FIG Bulletin

Recent developments
05 June 2017 to 09 June 2017

Hogan Lovells

Contents

1. Financial Conduct Authority

1.1 Market Watch issue 52

On 2 June 2017, the Financial Conduct Authority (FCA) published issue 52 of Market Watch, its newsletter on market conduct and transaction reporting issues. This subject of this issue is dividend arbitrage and it sets out the findings of the FCA's recent review of some firms engaged in dividend arbitrage, together with the background to the review and what firms may wish to consider.

The FCA says that its review found that most firms executing transactions with, or on behalf of clients engaged in dividend arbitrage, appear to comply with its requirements. However, a small number of firms may not have undertaken a sufficiently detailed assessment of the purpose and nature of transactions that appear to be linked to withholding tax (WHT) reclaims. It says that this raises the risk that some firms may become involved in potentially contrived transactions created in order to support fraudulent WHT reclaims.

The FCA says that firms executing transactions with, or on behalf of, clients engaged in dividend arbitrage need to comply with its requirements regarding financial crime risk. They must also have effective processes for carrying out due diligence on new business proposals, on new clients and for monitoring ongoing business.

The FCA also expects firms to have a good understanding of the risks that are relevant to their business, as well as strong controls for mitigating those risks. A firm must have the appropriate management oversight and controls in place to minimise the extent to which it is possible for its business to be used for a purpose connected with financial crime.

The suspicious activity reports (SARs) regime (administered by the UK Financial Investigation Unit, National Crime Agency) requires firms to report transactions where there is a suspicion of money laundering. Failure to do so may result in an offence under the Proceeds of Crime Act 2002.

Furthermore, the Market Abuse Regulation (MAR), which took effect on 3 July 2016, requires persons professionally arranging or executing transactions in financial instruments to report suspicious orders and transactions, where they have "reasonable suspicion" that an order or transaction could constitute market abuse, to the FCA without delay. In addition, MAR requires market operators and investment firms that operate a trading venue to report orders and transactions that "could constitute" market abuse to the FCA without delay.

The FCA also expects firms to be aware of their obligations under Principle 11 of its Principles for Businesses (dealing with the regulator in an open and cooperative way). This includes reporting other suspicious trading activity not necessarily covered by the SARs regime, or by MAR.

The FCA says that firms should consider the points it raises in the bulletin about dividend arbitrage and the processes that they must follow in monitoring existing business, taking on new business and in accepting new clients. If, when reviewing processes, a firm identifies any areas of concern, the FCA expects the firm to conduct an assessment and also to consider whether the firm should disclose the details to the FCA under Principle 11.

2. Bank of England and Prudential Regulation Authority

2.1 PRA updates remuneration policy templates and tables

On 6 June 2017, the Prudential Regulation Authority (PRA) updated its supervisory activities - remuneration rules webpage to give the information that it has updated the remuneration policy statement (RPS) questionnaires and tables (with the exception of RPS Annex 1 - Malus, and RPS Tables 7 and 8) to reflect submission deadlines and document references. Other changes are:

- an amendment to question (D.i) within the RPS Level 1 questionnaire relating to the identification of material business units; and
- additional notes on buy-outs within the notes section of the RPS tables.

Links to all of the documents are given further down the same webpage, see under the heading "Self-assessment templates and tables".

3. Banking

3.1 Basel III LCR framework: Basel Committee updates FAQs

On 8 June 2017, the Basel Committee on Banking Supervision published an updated version of its frequently asked questions (FAQs) on the Basel III liquidity coverage ratio (LCR), which were first published in April 2014.

The FAQs are grouped according to the paragraph number of the related issue within the LCR framework. New FAQs and updates are marked in italics. The new FAQs and updates relate to FAQs 1 (b, d and e), 2, 5, 6 (d and e), 9, 10, 13 (i), 15, 17, 19, 20, 21, 24 (b), 25 (b), 26, 27, 29, 30, 31, 33 and 34.

3.2 BBA principles to improve customer access

On 2 June 2017, the British Bankers' Association (BBA) announced the publication of a new set of principles to improve customer access. The Bank of Ireland, Barclays, Capital One, HSBC, Lloyds Banking Group, Nationwide Building Society, Natwest, RBS and Santander UK have signed up to the principles, with the majority of participating institutions aiming to fully implement the changes by May 2018.

The principles have been developed by the BBA's third party access working party under vulnerability taskforce principle 5 (easy for friends and family to support) designed to help improve customer experience and outcomes for these individuals. The principles include improvements to registration processes and changes and changes to processes around the registration and use of legal instruments that can be used to enable third party access in England, Wales, Scotland and Northern Ireland; such as power of attorney, court of protection orders to appointees and guardianship orders.

The BBA says that customers and third parties will benefit from greater clarity and transparency of information about options that are available; greater consistency in the documents required to register powers of attorney and other legal instruments; access through more channels such as telephone and post, improvements to third party servicing and transacting; and reduced need to notify different parts of the bank.

3.3 SME credit applications: EU banking associations high-level principles

On 6 June 2017, the European Association of Co-operative Banks together with four other European banking associations (the European Association of Public Banks, the European Banking Federation, the European Covered Bond Council and the European Savings and Retail Banking Group) published a set of high-level principles on feedback given by banks on declined small and medium-sized (SME) credit applications.

The principles aim to support the dialogue necessary through the provision of better information both from a business to a bank when finance is sought and from the bank to the business when finance cannot be provided, where initiatives to facilitate this dialogue have not been developed at national level. See also item 4.7 below for the European Commission's related staff working document.

4. European Union

4.1 CRR and EMIR: Commission Implementing Regulation on the extension of the transitional periods related to own funds requirements for exposures to CCPs published in the Official Journal

On 7 June 2017, the text of Commission Implementing Regulation (EU) 2017/954 of 6 June 2017 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties (CCPs) set out in the Capital Requirements Regulation (CRR) and the Regulation on over-the-counter derivatives, central counterparties and trade repositories (known as EMIR) was published in the Official Journal of the European Union.

This is the seventh such Implementing Regulation and it extends the transitional periods by an additional six months, to 15 December 2017, in order to avoid disruption to the international financial markets and to prevent penalising institutions by subjecting them to higher own funds requirements during the process of authorisation and recognition of existing CCPs.

The Implementing Regulation enters into force on the third day following that of its publication on the Official Journal.

4.2 MiFID II: Commission Implementing Regulation laying down ITS with regard to the format and the timing of position reports by investment firms and market operators of trading venues published in the Official Journal

On 7 June 2017, the text of Commission Implementing Regulation (EU) 2017/953 of 6 June 2017 laying down implementing technical standards (ITS) with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to the MiFID II Directive was published in the Official Journal of the European Union.

The Implementing Regulation enters into force on the twentieth day following that of its publication in the Official Journal and applies from 3 January 2018.

4.3 Proposed Directive on countering money laundering by criminal law: Council of the European Union agrees its position

Last week's FIG Bulletin reported that, on 30 May 2017, the Presidency of the Council of the European Union had published a note on its general approach to the European Commission's December 2016 proposal for a Directive on countering money laundering by criminal law. The Presidency invited the Council to reach a general agreement on the text as sent out in the annex to the note.

On 8 June 2017, the Council announced that it had adopted its position on the proposed Directive. The press release says that discussion at the Council focused in particular on:

- **the scope of the definition of a "criminal activity"** (Article 2(1)) where the Council compromise reaffirms that all categories of offences defined by the Council of Europe Warsaw Convention are covered as predicate offences, while references to existing EU legislation defining specific offences are also included to ensure that they are considered within the respective category. In order to address the growing threat of cybercrime, the Council agreed that this category should be also added in the definition of criminal activity;

- **the introduction of a criminalisation obligation for self-laundering** (Article 3(3));
- **the link with the Directive on the protection of the EU's financial interests (PIF Directive)**, which provides specific rules for money laundering of property derived from PIF offences (Article 1(2)) where the Council underlines that Member States can transpose these rules through a single comprehensive framework on money laundering at national level.

The Council and the European Parliament will enter into negotiations on the final text as soon as the Parliament has decided on its position.

4.4 CRR: ECON draft report on proposed amending Regulation

On 8 June 2017, the European Parliament's Economic and Monetary Affairs Committee (ECON) published a draft report on the proposed Regulation amending the Capital Requirements Regulation (CRR) to include provisions regarding transitional arrangements for mitigating the impact on the introduction of International Financial Reporting Standard 9 on own funds and large exposure treatment of certain public sector exposures denominated in non-domestic currencies of Member States.

The Council Presidency proposed to split the two transitional provisions from the CRR amending Regulation proposal and to deal with them in a separate draft regulation. This split is intended to allow for a timely entering into force of these transitional provisions. On the basis of a request initiated by ECON, the Conference of Presidents on 18 May 2017 approved the proposed split and the drawing-up of two separate legislative reports by ECON.

The draft report contains a European Parliament legislative resolution on the proposed Regulation, which sets out suggested amendments to the proposed Regulation to reflect the splitting of the transitional arrangements. into a separate Regulation. The amendments delete provisions in the proposed Regulation that do not relate to the transitional provisions. These deleted parts will be covered in a separate draft ECON report.

4.5 CMU action plan: European Commission communication on the mid-term review

On 8 June 2017, the European Commission announced the publication of a Communication on the mid-term review of its September 2015 capital markets union (CMU) action plan, together with the following related documents:

- an economic analysis;
- a set of questions and answers on the mid-term review; and
- a factsheet.

The mid-term review reports on the good progress made in implementing the 2015 action plan and sets the timeline for the next round of outstanding measures that will be unveiled in the coming months. It also updates and complements the original CMU agenda with some selected new priority measures to respond to evolving challenges.

The Commission says that it will now quickly move forward with three legislative proposals, which are central to the creation of a CMU:

- a legislative proposal on a **Pan-European Personal Pension Product (PEPP)** by the end of June 2017;
- a legislative proposal specifying **conflict of laws rules for third party effects of transactions in securities and claims** in the cross-border context in the fourth quarter of 2017;
- a legislative proposal for an **EU-framework for covered bonds**, a key long-term funding tool to help banks finance their lending activity, in the first quarter of 2018.

In addition, the Commission is also advancing with its preparatory work on the following measures to implement the commitments in the original action plan:

- **amendments to the Solvency II Delegated Regulation** in 2018 to review the prudential treatment of private equity and privately placed debt;
- a **Recommendation on private placements** in the fourth quarter of 2017;
- a **Communication on a roadmap for removing barriers to post-trade market infrastructure** in the fourth quarter of 2017;
- a **Communication on corporate bond markets** in the fourth quarter of 2017.

The mid-term review also sets out nine new priority actions, which include:

- amendments, to be proposed in the third quarter of 2017, to the **functioning of the European Securities and Markets Authority (ESMA) and the other European Supervisory Authorities** (ESAs), that is, the European Banking Authority and the European Insurance and Occupational Pensions Authority, to promote the effectiveness of consistent supervision across the EU and beyond. In targeted areas, the Commission will strengthen ESMA's powers including, where warranted, granting direct supervision to support a functioning CMU;
- reviewing the **prudential treatment of investment firms**. A legislative proposal will be presented in the fourth quarter of 2017;
- in the fourth quarter of 2017 assessing the case for an EU licensing and passporting framework for **FinTech** activities;
- presenting measures to support secondary markets for **non-performing loans** and exploring legislative initiatives to strengthen the ability of secured creditors to recover value from secured loans to corporates and entrepreneurs. The Commission services will shortly launch a consultation on potential EU action in areas such as loan servicing by third parties (that is, parties other than the originating lender) and the transfer of loans, including to non-bank entities. The Commission's benchmarking exercise will be completed in the fourth quarter of 2017. The Commission will also launch an impact assessment in the first quarter of 2018 with a view to considering a possible legislative initiative to strengthen the ability of secured creditors to recover value from secured loans to corporates and entrepreneurs;
- launching an impact assessment in the first quarter of 2018 to consider a possible legislative proposal to facilitate the **cross-border distribution and supervision of UCITS and alternative investment funds**.

An annex to the Communication contains a full overview of the CMU measures planned to be in place by 2019. More detailed information on all of these measures is contained in the economic analysis mentioned above.

4.6 Solvency II Delegated Regulation: European Commission adopts Delegated Regulation on infrastructure topics

On 8 June 2017, the European Commission adopted a Delegated Regulation amending the Solvency II Delegated Regulation concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates). A related impact assessment (and summary of the impact assessment) have also been published.

The Delegated Regulation reduces the capital charges attached to investment by insurance companies in infrastructure corporates and will remove regulatory barriers to investment opportunities in infrastructure fulfilling a

number of criteria and therefore considered as having a better risk profile.

The Council of the European Union and the European Parliament must now consider the Delegated Regulation. If neither of them objects, it will be published in the Official Journal of the European Union. It will enter into force on the day following that of its publication in the Official Journal.

4.7 SME funding market: European Commission initiatives to tackle information barriers

On 6 June 2017, the European Commission published a staff working document giving the results of a work stream, launched under the capital markets union (CMU) action plan, to document and present national and regional initiatives to tackle information barriers in the field of small and medium enterprise (SME) funding.

Key findings include the following:

- the lack of financial knowledge by SMEs and the lack of a recognised source of business finance advice for SMEs, able to guide them through the complexities of bank and non-bank finance and help them secure access to the most appropriate form(s) of finance, hamper the use of financing options by SMEs;
- the lack of standardised, verifiable and accessible financial information about SMEs represents a significant barrier for alternative finance providers to invest into/lend to European SMEs;
- improving the availability of SME credit and financial information for (alternative) investors and lenders is essential to support their access to a broader range of funding options.

The Commission concludes that the alternative forms of finance are growing rapidly and addressing the information barriers in the SME funding market therefore requires a mix of policy responses.

The document gives details of initiatives that have recently been adopted by EU Member States, or with their support, to improve the flow of information in the SME funding market.

See also item 3.3 above for the European Association of Co-operative Banks and four other European banking associations high-level principles on feedback given by banks on declined SME credit applications.

4.8 CRR: EBA updates guidelines on disclosure requirements

On 7 June 2017, the European Banking Authority (EBA) published an amended version (version 2) of its guidelines on disclosure requirements under Part 8 of the Capital Requirements Regulation (CRR). The original version of the guidelines was published in December 2016.

The updated version contains corrigenda (marked as footnotes) on pages 57, 72, 76, 78, 82 and 91, as well as language corrections and legislation updates in various parts of the document.

4.9 EBA issues 2018 EU-wide stress test methodology and templates for discussion

On 7 June 2017, the European Banking Authority (EBA) announced the publication of its 2018 EU-wide stress test draft methodology and templates for discussion with the industry.

The objective of the EU-wide stress test is to provide supervisors, banks and other market participants with a common analytical framework to consistently compare and assess the resilience of EU banks and the EU banking system to shocks, and to challenge the capital position of EU banks.

The exercise will cover 70% of the EU banking sector and will assess EU banks' ability to meet relevant supervisory capital ratios during an adverse economic shock. The methodology

covers all relevant risk areas and, for the first time, will incorporate International Financial Reporting Standard 9 accounting standards. The results will inform the 2018 supervisory review and evaluation process, challenging banks' capital plans and leading to relevant supervisory outcomes. The exercise will also provide enhanced transparency so that market participants can compare and assess the resilience of EU banks on a consistent basis. The list of institutions participating in the exercise has also been published (see annex I to the methodology).

The final methodology will be published as the exercise is launched, at the beginning of 2018, and the results will be published in mid-year 2018.

4.10 Benchmarks Regulation: ESMA publishes methodological framework for mandatory benchmarks contributions

On 2 June 2017, the European Securities and Markets Authority (ESMA) published a methodological framework developed to assist national competent authorities (NCAs) in their selection of supervised entities for mandatory contribution under Article 23(7) of the Benchmarks Regulation.

Article 23 of the Benchmarks Regulation provides that under certain circumstances a competent authority can require supervised entities to contribute to a critical benchmark. The selection of the supervised entities should be made on the basis of the size of a supervised entity's actual and potential participation in the market that the benchmark intends to measure.

ESMA has developed the methodological framework to promote the convergence of the supervision of specific types of critical benchmarks. The framework may be considered by competent authorities of administrators of the relevant critical benchmarks when they select the supervised entities that are to be required to contribute input data.

The methodological framework applies to all interbank offered rates and to the euro overnight index average. ESMA says that the approach adopted in the framework takes into account the general characteristics of the different rates in the EU that are potential candidates for inclusion in the list of critical benchmarks of the European Commission.

The publication of the framework does not imply any immediate need to use compulsory powers. However, as part of the implementation of the Benchmarks Regulation, it is important for supervisors of the administrators to develop their compulsion powers for critical benchmarks. ESMA considers that better supervisory convergence is achieved if the general principles are agreed upfront between supervisors of administrators and of contributors, thus minimising potential future divergences of supervisory practices and preventing potential future disputes.

4.11 Benchmarks Regulation: ESMA final draft RTS on co-operation arrangements with third parties

On 2 June 2017, the European Securities and Markets Authority (ESMA) published a final report containing its final draft regulatory technical standards (RTS) on the minimum contents for cooperation arrangements between ESMA and national competent authorities (NCAs) in third countries that have been designated as equivalent under Article 30(4) of the Benchmarks Regulation. It says that the draft RTS will enhance to negotiation of the relevant arrangements and thereby allow for the use of third country benchmarks soon after an equivalence decision has been adopted.

The draft RTS will also ensure convergence on cooperation arrangements entered into by EU NCAs and third country NCAs when they supervise administrators that apply for recognition in the EU. These cooperation arrangements will contribute to limiting risks for financial markets.

ESMA has submitted the draft RTS to the European Commission, which has three months to decide whether to endorse them.

The publication of these draft RTS concludes ESMA's work with respect to draft technical standards under the Benchmarks Regulation. In March 2017, ESMA published a final report containing 11 sets of draft RTS and implementing technical standards (ITS) under the Benchmarks Regulation. ESMA had consulted on the draft RTS/ITS in September 2016.

4.12 CSDR: ESMA publishes official translations of two sets of guidelines

On 8 June 2017, the European Securities and Markets Authority (ESMA) published the official EU language versions of two sets of guidelines under the Central Securities Depository Regulation (CSDR):

- guidelines on CSD participants default rules and procedures: these guidelines aim at ensuring CSDs define and apply clear and effective rules and procedures to manage the default of any of their participants;
- guidelines on access by a CSD to the transaction feeds of central counterparties (CCPs) and trading venues: these guidelines specify the risks to be taken into account by a CCP or a trading venue when carrying out a comprehensive risk assessment following a request for access to the transaction feed of the CCP or of the trading venue.

National competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, within two months of the date of publication by ESMA of the guidelines in all EU official languages.

4.13 CSDR: ESMA updates Q&As

On 2 June 2017, the European Securities and Markets Authority (ESMA) published an updated version of its questions and answers (Q&As) on implementation of the Regulation on improving securities settlement in the EU and on central securities depositories (CSDR).

The updated Q&As include new answers regarding certain aspects of the regime applying to central securities depositories (CSDs):

- CSDs' investment policy (see CSD Q&A 6 (c));
- access to CSDs (see CSD Q&A 8); and
- conditions to provide services in another Member State (see CSD Q&A 9).

The purpose of the document is to promote common supervisory approaches and practices in the application of the CSDR. It should also help investors and other market participants by providing clarity on the requirements. The date on which each section was last amended is included for ease of reference.

4.14 FinTech: ESMA response to European Commission consultation

On 7 June 2017, the European Securities and Markets Authority (ESMA) published its response to the European Commission's March 2017 consultation paper on FinTech.

ESMA says that it sees Fintech as a positive evolution overall as long as business models aim at improving financial consumer experiences and facilitate financial inclusion. In its consultation response, ESMA comments on some of the issues raised, including in relation to:

- **artificial intelligence and big data analytics for automated advice and businesses**: while ESMA acknowledges potential benefits, it also believes that the use of such technologies may trigger a number of concerns. ESMA stresses that possible technology-driven cost savings should be passed on to consumers. Also, ESMA hopes the Commission will take into account work currently carried out within the Joint Committee of the European

Supervisory Authorities and notes that any possible specific legislation in this field should be underpinned by a thorough impact assessment;

- **crowdfunding**: ESMA reiterates its call for a specific crowdfunding EU-level regime, which would ensure investors across the EU are equally protected and which would enable crowdfunding platforms to operate cross-border based on a common regulatory framework; ESMA's response also includes the findings (see the annex to the response) of a survey on regulated investment-based crowdfunding platforms in the EEA, providing an overview of current activities and trends;
- **RegTech**: ESMA notes that the use of technology by market participants and regulators to comply with regulatory and supervisory requirements is not new. It recognises the possible additional benefits that RegTech could entail for regulators if they use more these technologies in particular for data reporting and analysis;
- **outsourcing and cloud computing**: ESMA stresses that outsourcing arrangements, including to the cloud, should be implemented in a manner that complies with European legislation, including on data security and data protection rules;
- **distributed ledger technology (DLT)**: following the publication of its February 2017 report on DLT in securities markets, ESMA is continuing to monitor market developments around DLT and is looking into whether a regulatory response may become necessary;
- **role of regulation and supervisors**: ESMA believes that entities providing the same service should be regulated and supervised on an equal foot. However, Fintech start-ups might benefit from regulatory advice to navigate the applicable legal framework; and
- **role of industry: standards and interoperability**: ESMA strongly supports the objective of data standardisation and harmonisations.

4.15 MiFID II: ESMA updates Q&As on investor protection topics

On 6 June 2017, the European Securities and Markets Authority (ESMA) published an updated version of its document containing questions and answers (Q&As) regarding the implementation of investor protection topics under the MiFID II Directive and the Markets in Financial Instruments Regulation (together known as MiFID II).

ESMA had added 14 new Q&As covering the following topics:

- post-sale reporting (see Q&As 4 to 7 in section 8);
- information on costs and charges (see Q&As 6 to 14 in section 9); and
- appropriateness/complex financial instruments (see Q&A 1 in new section 10).

The purpose of the Q&As is to promote common supervisory approaches and practices in the application of MiFID II in relation to the protection of investors. The document gives answers to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II.

The document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.

4.16 MiFID II: ESMA final report on product governance guidelines to safeguard investors

On 2 June 2017, the European Securities and Markets Authority (ESMA) published its final report on product governance guidelines under the Markets in Financial Instruments Directive II (MiFID II) regarding the target market

assessment by manufacturers and distributors of financial products.

The requirements on product governance were introduced under MiFID II to enhance investor protection by regulating all stages of the life-cycle of products or services in order to ensure that firms which manufacture and distribute financial instruments and structured deposits act in the clients' best interests. The proposed guidelines, which are set out in annex IV to the report, address issues specific to manufacturers and distributors as well as issues common to both.

ESMA consulted on the guidelines in October 2016. Following the responses to the consultation and advice from the Securities Markets Stakeholder Group, ESMA has modified the guidelines in some areas such as the topic of portfolio diversification and has provided further practical examples in the annex in order to ease the application of the guidelines.

The guidelines will apply from 3 January 2018. They will now be translated into the official EU languages and published on ESMA's website. The publication of the translations in all official languages of the EU will trigger a two-month period during which national competent authorities must notify ESMA whether they comply or intend to comply with the guidelines.

4.17 SSM supervisory fees: ECB consultation

On 2 June 2017, the European Central Bank (ECB) published a consultation paper on a review of the ECB regulation on supervisory fees. A related set of frequently asked questions has also been published.

The ECB regulation on supervisory fees, which was adopted in October 2014, obliges the ECB to conduct a review by 2017. The aim of the current consultation is to gather feedback from interested parties with a view to assessing possible improvements. The responses to the consultation paper will provide the ECB with important insights for preparing, if considered appropriate, a formal update to the ECB regulation on supervisory fees.

Comments are requested by 20 July 2017. The ECB will also consult the national competent authorities via its established fora, including the Supervisory Board. The outcome of the review will be published on the ECB's website in 2018.

5. Financial crime

5.1 Correspondent banking: Basel Committee revised finalised guidelines

On 7 June 2017, the Basel Committee on Banking Supervision published an updated version of its guidelines on sound management of risks related to money laundering and financing of terrorism. The revised guidelines include, in annex II, the final revisions to the guidelines on correspondent banking and, in annex IV, revisions to the general guide to account opening.

The revisions aim to ensure that banks conduct correspondent banking business with the best possible understanding of the applicable rules on anti-money laundering and countering the financing of terrorism, recognising that not all correspondent banking relationships bear the same level of risk. The guidance includes a list of risk indicators that correspondent banks should consider in their risk assessment of money laundering and financing of terrorism associated with correspondent banking.

The Basel Committee says that the clarifications are in response to growing concerns in the international community that banks are withdrawing from correspondent banking to avoid these risks. A decline in correspondent banking may, in turn, affect the ability to send and receive international payments in entire regions.

The guidance is fully consistent with and complements the Financial Action Task Force standards and guidance, including the guidance on correspondent banking services published in October 2016.

6. Securities markets

6.1 Euro clearing: FIA cautions against forced relocation

On 4 May 2017, the European Commission published a Communication on responding to challenges for critical financial market infrastructures and further developing the capital markets union (CMU). The Communication set out the Commission's intention to present further legislative proposals before summer 2017 to address important and emerging challenges in derivatives clearing as its scale and importance grows. Among other things, the Communication mentioned that possible options for safeguards to the financial system could include forced relocation of and/or enhanced supervision of euro clearing.

On 6 June 2017, the Futures Industry Association (FIA) responded to the Communication setting out its concerns about the potential approach of forced relocation of euro-denominated derivatives clearing to the EU. In a letter to the Commission's Vice-President Valdis Dombrovskis, the FIA acknowledges the importance of protecting financial stability, but says that the forced relocation of euro-denominated cleared derivatives would be the most disruptive and expensive approach to overseeing third-country central counterparties.

The FIA says that forced relocation would:

- harm the markets;
- have an impact on systemic risk;
- have an impact on end users.

The FIA believes that the Commission's suggestion of recognition and enhanced supervision are more effective ways to protect financial stability than forced relocation of the clearing of euro- denominated products. It also believes that the EU's system of equivalence of third-country central counterparties (CCPs) currently has tools necessary for on-going information gathering, inspections and oversight where necessary. However, if EU authorities believe they need enhanced oversight powers with respect to systemically important third-country CCPs, the FIA believes that the EU should ensure such increase in powers is carefully calibrated. Other jurisdictions have utilised both recognition and direct supervision in their oversight of third-country exchanges and CCPs to tailor the supervisory needs to the specific policy objective.

The FIA says that it is not practicable for each major jurisdiction that has a regulatory interest in CCPs to directly enforce the entirety of its rules against CCPs located in foreign countries. Therefore the third-country regime in the Regulation on over-the-counter derivatives, CCPs and trade repositories (known as EMIR) is an efficient way to facilitate firms operating cross border by mitigating the impact of conflicting or duplicative rules. A relocation policy would directly contravene EMIR's goal of facilitating firms operating across borders. It says that this is why Article 13 of EMIR was created, to mitigate the impact of conflicting or duplicative rules for just such an instance.

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