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CACEIS European Regulatory Watch Newsletter

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EUROPE

AIFMD

ESMA Q&A update

Background

The Alternative Investment Fund Managers Directive (“AIFMD”) sets up a coherent framework for the regulation of the alternative investment fund managers (“AIFM”) in Europe.

Moreover, the AIFMD aims to ensure that AIFMs are able to manage and market AIF’s on a cross-border basis.

European Securities and Markets Authority (ESMA) has issued and regularly updates a Q&A document aiming to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the AIFMD.

The previous update was on 21 July 2015.

What’s in there?

On 1 October 2015, ESMA published an updated version of its AIFMD Q&A (ES-MA/2015/1490).

In this Q&A version, answer 8 in section IV (p. 13) clarifies that AIFMD rules fully apply to the delegation by a depositary of its custody functions to an EU or third country CSD (including segregation duties as set forth in article 21.11 d (iii)).

[THE UPDATED Q&A IS AVAILABLE HERE.](#)

What’s next?

The Q&A document is intended to be continuously edited and updated as when new questions are received.

AIFMD

ESMA opinion and advice on the AIFMD passport

Background

On 21 July 2013, the final text of the AIFMD became effective across the EU. The AIFMD makes provision for the passport, which is currently reserved to EU AIFMs and AIFs, to be potentially extended in future. Under Article 67(4) of the AIFMD, ESMA was required to issue an advice on the application of the passport to the management and/or marketing of non-EU AIFs by EU AIFMs in the Member States and the management or/and marketing of AIFs by non-EU AIFMs in the Member States.

ESMA launched a call for evidence in November 2014 aimed at gathering information from EU and non-EU stakeholders on the functioning of the EU passport.

A first advice was issued by ESMA on 30 July 2015 on the application of the AIFMD passport to Guernsey, Jersey, Switzerland, Hong Kong, Singapore and the United States ([AVAILABLE HERE](#)).

What’s in there?

On 13 October 2015, Steve Maijoor made a speech (ESMA/2015/1535) to ECON regarding the application of the AIFMD passport.

He first raised that no definitive opinion could be

formed in respect of the functioning of the EU passport and the national private placement regimes and that follow-up work will be conducted in this regard.

Then, after describing the methodology used by ESMA he further referred to the outcome of the first assessment of 6 non-EU countries regarding extension of AIFMD passport mechanisms. As a reminder, ESMA’s advice was as follows:

- ★Guernsey and Jersey: positive advice;
- ★Switzerland: advice would be positive to the extent that pending legislation is enacted; and
- ★Hong Kong, Singapore, United States: no definitive view was reached.

[STEVEN MAIJOOR’S STATEMENT IS AVAILABLE HERE.](#)

What’s next?

On the one side ESMA will keep assessing Hong Kong, Singapore and the United States until a definitive conclusion is reached and on the other side it will start assessing Australia, Canada, Japan, the Cayman Islands, the Isle of Man and Bermuda.

AML/CTF

EBA, EIOPA and ESMA consult on AML/CTF

Background

Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing entered into force on 26 June 2015 (the “AML IV”). It aims

to bring European legislation in line with the international standards on combating money laundering and the financing of terrorism and proliferation adopted in 2012 by the Financial Action Task Force (FATF).

Article 48 (10) AML IV requires the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and ESMA (the "ESAs") to issue guidelines to competent authorities on the characteristics of a risk-based approach to AML/CTF supervision.

Article 17 and 18(4) of AML IV require ESAs to issue guidelines to support firms with this task and to assist competent authorities when assessing the adequacy of firms' application of simplified and enhanced customer due diligence measures.

What's in there?

On 21 October 2015, the Joint Committee of the ESAs launched two consultations on two drafts AML/CFT guidelines.

1 - CONSULTATION PAPER ON THE RISK-BASED SUPERVISION GUIDELINES (JC 2015 060):

This consultation paper lays down the characteristics of a risk-based approach to AML/CFT supervision and set out what competent authorities should do to ensure that their allocation of supervisory resources is commensurate to the level of money laundering and terrorist financing risk associated with credit and financial institutions that they are supervising. These guidelines would be addressed to competent supervisory authorities

[THE CONSULTATION PAPER IS AVAILABLE HERE.](#)

2 - CONSULTATION PAPER ON THE RISK-FACTORS GUIDELINES (JC 2015 061).

This consultation paper provides guidance on the credit factors, financial institutions should consider when assessing the risk of money laundering, and terrorist financing associated with individual business relationships, and on how they should adjust their customer due diligence measures as a result of that risk assessment. These guidelines would be addressed to both credit and financial institutions and competent supervisory authorities.

[THE CONSULTATION PAPER IS AVAILABLE HERE.](#)

What's next?

The consultation will close on 6 January 2016. The ESAs will hold a public hearing on the draft guidelines, which will take place at the EBA on 15 December 2015. The guidelines are likely to be finalised in Q2 2016. Once adopted, the ESAs will keep these guidelines under review and update them as appropriate.

COVERED BONDS

EU Commission launches public consultation on covered bonds in the EU

Background

On 30 September 2015, the EU Commission launched the Capital Market Union ("CMU") action plan (COM (2015) 468) to unleash free flow of capital throughout the European Union.

In this context, the EU Commission started early CMU action plan initiatives to address the urge to strengthen investment for the long term in the EU, the need of stronger capital markets and as EU commission's top priority.

The CMU shall allow the creation of a true single market for capital for all 28 Member States.

What's in there?

On 30 September 2015, the EU Commission launched its consultation paper ("CP") on covered bonds in the European Union, as part of the CMU early measures. The objectives of the CP are as follows:

- ★ Provide an in-depth analysis of covered bond market data and trends in recent years. Such data shows some evidence on the trend towards increased encumbrance in the balance sheets of European credit institutions as a result of the relative decline in unsecured debt issuance;
- ★ Consider the disparity between legal frameworks and supervisory practices of the various Member States that have adopted dedicated covered bond laws as a factor which could have contributed to market fragmentation;
- ★ Discuss a high level design for a hypothetical EU covered bond framework;



- ★ Evaluate the signs of weaknesses in national covered bond markets as a result of the crisis;
- ★ Assess the convenience of a possible future integrated European covered bond framework that could help improve funding conditions throughout the Union;
- ★ Assess whether such framework could facilitate cross-border investment in Member States currently facing practical or legal challenges in the development of their covered bond markets.

The CP should trigger a debate with stakeholders on the feasibility and potential merits of greater integration between covered bond laws. All citizens and organizations can contribute to this consultation, but responses from participants in covered bond markets, such as investors, issuers and public authorities are particularly sought.

[THE CP IS AVAILABLE HERE.](#)

What's next?

The deadline to respond to the consultation is 6 January 2016. Responses will be published at a later stage.

ELTIF

ESMA publishes responses to ELTIF consultation

Background

The European Long-Term Investment Funds (ELTIF) regulation entered into force on 9 June 2015. It will apply from 9 December 2015 onwards.

ELTIFs are designed to increase the amount of non-bank finance available for companies investing in the real economy of the European Union. They are also intended to allow investors to put money into companies and infrastructure projects for the long term. As such, ELTIFs are an important element of the efforts being put in place at European level to boost long-term investments.

On 30 July 2015, ESMA launched a consultation on draft RTS under the ELTIF regulation (ESMA/2015/1239) covering the following topics:

- ★ Criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes;
- ★ Circumstances in which the life of an ELTIF is considered sufficient in length;



- ★Criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets;
- ★Costs disclosure; and
- ★Facilities available to retail investors.

What's in there?

On 20 October 2015, responses received by ESMA to consultation paper (ES-MA/2015/1239) have been published on its website.

[THEY ARE AVAILABLE HERE.](#)

What's next?

ESMA will consider the feedback it received to this consultation paper and expects to publish a final report in Q1 2016.

EMIR/ MiFIR

ESMA letter to the EU Commission on indirect clearing RTS on EMIR and MiFIR

Background

Further to the entry into force of European Market Infrastructure Regulation (EMIR) and Markets in Financial Instruments Regulation (MiFIR), ESMA has been empowered to develop Regulatory Technical Standards "RTS" on indirect clearing for OTC derivatives and exchange-traded derivatives.

In respect of indirect clearing for OTC derivatives, EMIR RTS have been set by Commission Delegated Regulation No 149/2013 of 19 December 2012 ([AVAILABLE HERE](#)).

In the meantime, ESMA conducted multiple consultations on draft MiFIR RTS ([FINAL REPORT AVAILABLE HERE](#)) whereby stakeholders outlined the need for alternative requirements for both OTC and exchange-traded derivatives.

What's in there?

In its letter to the EU Commission dated 2 October 2015, ESMA's Chair declares its intention to conduct a consultation on the possible amendments to the EMIR RTS, to make it consistent with the future draft MiFIR RTS.

It derives therefrom that the amended EMIR RTS and the MiFIR RTS will be issued simultaneously at a later stage.

[ESMA'S LETTER TO THE EU COMMISSION IS AVAILABLE HERE.](#)

What's next?

ESMA will launch a new consultation on draft EMIR RTS on indirect clearing for OTC derivatives.

EMIR

ESMA Q&A update

Background

ESMA publishes a regularly updated Q&A addressing questions relating to Regulation (EU) No 648/2012 ("EMIR").

The Q&A is designed to promote common supervisory approaches and practices in the application of EMIR. It also provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR.

The ESMA EMIR Q&A was last updated on 27 April 2015.

What's in there?

On 1 October 2015, ESMA published an updated version of its EMIR Q&A (ES-MA/2015/1485).

The Q&A is more particularly updated with a new question 40 concerning the treatment by trade repositories of situations where the counterparty identified in a derivative transaction reported to them a change in LEI due to a merger or acquisition or where the identifier of the counterparty has to be updated from BIC (or other code) to LEI. It further describes how the counterparty is expected to notify such change to its trade repositories.

[THE UPDATED VERSION OF THE ESMA EMIR Q&A IS AVAILABLE HERE.](#)

What's next?

ESMA's Q&A is intended to be continuously edited and updated as and when new questions are received.

ESEF

ESMA consults on ESEF RTS

Background

On 6 November 2013, Directive 2013/50/EU amending the Transparency Directive 2004/109/EC has been published in the Official Journal of the European Union and entered into force on 20 November 2013 ([THE "DIRECTIVE" AVAILABLE HERE](#)).

The Directive requires issuers with securities listed on regulated markets to provide investors with an Annual Financial Report ("AFR"). However, the Directive does not define which file formats should be used by issuers when disseminating the AFR to the public.

Article 4.7 of the Directive, requires issuers to prepare the AFR using an European Single Electronic Format ("ESEF") with effect from 1 January 2020 and empowers ESMA to specify the electronic reporting format that should be implemented.

What's in there?

On 25 September 2015, ESMA launched a public consultation (2015/ESMA/1463) (the "Consultation Paper") on draft regulatory technical standards ("RTS") on the ESEF.

The Consultation Paper includes an assessment of current electronic reporting and explores ways forward with regard to the establishment of an ESEF by taking into account technical developments in financial markets and telecommunication technologies.

[THE CONSULTATION PAPER IS AVAILABLE HERE.](#)

What's next?

The consultation will close on 24 December 2015. ESMA will consider the feedback received in relation to this consultation when finalizing the draft RTS and the impact assessment and submit the draft RTS to the EU Commission by 31 December 2016.

The Directive requires issuers listed on regulated markets to prepare their AFR in an ESEF format from 1 January 2020, with the objectives of making submission easier for issuers and facilitating accessibility, analysis and comparability for investors and regulators.

EuSEF - EuVECA

EU Commission consultation

Background

On 17 April 2013, the EU Parliament and Council adopted Regulation (EU) No 345/2013 on European Venture Capital Funds “EuVECA” and Regulation (EU) No 346/2013 on European Social Entrepreneurship Funds “EuSEF” (available here and here). Both aim at increasing non-bank finance for the economy and at bringing together investors and unlisted SMEs and start-up companies.

These regulations provide for a common EU framework for the managers of EuVECA and EuSEF and for harmonised passporting rules.

Several provisions in these two Regulations call for the adoption of delegated acts by the EU Commission. On that basis, the EU Commission submitted to ESMA on 27 May 2014 an official request for the provision of technical advice.

What's in there?

On 30 September 2015, the EU Commission launched a public consultation on the review of the EuVECA and EuSEF regulations (the “Consultation Document”).

The aim of the Consultation is to collect further information on the performance of the current legislation and identify possible remedial measures. The Consultation is in particular assessing need for changes in the following areas:

- ★ Authorisation for AIFM to set-up and market EuVECA and/or EuSEF;
- ★ Extension of the grandfathering rule to EuVECA/ EuSEF for managers exceeding the EUR 500 Million threshold post to registration;
- ★ Reduction of the minimum entry-ticket currently set at EUR 100,000;
- ★ Balance the take-up and domiciliation rules for EuVECA and EuSEF (e.g. registration fees, own funds requirements);
- ★ Use of the EuVECA or EuSEF designation by non-EU managers; and
- ★ Broaden the range of eligible assets available to EuVECA.

[THE CONSULTATION DOCUMENT IS AVAILABLE HERE.](#)

What's next?

Feedback to the Consultation Document shall be submitted by 6 January 2016.

PSD2

The EU Parliament adopts the revised Directive on Payment Services (PSD2)

Background

In 2007, the Payment Services Directive (PSD) was adopted in order to make the cross-border payments within the EU as easy and safe as “national ones”.

On 24 July 2013, the EU Commission issued a legislative proposal on the amendment of the PSD.

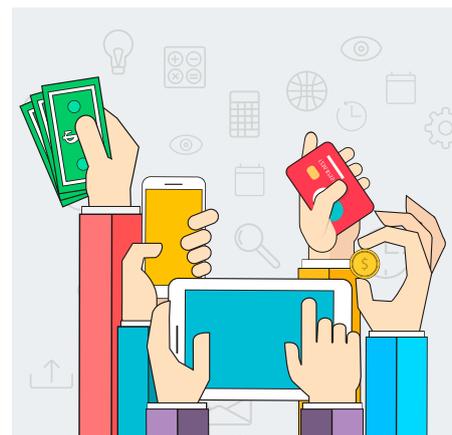
On 5 May 2015, the EU Parliament and the Council reached an agreement on PSD2 proposal in trilogue.

What's in there?

On 8 October 2015, the draft PSD2 proposed by the EU Commission was approved by 578 votes to 29 by the EU Parliament.

With this revised version, the EU Commission introduce the following changes:

- ★ Introduction of strict security requirements for the initiation and processing of electronic payments and the protection of consumers’ financial data;
- ★ Opening the EU payment market for companies offering consumer or business-oriented payment services based on the access to information about the payment account which should stimulate the competition within the electronic payment market;
- ★ Enhancing consumers’ rights in numerous areas, including reducing the liability for non-authorized payments, introducing an unconditional (“no questions asked”) refund right for direct debits in euro; and



- ★ Prohibition of surcharging (additional charges for the right to pay e.g. with a card) whether the payment instrument is used in shops or online.

[THE FULL TEXT OF THE PSD2 DRAFT IS AVAILABLE HERE.](#)

What's next?

Following the EU Parliament’s vote, the PSD2 will be formally adopted by the EU Council of Ministers. The PSD2 will then be published in the Official Journal of the EU. As from this publication, EU Member States will have two years to implement the directive into national laws in order to comply with the new rules.

TRANSPARENCY DIRECTIVE

ESMA new Q&A update and documents set preparing the transposition of the Transparency Directive

Background

On 6 November 2013, Directive 2013/50/EU (the “amended TD”) amended the transparency directive 2004/109/EC (the “TD”) which creates a common basis for disclosure and dissemination of regulated information to the markets on a regular and on-going basis.

The amended TD entered into force on 27 November 2013.

What's in there?

On 22 October 2015, ESMA published three documents in the view of the application date of 26 November 2015 of the TD;

- ★ A standard form for the notification of Home member States (ESMA/2015/1596) - Issuers having their securities admitted to trading on a EU regulated market shall disclose to their competent authority, all host member states competent authorities and to the competent authorities where the issuer have its registered office ;

- ★ A standard form for the notification of major holdings (ESMA/2015/1597);
- ★ An indicative list of financial instruments subject to notification requirement following article 13 (1b) of the TD as amended (ESMA/2015/1598).

On 22 October 2015, ESMA also updated its Q&A (ESMA/2015/1595) by including 7 new questions and answers covering the following topics:

- ★ A question and answer 19 on the reporting of payments to governments at consolidated level;
- ★ A question and answer 20 on horizontal aggregation;
- ★ A question and answer 21 on the change of home member state;
- ★ A question and answer 22 on the requirement to “remain publicly available”;
- ★ A question and answer 23 on the additional periodic information (including quarterly reports);
- ★ A question and answer 24 on the publication of sanctions and administrative measures without “undue delay”;
- ★ A question and answer 25 on major shareholding notification.

[THE THREE DOCUMENTS AND THE Q&A ARE AVAILABLE HERE.](#)

What's next?

Deadline for transposition of the amended TD in EU Member States: 26 November 2015.

ESMA will monitor developments in the financial markets, update the indicative list of financial instruments and its Q&A on an ongoing basis.

WORK PROGRAMME

EU - ESMA issues 2016 work programme

Background

ESMA's annual work programme describes and summarises its main objectives, priorities and deliverables over a 12 months period.

On 4 February 2015, the budget of €40,437,589 for ESMA's 2016 work programme was approved by ESMA's board of supervisors.

What's in there?

On 29 September 2016, ESMA published its 2016 work programme.

Amongst other, ESMA 2016 main focus areas will be as follows:

- ★ MIFID II/MIFIR: between 15 and 18 Technical Standards including 2 on the trading obligation under MIFIR (Q1 and Q4 2016);
- ★ MMF: Technical Advices and Standards on the MMF Regulation (Q4 2016);
- ★ AIFMD: Technical Advice on depositary frameworks of non-EU jurisdiction under Article 21(6) AIFMD and Advice on the application of the passport to third-country AIFMDs and AIFs (Q4 2016);
- ★ EMIR: Regulatory Technical Standards on the clearing obligation and on CCP requirements (Q4 2016);
- ★ PRIIPS: Regulatory Technical Standards and Technical Advice under article 8 of PRIIPS Regulation on key information to be presented in the KID (Q1 2016 and Q4 2016).

[ESMA'S 2016 WORK PROGRAMME IS AVAILABLE HERE.](#)

What's next?

ESMA's 2015 annual report will be published in the second quarter of 2016.

LUXEMBOURG

CRD IV

CSSF publishes Circular 15/620 on the CRD IV framework into national law

Background

On 31 July 2015, the law of 23 July 2015 has been published in the Memorial A no.149 (the “Law”). This law transposes the CRD IV in the Lux-

embourg's legislation and modifies the law from 5 April 1993 relating to the financial sector (the “FSL”). The Law came into force on 4 August 2015. On 27 June 2013, the Regulation (UE) n° 575/2013 (the “CRR”) was published in the Official Journal of the European Union and is directly applicable in the all EU member states.

On 14 August 2015, the CSSF issued two regulations regarding the transposition of the CRD IV.

The first regulation no.15-01 (the “Capital Buffer Regulation” [AVAILABLE HERE](#)) relates to the calculation of institution-specific countercyclical capital buffer rates while the second regulation no.15-02 ([AVAILABLE HERE](#)) relates, amongst others, to the prudential supervision and evaluation process that applies to CRR institutions as defined in article 1er, para-graph 11bis of the FSL (the “Pillar Regulation”) together with the Law (the “CRD IV Package”).

What's in there?

On 6 October 2015, the CSSF published its circular 15/620 (the “Circular”) to remind the new national CRD IV framework, the main innovations of the CRD IV and the changes implemented in the FSL. The two directives 2006/48/CE and 2006/49/CE as originally transposed in the FSL and in the CSSF circulars 06/273 and 07/290 are repealed and replaced by the CRD IV Package and the CRR.

THE MAIN INNOVATIONS OF CRD IV

- ★ Credit institutions and investment firms shall hold capital buffers in addition to their capital requirements (insertion of a new Chapter 5 in the Part III of the FSL);

THE CHANGES REGARDING THE FSL

- ★ The strengthening of the remuneration policies and the corporate governance rules in the financial sector (new Chapter 4bis beneath Part II of the FSL);
- ★ A clarification of the scope of the CSSF mandate regarding its supervision, investigation and sanction powers;

[THE CIRCULAR IS AVAILABLE HERE.](#)

What's next?

The CSSF is currently amending circulars 06/273 and 07/290 on the definition of capital ratios and the circular 12/552 regarding central administration, internal governance and risk management.



IRELAND

REGULATORY UPDATES

Ireland - the Central Bank of Ireland issued an eighth edition of the UCITS Q&A

■ Background

Following the recent Central Bank Act 2013 (Section 48 (1) UCITS Regulations 2015) which shall replace the long established UCITS Notices with the main objective, to simply recast the regulatory rules and put them on a statutory basis - please note that now, the Central Bank of Ireland (CBI) has issued a new version of the UCITS Questions & Answers. (the 8th).

As, the Central Bank of Ireland has planned the replacement of their Guidance Notes on a long-term basis -as the implemented UCITS Directive was in place and was coexisting with the prior UCITS Notices. The newly issued UCITS Q&A are giving further details on how/when the Fund(s) should implement the changes.

■ What's in there?

New questions ID 1047 and ID 1048 on certain transitional arrangements related to the Central Bank UCITS Regulations are included - and state that the technical amendments, for example to replace references to the UCITS Notices with references to the Central Bank UCITS Regulations, should also take place when the prospectus is next updated.

[THE UPDATED Q&A IS AVAILABLE HERE.](#)

■ What's next?

The Central Bank UCITS Regulations will come into effect on 1 November 2015.

The new Irish regulatory framework for UCITS reduces the significant administrative hurdle of market entry and the references to UCITS Notices in the fund documents should be removed within the next fund documents renewals.

TAX

AEOI

Automatic exchange of information of advance cross-border tax rulings between Tax Authorities and the EC within the EU from 1 January 2017

■ Background

On 6 October 2015, EU Finance Ministers reached political agreement in Council to amend Directive 2011/16/EU on administrative cooperation in the field of taxation.

■ What's in there?

The Directive will require Member States to automatically exchange a basic set of information on advanced cross-border tax rulings and advanced pricing arrangements, which are broadly defined.

The Directive will ensure that where one Member State issues such ruling or APA, any other Member State affected is in a position to monitor the situation and the possible impact on its tax revenue.

The EU Commission will develop a central directory, where the information exchanged will be stored, which will be accessible to all Member States and, solely to the extent required for monitoring the correct implementation of the Directive, to the EU Commission.

[THE LINK IS AVAILABLE HERE.](#)

■ What's next?

The Directive will be adopted at a forthcoming Council meeting (probably December 2015).

BEPS

Multinationals receive recommendations on BEPS proposals for G20 and wider take-up.

■ Background

On 05 October 2015, the OECD published the agreement of the G20 Finance Ministers on recommended changes to the international tax rules and to the implementation plans. A number of non-G20 countries have also been involved in working on the Action Plan and contributed to the proposals.

■ What's in there?

The OECD's Base Erosion and Profit Shifts (BEPS) Action Plan categorised its various areas of focus into three themes: addressing substance; coherence of the international tax system; and transparency. Sub-stance actions seek to align taxing rights with the relevant value-adding activity. Coherence actions aim to remove gaps and "black holes". Transparency actions look to provide significant additional disclosure.

[THE LINK IS AVAILABLE HERE.](#)

■ What's next?

The policy formulation stage of BEPS Action Plan will conclude at the end of this year, although it has been agreed that certain follow-on actions will take place during 2016 and beyond.





Scanning

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