

Regulatory Update

Finally... signs of progress... sort of!

In December last year, I outlined the sense of frustration we were all experiencing with the delays in finalising regulatory initiatives. In particular, I referred to the recognition of Third Country CCPs.

Almost a year later, we are finally beginning to see the light at the end of the tunnel. We know that draft Equivalence decisions for a number of Third Country CCPs, including Switzerland's, are now very firmly in the EU endorsement process. That is good news for us and our clearing arm, SIX x-clear. Realistically speaking, though, we expect the process to be finalised by the end of this year or early next year.

Following its agreement with ESMA, the Commission published its proposal for the categories of Interest Rate Swaps that should be subject to central clearing. A parallel proposal on Credit Default Swaps should follow soon, and this final element of the EMIR package should be in place in Q2 of next year.

In addition to EMIR, there is progress too on the CSDR. While the finalisation of the Regulatory Technical Standards has been delayed to this month, ESMA have kept us busy over the summer: with a further consultation on the operation of buy-ins; intended guidance on settlement discipline fines; and the definition of significant interest in relation to competent national authorities.

A third bit of good news is that the Swiss FMI Act («FinfraG») completed its legislative passage through the Swiss Parliament at the end of June. The text is now final, but there are add-ons including the FMI Ordinance (dubbed «FinfraV»), as well as revisions to the National Bank Ordinance. These went out for consultation in Mid-August until early October, and we still expect the whole FinfraG package to enter into force on 1 January, 2016.

As you can see, there is a lot going on. We will be taking stock of how these pieces fit together, the impact internally as well as sharing with you the wider industry impact as we move towards implementation.

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EU Initiatives Affecting the Value Chain

CSDR standards being finalised; More EMIR Third Country CCP Equivalence Decisions in the pipeline. Other EU initiatives in progress, such as the TSFTR, Shareholder Rights, as well as the FTT.

a) General Overview

Changes since the last edition of Oversight are highlighted in bold in the table below:

Segment of the Value Chain	Measure	Proposed (Published)	Adopted (Finalised)	Entry into Force (after Technical Standards)
Trading	Review of Market in Financial Instruments Directive (MiFIDII/MiFIR)	20 October 2011	13 May 2014	1 January 2017
Clearing	Regulation on OTC Derivatives, central counterparties & Trade Repositories («EMIR»)	15 September 2010	July 2012	15 March 2013 (main Text) Q2 2016 (Clearing Obligation)
Settlement	Central Securities Depositories Regulation (CSDR)	7 March 2012	28 August 2014	Q2 2016 (except Settlement Discipline Q2 2017)
Underpinning Law	Securities Law Legislation (SLL)	To be spelled out in CMU Action Plan	TBC	TBC

b) Central Securities Depositories Regulation (CSDR)

Both the ESMA and EBA draft RTS, which were expected in June, have now been delayed until September. Over the summer, ESMA launched a consultation (which closed on 6 August) on the operation of the buy-in mechanism (Article 6 of the CSDR). In common with a number of other market players, including our Association, ECSDA, we have supported the choice of ESMA's Option 1, whereby the responsibility for buy-ins falls to trading participants, and not the CSD. But in other respects the potential future framework remains far from clear, not least because of the absence of a definition for buy-ins. The expectation is that the ESMA Board of Supervisors will finalise the RTS at its meeting in September. We also await the final proposal from EBA on their framework for CSD capital requirements. The RTS will be subject to a further ratification process when delivered to the Commission, and we now expect to see their finalisation sometime in Q1 2016. Meanwhile, ESMA has also delivered its Guidance (published on 4 August) in respect of the methodology to be adopted when calculating fines for settlement fails (advocating a system of fixed basis point numerator, depending on the asset class), as well as its defining what is meant, in relation to a host Member State market, by a CSD of «substantial

importance» operating on a cross-border basis. This definition is subject to a number of thresholds in relation to the three CSD core services, with both a numerator and denominator.

c) The EU Regulation on OTC Derivatives, central counterparties, and trade repositories (EMIR)

The main development here lies in relation to the **Recognition of Third Country («TC») CCPs under EMIR**. Oversight learned in early July that the Commission had completed its initial inter-service consultation on further Equivalence Decisions («EDs») for CCP requirements for a number of further TC jurisdictions. On 5 August, the European Securities Committee (ESC) indicated that it was putting out for consultation to Member States a further five Equivalence Decisions in respect of CCP requirements for Canada (3 CCPs), Mexico (1), South Africa (1), South Korea (2) and Switzerland (SIX x-clear). The consultation lasts until 1 September, after which the dossiers should return to the Commission College, for final adoption. The EU endorsement mechanism is then completed by formal approval from the Council and the European Parliament, which should take a further two or three months. So, all things being equal and pending any further delays, we could reasonably expect the ED for Switzerland to be finalised towards the end of this



year, with formal recognition under EMIR for SIX x-clear from ESMA following in the early months of 2016. We say this also, as a number of other financial services EDs for Switzerland have also been resolved positively in recent months (see below).

It is not clear where the ESC consultation leaves the EU recognition of US CCPs. Oversight understood before the summer break that progress had been made in the **EU-US Discussions**, notably over mutual recognition. But the main sticking point remains the continued disagreement over margining requirements, and particularly the variances in the treatment between «house» and client accounts.

Other aspects, related to EMIR, such as its Review, the regulation of CCPs and derivatives clearing are dealt with in the following section entitled «Focus on CCP Regulation & Derivatives Clearing».

d) The EU Regulation on the Transparency of Securities Financing Transactions

Triologue discussions between the EU institutions were concluded rapidly in mid-June and having returned to the Council and the EP at the end of that month, the text was, at the time of writing, only one step away from being finalized (by jurist/linguists) and awaits publication in the Official Journal.

e) Amendment to the Shareholders Rights Directive

After a heated debate in the EP in July (mainly in respect of differences over whether remuneration resolutions should be binding), not all of the proposed amendments were voted through, which means that the measure will have to return to the EP Plenary session for a final vote in September, when formal Triologue discussions can begin with the Council and Commission. In other respects, the text is broadly favourable in terms of the obligations for intermediaries such as CSDs.

f) Financial Transactions Tax (FTT)

As mentioned last time. Luxembourg, which assumed the Presidency of the EU on 1 July, is not one of the 11 Member States supporting the FTT, and did not include it in its list of Presidency priorities on tax dossiers. Elsewhere, there is continued enthusiasm, notably in France and Germany, but little expectation that anything can now be agreed before a start date of 1 January 2017 at the earliest.

Focus on CCP Regulation & Derivatives Clearing

A number of EU institutions have made recommendations to change EMIR; Regulators continue to be busy in finalising the pieces relating to the EU Clearing obligation, as well as the treatment of non-centrally cleared OTC derivatives, and Recovery & Resolution Plans for CCPs.

The Review of EMIR: The Consultation launched by the Commission, which majors significantly on CCP requirements including margining, central bank facilities, risk mitigation and the operation of colleges, closed on 13 August. These issues have been complemented recently by published reports from the European Systemic Risk Board (ESRB) and ESMA.

ESMA has published four reports on 13 August. The first three reports are required under Article 85 of EMIR, and cover:

- Report No 1 on **non-financial counterparties** (NFCs), ESMA recommends removing the hedging criteria from EMIR and to use other measures to determine the systemic relevance of NFCs, as this would allow regulators to identify the few NFCs with the highest systemic importance while greatly simplifying the process and reducing the compliance costs for the majority of small and medium NFCs, which pose limited risks to the system overall;
- Report No 2 on **limiting pro-cyclicality**, where ESMA recommends further specifying the rules for implementing the counter-cyclical tools adopted by CCPs for margins and collateral, including regular testing and transparency on the results to further improve their effectiveness; and
- Report No 3 on **segregation and portability** for CCPs, where ESMA has identified some differences in CCP practices in the implementation of the relevant provisions. In order to promote convergent practices and achieve a level playing field, it recommends introducing clarifications and more

detailed requirements by RTS along with incentives related to margin period of risk depending on the safety of the chosen account structure. ESMA also proposes monitoring the take-up of the different types of account models to confirm adequacy and efficiency.

Report No 4 recommends amending EMIR in relation to the clearing obligation, **the recognition of third country CCPs** and the supervision and enforcement procedures for trade repositories.

Here, ESMA proposes streamlining the process for determining **clearing obligations** and to introduce tools allowing the suspension of the clearing obligation when certain market conditions arise. It also proposes removing the frontloading requirement.

On the **recognition of TC CCPs**, ESMA is proposing to rethink the entire equivalence and recognition process to increase its efficiency and effectiveness and to better respond to regulatory differences between TCs. ESMA proposes that the jurisdictional decision should be governed by Regulatory Technical Standards (RTS) and that any recognition process should also include additional risk-based considerations allowing it to deny or suspend the recognition of a third country CCP.

In order to improve **the supervision of Trade Repositories** (TRs), the report makes proposals for changes to ESMA's supervisory and enforcement powers and procedures including increases in fine levels, broadening the enforcement decisions available

to ESMA, appropriate timeframes to consider applications in the registration process and clarifying TRs' obligations in relation to data quality and reconciliation and supervisory reporting.

As part of its mandate to assist the Commission in the EMIR review, the ESRB has also published two reports, which address the following issues:

- **efficiency of margining requirements** to limit pro-cyclicality and the need to define additional intervention capacity in this area - which focuses on margins and haircut settings for central counterparties, as the regulatory technical standards on bilateral margin requirements have not yet been endorsed. The ESRB proposes a further review of EMIR in 2018, specifically on the macro-prudential use of margining and haircuts to address and prevent systemic risks; and
- **issues to be considered other than efficiency of margining requirements** - which include a swift process for the removal or suspension of mandatory clearing obligations and the evaluation of systemic risks for mandatory clearing purposes.

Earlier, ESMA released on 2 July its final report on **interoperability arrangements** between EU-based CCPs under EMIR. In its report, ESMA recommends extending the interoperability provisions arrangements to Exchange-Traded Derivatives (ETDs). A further extension to OTC derivatives will be assessed at a later stage. The report maps and describes of the current interoperability arrangements between EU CCPs for different product types i.e. EU equities, EU government bonds and EU ETDs. In addition, it examines the reasons for extending the current EMIR framework to derivatives taking into account the corresponding costs and benefits. ESMA will submit the final report to the Commission, Parliament and Council so that its recommendation can be endorsed and implemented. In the future ESMA may, if it is deemed appropriate, ask to further extend the EMIR framework to OTC derivatives. ESMA will also cooperate with the Commission on the annual assessment of systemic risk and the cost implications of interoperability arrangements.

In a separate development, the Bank of England, set out on 28 July its policy response and a feedback summary received to its consultation on its **proposed supervisory approach in the UK** to implementation of the ESMA guidelines and recommendations on interoperability arrangements between EU-based CCPs. The Bank's final standards for assessing interoperability arrangements for UK CCPs concern:

- the level of inter-CCP margin;
- the sourcing of inter-CCP margin;
- CCP default resources other than inter-CCP margin;
- loss allocation rules and post-default arrangements; and
- interoperability for derivatives products.

The Bank will ordinarily apply the five standards above, as a minimum, as part of its supervisory approach but will, however, always consider the specific circumstances of each case

Finalising the EU clearing obligation: Following its agreement with ESMA, the Commission published on 6 August its revised draft EU announced its adoption of the Delegated Act (DA) relating to the clearing obligation for interest rate swaps (IRS). It covers IRS denominated in euro, pounds sterling, Japanese yen or US dollars that have specific features, including the index used as a reference for the derivative, its maturity, and the notional type (i.e. the nominal or face amount that is used to calculate payments made on the derivative). These IRS contracts are:

- Fixed-to-float interest rate swaps (IRS), known as «plain vanilla» interest rate derivatives;
- Float-to-float swaps, known as «basis swaps»;
- Forward Rate Agreements;
- Overnight Index Swaps.

The DA is subject to scrutiny by the Council and the EP, which should take place after the EU institutions return after the summer break in September. The Commission and ESMA will be working to finalise, in the next months, a parallel DA on the central clearing of CDS, as well as the capital treatment of non-centrally cleared OTC derivatives. The whole package should be in place by Q2 2016.

ESAs consult on margin requirements for non-centrally cleared OTC derivatives: This will be the final piece in this jigsaw in determining the boundary between centrally cleared and non-cleared OTC derivatives. The ESAs, including ESMA launched a second consultation on 10 June, focusing on new aspects since the first consultation was held in 2014. For these transactions that will not be subject to central clearing, the treatment will prescribe the regulatory amount of initial and variation margin that counterparties should exchange as well as the methodologies for their calculations. In addition, these rules outline the criteria for the eligible collateral and establish the criteria to ensure that such collateral is sufficiently diversified and not subject to wrong-way risk. The main topics covered include:



- the exchange of margins with third country entities and the treatment of non-financial counterparties;
- the treatment of covered bonds swaps; the timing of margin exchanges;
- concentration limits for sovereign debt securities;
- the requirements on trading documentation;
- minimum credit quality of collateral;
- initial margin models;
- haircuts for foreign exchange (FX) mismatch;
- the treatment of cash collateral for initial margin; and
- reviewed criteria on intragroup exemptions.

Furthermore, following the amendments of the standards issued by the Basel Committee on Banking Supervision (BCBS) and IOSCO in March 2015, these RTS include a revised phase-in for initial margin requirements and a new phase-in for variation margin. The consultation closed on 12 July.

Oversight would also like to mention briefly four other initiatives with a bearing on the clearing of OTC derivatives, which have come to our attention, namely:

- The FSB published on 24 July its Ninth report on the progress on **implementation of OTC derivatives market reforms**. The report finds that implementation of OTC derivatives market reforms is well underway, with the authority needed to give effect to the full range of these reforms in place in most FSB member jurisdictions. However, it notes that that few jurisdictions have regulatory frameworks in place to promote execution of standardised contracts on organised trading platforms, and that it is early days for implementing the BCBS–IOSCO framework for margin requirements for non-centrally cleared derivatives. The FSB will continue its monitoring.
- IOSCO has published its final report on the **post-trade transparency in the CDS market**. The report assesses the potential impact of introducing post-trade transparency requirements in the credit default swaps (CDS) market. The report concludes that greater post-trade transparency in the CDS market would be valuable to market participants and other market observers and that the introduction of mandatory post-trade transparency

would not have a substantial effect on market risk exposure or market activity in the CDS market.

- The BCBS has published a CP entitled «Review of **the Credit Valuation Adjustment Risk Framework**». The objectives of the review are to (i) ensure that all important drivers of credit valuation adjustment (CVA) risk and CVA hedges are covered in the Basel regulatory capital standard; (ii) to align the capital standard with the fair value measurement of CVA employed under various accounting regimes; and (iii) to ensure consistency with the proposed revisions to the market risk framework under the BCBS' fundamental review of the trading book, and particularly to take into account the market risk exposure component of CVA along with its associated hedges. The consultation runs to 1 October.
- EBA has issued a CP (deadline 15 November) on RTS and the procedures for excluding transactions with **non-financial counterparties** (NFCs) established outside the EU from the own funds requirement for credit valuation adjustment (CVA) risk. The proposed RTS align the treatment of non-EU NFCs with the treatment of EU NFCs by requiring the relevant institution to check that a counterparty would qualify as an NFC and, if so, that the counterparty does not exceed the clearing threshold set out in the EMIR provisions.

Forthcoming EU Proposal on Recovery and Resolution Plans (RRPs) for CCPs: There has been little new on divulging the content of a proposal, but Oversight has learnt that the Commission will, provisionally, present its intentions at the 8 December Ecofin.

ESMA Work on CCP stress-testing: In common with the FSB and CPMI-IOSCO, ESMA is also undertaking work in this field. ESMA says that it will conduct an EU-wide stress test exercise for CCPs, and is recruiting additional resources to do so. The work consists in identifying stress scenarios, building a database of information on the basis of files submitted by individual CCPs, testing and validating the scenarios, verifying the consistency of the data and information submitted by CCPs and the consistency of the results. Eventually, the results of the stress test exercise could well be made public, in aggregate form.

EU Institutional Developments

The Luxembourg Presidency priorities; a bit more on the Commission's consultation on Capital Markets Union (CMU), DG FISMA has a new Director-General and a new FMI Unit Head; and ESMA's priorities.

a) Luxembourg EU Presidency Priorities

Luxembourg is the latest Member State to take over the rotating Presidency of the EU, commencing on 1 July. As previously mentioned, the Latvian Presidency did a fine job in bringing to fruition a number of financial services dossiers. Luxembourg will continue, under the general umbrella of restoring economic growth and employment, to deepen EMU, progress both the Banking Union and the CMU, and among other things, it intends to:

- advance the negotiations on the Bank Structure Regulation;
- start negotiations on a legislative proposal for the resolution of markets infrastructures;
- remove barriers to cross-border investment so as to improve and widen the sources of financing (CMU);
- ensure transparent, simple and high-quality securitisation so as to revitalise the market; and
- review the Prospectus Directive requirements so as to improve access to capital markets for SMEs (CMU).

b) EU Capital Markets Union (CMU)

A little bit more detail has emerged on how the CMU Action Plan, due for publication after the summer break, could look. Oversight understands that there will be a number of key components:

- Initial targeted proposals, such changes to the securitization requirements, the Prospectus Directive, and SME information requirements;
- Changes that can be effected by public and private markets;
- Changes than can be effected by national governments; and

- Longer term, but difficult, structural changes such as insolvency, securities law

With this last category in mind, the Commission announced on 28 July that it was establishing an Insolvency working group, calling for the nomination of relevant (legal) experts. This WG is not particularly directed at financial services aspects of insolvency, but the work is due to run on until the end of 2018. The Commission argues that a lack of harmonisation amongst national insolvency laws remains and that this places a disproportionate burden on cross-border investors and may cause competitive distortions in damaging the integrity of the single market.

c) Personnel Changes in DG FISMA

On 25 June, the Commission announced the rotation of its key officials at Director-General («D-G») level. As widely expected, Olivier Guersent becomes D-G of DG FISMA, with the current incumbent, Jonathan Faull moving to a special position handling the negotiations with the UK over EU membership. Alexander Italianer is the new Commission Secretary-General. The changes take effect on 1 September. Further down in DG FISMA, and also as expected, Maria Teresa Fabregas Fernandez succeeded Patrick Pearson as Head of the Market Infrastructure Unit on 1 August.

d) ESMA Strategic Orientation Plan («SOP»)

On 16 June, ESMA published its SOP for 2016-2020 and Budget. It is tweaking its focus toward financial stability, orderly markets and investor protection, Chairman Steven Maijoor said at the launch. «As the bulk of post-crisis rule-making is now lying behind us ... in the coming years, ESMA's work will be a lot



more about implementing rules and about convergence of supervisory practices». This will advocate ESMA moving away from post financial crisis regulatory repair, and bedding down supervisory responsibilities for CRAs and TRs, to focus more on supervision, supervisory convergence and consistent implementation of rules among the MS NCAs. This also means ESMA focusing more on:

- risk analysis (on the basis of all the data that ESMA now collects),
- monitoring markets,
- fulfilling the financial stability mandate,
- assessing risks for investors and accounting aspects.

Two particular novel features and proposals would involve ESMA being more pro-active (about inputting) at Level 1, and the potential use of «no action» letters to mitigate delays and/or vary existing requirements.

e) Five Presidents Report on the Development of EMU

The Commission published in early July a Report entitled «Completing Europe's Economic and Monetary Union». It follows on from widely perceived failings in the institutional framework for EMU, not least during the Greek crisis. The Five

Presidents offer three different stages for turning the vision of EMU into reality:

- Stage 1 or «Deepening by Doing» (1 July 2015 - 30 June 2017): using existing instruments and the current Treaties to boost competitiveness and structural convergence, achieving responsible fiscal policies at national and euro area level, completing the Financial Union and enhancing democratic accountability.
- Stage 2, or «Completing EMU»: more far-reaching actions will be launched to make the convergence process more binding, through for example a set of commonly agreed benchmarks for convergence which would be of legal nature, as well as a euro area treasury.
- Final Stage (at the latest by 2025): once all the steps are fully in place, a deep and genuine EMU would provide a stable and prosperous place for all citizens of the EU Member States that share the single currency, attractive for other EU Member States to join if they are ready to do so.

To prepare the transition from Stage 1 to Stage 2, the Commission will present a White Paper in spring 2017 outlining the next steps needed, including legal measures to complete EMU in Stage 2.



Market Infrastructure Initiatives by Other Standard-setters

T2S went live as intended on 22 June; CPMI-IOSCO follow-up work on its PFMI; FinfraG is finalised; Good news for Switzerland on insurance and AIFMD equivalence; Regulatory direction of travel by key standard setters.

a) European Central Bank

The T2S project went live on 22 June as intended with the first migration wave of SIX SIS, and CSDs from Greece, Malta and Romania. Earlier, the ECB T2S Board agreed to a temporary deferral of participation by the Italian CSD, Monte Titoli, which arose as a result of the lack of preparedness of the Italian market. MT should now join by the end of August. The launch was a success, and SIX SIS reports few problems, with a steady flow of transactions between Swiss participants. SIX SIS's monitoring and assessment apparatus, such as its T2S and Quality Assurance Boards, remain in place and will continue to monitor the project until all participating CSDs have joined by 2017.

b) Initiatives by CPMI-IOSCO

In a useful contribution to the transparency and comprehension of the sectors, the Committee on Payments and Market Infrastructures (CPMI) of the BIS published in mid-June **a glossary of payments and market infrastructure terminology** as a reference to the standard terms and definitions used in connection with payment, clearing, settlement and related arrangements. Current definitions are now shown alongside the previous ones. This is an addendum to the main glossary published in 2003.

This followed hot on the heels of CPMI-IOSCO issuing a revised assessment of the state of

implementation of the Principles for financial market infrastructures («PFMIs»), the international standards for financial market infrastructures, in selected jurisdictions. Switzerland received the top rating (of «4») for the implementation of PFMI in respect of CCPs, CSDs, SSSs and Payment Systems. The outcome on Trade Repositories («TR») was less favourable, as the TR for the Swiss market is still currently in construction (and the PFMI framework has yet to be applied).

In early July, CPMI-IOSCO announced that they had started the first **Level 3 assessment** of the implementation of the PFMI. This review will examine consistency in the outcomes of PFMI Principles implementation and is part of the CPMI-IOSCO's monitoring of full, timely and consistent implementation of the PFMI. The review will focus on a subset of requirements under the PFMI that relate to financial risk management by central counterparties (CCPs) including certain practices related to governance, stress-testing, margin, liquidity, collateral, and recovery. This first review will consider outcomes achieved in this area by examining a number of globally- and locally-active CCPs that clear derivative products (both exchange traded and OTC). Beyond the aim of fostering full and consistent implementation of the PFMI, the first Level 3 Principles assessment is also expected to inform CPMI and IOSCO about the nature and



potential causes of variations in approaches or outcomes. A report presenting the results of this first Level 3 assessment is expected to be published in 2016.

Finally, CPMI-IOSCO has clarified in a further note released during how PFMI apply to FMIs **owned and operated by central banks**. The note develops what is stated in the PFMI themselves and further clarifies the interaction between the PFMI and central bank policies. The note spells out particularly what PFMI can be dis-applied to a CB-run FMI, and where the PFMI are not designed to constrain CB policies (e.g. in respect of monetary policy operations).

c) The Swiss Legal Framework for FMIs

As expected the FMI Act («FinfraG») concluded its passage through both Chambers of the Swiss Parliament in June, and the final text was published in the Official Gazette at the end of that month.

On 20 August, the Swiss authorities released - for consultation until 2 October - underpinning «level 2» rules in the form of three draft Ordinances, as follows:

- The Federal Council's FMI Ordinance (**FMIO** – also known as «FinfraV»), which is the more substantive of the three items, and covers aspects such as the trading, clearing and reporting of OTC derivatives, with detailed provisions for CSDs and CCPs, as well as aspects relating to MiFID II/MiFIR and the MAR;
- The FINMA Financial Market Infrastructure Ordinance (**FMIO-FINMA**), principally covering reporting requirements for securities, and the clearing obligation for OTC derivatives; and
- A revision of the **National Bank Ordinance**, as it relates to the Oversight of FMIs. This is more of a tidying up exercise, deferring to the FMIO for detailed requirements.

The expectation is still that the Act and the accompanying Ordinances will enter into force on 1 January.

d) EU-Swiss Relations in financial services

As noted above, the appearance of a draft Equivalence Decision on **Swiss CCP requirements** heralds a further step in cementing the ability of Swiss firms to do business in the EU (which have to be approved on a sector-by-sector basis). This follows hot on the heels of two further positive developments. In early July, the Commission published a **draft ED on Swiss insurance and re-insurance** requirements, which will take effect on 1 January. The Ecofin Council delivered its «nihil obstat» verdict at its meeting on 14 July, and it is also expected that the European Parliament will do the same, after the summer recess.

More recently, ESMA has published its Advice in relation to the application of the **Alternative Investment Fund Managers Directive** («AIFMD») passport to non-EU Alternative Investment Fund Managers (AIFMs) and Alternative Investment Funds (AIFs) and its Opinion on the functioning of the passport for EU AIFMs and the national private placement regimes (NPPRs). The Advice and Opinion, required under AIFMD, will now be considered by the Commission, Parliament and Council.

The Advice relates to the possible extension of the passport, currently only available to EU entities, to non-EU AIFMs and AIFs which are currently subject to EU NPPRs. ESMA in conducting a country-by-country assessment, enabled it to take into account the relevant regulatory issues pertaining to each non-EU jurisdiction, for instance in the areas of investor protection, competition, potential market disruption and the monitoring of systemic risk. ESMA assessed six jurisdictions, including Switzerland and the United States. The Advice concluded that no obstacles exist to the extension of the passport to Guernsey and Jersey, while **Switzerland** will remove any remaining obstacles with the enactment of pending legislation (and so Swiss rules are largely equivalent).

The Advice and Opinion have been sent to the Commission, Parliament and Council to consider whether the relevant provision in the AIFMD should



be activated, thereby extending the passport through a Delegated Act. Alternatively, it is suggested that the EU institutions might wait until ESMA has delivered positive advice on a larger number of non-EU jurisdictions, before introducing the passport so as to avoid any adverse market impact which a decision to extend the passport to only a few non-EU jurisdictions might have.

In a separate development, the FINMA and the German regulator, BaFin, agreed in mid-July on a simplified **authorisation regime for Swiss banks** seeking to access the German market.

The whole question of the future of the Swiss Financial Centre and its strategy is being taken forward in the recently announced apparatus following-up to the Brunetti Report. SIX is represented both on the Advisory Board, as well as two key working groups, notably examining Market Access as well as the broader Financial Centre Policy (including tax).

e) Future direction of Regulatory Travel

Oversight takes a keen interest in the developing regulatory agenda, as this shapes the environment for FMIs and here are a few recent examples.

Bank of England: Mark Carney, governor of the Bank of England, in presenting the latest Financial Stability report in early July, noted a shift in risk from banks to markets, infrastructure and nonbank financial institutions, including asset managers and hedge funds. «While the resilience of the institutions at the core of the financial system has continued to strengthen, risks are shifting to the markets that connect them, and to the infrastructure that underpins them», Carney said. So, we can expect

continued regulatory scrutiny, and the report particularly highlights intermediary/infrastructure resilience, notably cyber-resilience, and market liquidity, as continued regulatory concerns.

IOSCO: held its Annual Meeting and Conference in London in June. As well as developing its own capacity building in bringing together its extensive supervisory membership through more supervisory convergence, IOSCO also highlighted its future focus on cyber-security and digital disruption. Differences with banking supervisors were also highlighted, as was the under-representation of IOSCO and its members in the G-20 apparatus and the Financial Stability Board. So this aspect needed to be sharpened up as did promulgating the approach of securities supervisors towards regulation. This has notably borne fruit in the toning down of the next stage of the FSB's work on identifying, and imposing additional regulatory requirements on the asset management industry. IOSCO also singled out infrastructure resilience, and notably that of CCPs, as part of the future work programme. At the IOSCO AGM, it was also announced that its Secretary-General, David Wright, would be stepping down in the New Year. An early name in the frame to replace him, is the head of the US self-regulatory organisation FINRA, Paul Andrews.

IOSCO's AGM was followed up in late July with the publication of its **Strategic Direction 2015-2020 plan** comprising its Mission to 2020; A Goal; Priorities; and Action Plans. The **Mission** broadly breaks down into:

- To co-operate in developing, implementing and promoting adherence to internationally recognized and consistent standards of regulation, oversight

and enforcement in order to protect investors, maintain fair, efficient and transparent markets, and seek to address systemic risks;

- To enhance investor protection and promote investor confidence in the integrity of securities markets through strengthened information exchange and co-operation in enforcement against misconduct and in supervision of markets and market intermediaries; and
- To exchange information at both global and regional levels on their respective experiences in order to assist the development of markets, **strengthen market infrastructure** and implement appropriate regulation.

And the **Priorities** (as widely trailed during the AGM) will consist of:

- 1) Research and Risk Identification;
- 2) Standard Setting and Developing Guidance;
- 3) Implementation Monitoring;
- 4) Capacity Building;
- 5) Co-operation and Information Exchange; and
- 6) Collaboration and Engagement with other International Organisations.

These Priorities are underpinned by **Action Plans** to support the delivery of each of them.

Paris Europlace: the French approach to, and wish list for, CMU has been encapsulated in the Demarigny Report, which was delivered to the French Minister of Finance in May. In it, the authors identify the continued fragmentation of infrastructure in Europe as weighing heavily on investors and the securities industry, and suggest that further steps should be examined towards greater harmonisation and efficiency (unobjectionable per se, but code for continued centralisation of infrastructural apparatus under the ECB and the Eurosystem).

A glossary of acronyms

AIFMD	Alternative Investment Fund Management Directive	Governing regulation of hedge funds and managers in the EU
BIS	Bank for International Settlements	Cooperation of central banks and international monetary policy makers
BU	Banking Union	Euro-area construct for the supervision, protection and resolution of banks
CPMI	Committee for Payments & Market Infrastructures	BIS Committee of central banks
CRR/D	Capital Requirements Regulation/Directive	EU measure on banks' capital adequacy, risk management and supervision
CSDR	Central Securities Depository Regulation	EU measure governing requirements for CSDs
CMU	Capital Markets Union	European Commission plan for regenerating finance for firms
DG FISMA	Directorate-General for Financial Stability, Financial Services & CMU	Commission entity responsible for financial services initiatives
EBA	European Banking Authority	Pan-European banking regulator
ECB	European Central Bank	
EDs	Equivalence Decisions	Commission confirming compatibility of a Third Country's regime (e.g. CCPs)
EMIR	European Market Infrastructure Regulation	Governing requirements for CCPs, derivatives clearing and trade repositories («TRs»)
ESAs	European Supervisory Authorities	Such as EBA and ESMA
ESMA	European Securities & Markets Authority	Pan-European securities regulator
EU	European Union	The 28 Member States («MS»)
FinfraG	Swiss FMI Act (effective 1 January 2016)	Governing authorisation, oversight and supervision of CCPs, CSDs, TRs and trading venues in Switzerland
FinfraV	Swiss Federal Council Ordinance (wef 1.1.16)	Detailing prudential requirements for CCPs, CSDs, etc in Switzerland
FINMA	Swiss Financial Markets Authority	The Swiss regulatory authority
FMI	Financial Market Infrastructures	CCPs, CSDs, SSSs and TRs
FSB	Financial Stability Board	Forum of central banks, regulators from major market economies

MiFID/ MiFIR	Market in Financial Instruments Directive/ Regulation	EU measures governing trading venues, investment services and investor protection
NBO	(Swiss) National Bank Ordinance	Governs powers and responsibilities of the SNB, e.g. in relation to oversight of FMIs in Switzerland
PFMIs	Principles for Financial Market Infrastructures	Global standard developed by CPMI-IOSCO for the oversight of CCPs, CSDs, TRs and payment systems
RRPs	Recovery & Resolution Plans	Plans by which firms will mitigate threat of failure and authorities will alleviate systemic contagion
SLD/L	Securities Law Directive/Legislation	A potential EU measure for harmonising location and conflict rules for securities accounts
SNB	Swiss National Bank	The Swiss central bank
SRB	Single Resolution Board	Euro-area banking resolution authority
SRD	Shareholder Rights Directive	EU measure prioritizing shareholder access to company information
SRM	Single Resolution Mechanism	Euro-area framework for resolving failing banks and mutualizing funds
SSM	Single Supervisory Mechanism	The banking supervision framework for the euro-area
TC	Third Country (like Switzerland)	Non-member of the EU/EEA
TLAC	Total Loss Absorption Capacity	Total availability of bank capital resources above regular capital adequacy
TSFTR	Transparency of Securities Financing Transactions Regulation	Nearly finalized EU measure on reporting and re-use of SFTs
TTIP	Trans-Atlantic Trade & Investment Partnership	Framework for EU – US liberalization of trade and investment (in negotiation)

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