSF Regulation No. 16-13

The CSSF has published Regulation No. 16-13 on reporting violations of the Law of 23 July 2016 on the auditing profession and Regulation (EU) No. 537/2014 on specific requirements regarding statutory audit of public-interest entities. The Regulation sets

out rules regarding specialised employees, the reception and follow-up of reports, reporting registers and data protection.

## Communication regarding Article 26 of MiFIR

The CSSF has published a communication regarding Article 26 of MiFIR regarding the obligation to report transactions. Via the press release the CSSF is providing some additional information and guidance on: adherence to the guidelines and the technical reporting instructions, file transport, transition period as well as transaction reporting by branches.



# EBA

## EBA sees high NPL levels and low profitability as the main risks for EU banks

The EBA has published its ninth report on risks and vulnerabilities in the EU banking sector. The report is accompanied by the EBA's 2016 transparency exercise, which provides essential data, in a comparable and accessible format, for 131 banks across the EU. Overall, banks have further strengthened their capital position, allowing them to continue the process of repair. The report identifies as the key challenges in that process the remaining high levels of non-performing loans (NPLs) and sustained low profitability. Operational risks also appear to be on the rise and volatility in funding markets remains high.

## EBA publishes compliance table for Revised Guidelines for the identification of G-SIIs

The EBA has published the compliance table listing the competent authorities that comply or intend to comply with the EBA's guidelines for the identification of global systemically important institutions (G-SIIs).

## EBA issues revised list of ITS validation rules

The EBA has issued a revised list of validation rules in its Implementing Technical Standards (ITS) on supervisory reporting, highlighting those which have been deactivated either for incorrectness or for triggering IT problems. Competent Authorities throughout the EU are informed that data submitted in accordance with these ITS should not be formally validated against the set of deactivated rules.

## EBA launches qualitative survey on internal models

The EBA has launched a qualitative survey on internal ratings-based (IRB) models to analyse the impact of the

EBA draft Guidelines on the estimation of risk parameters for non-defaulted exposures, namely of the probability of default (PD) and the loss given default (LGD), and on the treatment of defaulted assets (Guidelines hereafter), which are currently under consultation. These Guidelines are part of the broader review of the IRB approach that is carried out by the EBA to reduce the unjustified variability in the outcomes of internal models, while preserving the risk sensitivity of capital requirements. Institutions are invited to submit their responses to this survey by 27 January.

This qualitative survey is addressed to all institutions which use the IRB approach for credit risk. It contains detailed questions about banks' modelling practices for estimating PDs, LGDs, LGD in-default and expected loss best estimate. The main objective of this survey is to assess the impact of the Guidelines in terms of expected amount and severity of model changes.

# European Commission

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## Call for evidence – EU regulatory framework for financial services

The EC has published a communication on the call for evidence on the EU regulatory framework for financial services.

The financial crisis triggered the adoption of more than 40 new pieces of EU legislation to restore financial stability and market confidence. The call for evidence includes assessing the interaction between the individual rules, and their combined economic impact.

Based on a thorough review and analysis of all the responses to the call for evidence and the discussions during the public hearing held in Brussels in May 2016, the Commission has concluded that overall the financial services framework in the EU is working well. However, targeted

follow-up action is required in the following areas:

- Reducing unnecessary regulatory constraints on financing the economy;
- Enhancing the proportionality of rules without compromising prudential objectives;
- Reducing undue regulatory burdens;
- Making rules more consistent and forward-looking.

## EU Banking Reform

The Commission has presented a comprehensive package of reforms to further strengthen the resilience of EU banks. The proposals aim to complete this reform agenda by implementing some outstanding elements, which are essential to further reinforce banks' ability to withstand potential shocks.

The proposals amend the following pieces of legislation:

- The CRR and the CRD which were adopted in 2013 and which set out prudential requirements for credit institutions (i.e. banks) and investment firms and rules on governance and supervision;
- The BRRD and the SRMR which were adopted in 2014 and which spell out the rules on the recovery and resolution of failing institutions and establish the Single Resolution Mechanism.

These measures implement international standards into EU law, while taking into account European specificities and avoiding undue impact on the financing of the real economy. They also take into account the results of the Call for Evidence.

These legislative proposals will be submitted to the European Parliament and to the Council for their consideration and adoption.

# EIOPA

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## EIOPA Discussion paper on the harmonisation of recovery and resolution frameworks for insurers

The EIOPA has published a discussion paper on the potential harmonisation of recovery and resolution frameworks for insurers.

The discussion paper, which does not constitute a formal proposal by EIOPA, aims at gathering the views of stakeholders. It is composed of four chapters: (i) introduction, (ii) overview of existing national recovery and resolution frameworks in the EU, (iii) rationale for harmonisation, and (iv) possible building blocks of recovery and resolution.

Comments should be submitted by 28 February 2017.

## EIOPA Financial Stability Report December 2016

The EIOPA has published its financial stability report for December 2016.

The report consists of two parts – the standard part and the thematic article section. The standard part is structured as in previous versions of the EIOPA Financial Stability Report. The first chapter discusses the key risks identified for insurance and occupational pension sectors. The second, third and fourth chapter elaborates on these risks covering all sectors (insurance, reinsurance and pension). The fifth chapter provides the final qualitative and quantitative assessment of the risks identified. This assessment is done in terms of the scope as well as the probability of their materialization using also qualitative questionnaires. Finally, one thematic

article elaborates on the impact of the monetary policy interventions on the insurance industry and another on a possible approach to update the long term rate in time.

## EIOPA Insurance Stress Test Report

The EIOPA has published the 2016 insurance stress test report. To assess the resilience of the life insurance industry to the most prominent and prevalent risks, EIOPA launched a stress test exercise with reference date 1 January 2016. Two scenarios were tested in this exercise, i.e. a low-for-long yield scenario and a so-called 'double-hit' scenario.

The exercise confirmed the vulnerability of the insurance sector to the low interest rate environment, and to a pronounced reassessment of risk premia. During their supervisory

review process, NCAs should assess whether the vulnerabilities identified from the exercise pose a threat to the viability of the supervised entity and, collectively, to the system as a whole.

EIOPA has therefore published a set of general Recommendations in relation

to the vulnerabilities identified and the prospective impact on the financial stability of the EU Insurance sector. The Recommendations are addressed to National Supervisory Authorities and cover three main areas:

- Risk management and business model sustainability
- The modelling of lapses and best estimates
- The impact on group solvency and group support.

# ESMA

## ESMA sees continued high levels of market risks

The ESMA risk assessment has updated its Risk Dashboard for the third quarter of 2016.

The overall assessment of risk levels in EU markets under ESMA's remit, remains unchanged for the time being,

characterised by continued very high credit and market risks.

The risk outlook is stable across all risk categories, reflecting market signs of absorption of the uncertainty and volatility following the UK referendum in the 3<sup>rd</sup> quarter of 2016. However, as the outcome of the US election has shown, economic and political uncertainties remain important risk sources going forward.





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