OVERSIGHT

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Regulatory Update

Little or no news may just be good news…

Since the last time I wrote the editorial, a lot has happened – and a lot hasn't. On the "happened" front, perhaps the most momentous event was the English voting to leave the European Union. While the jury is still out on whether or not this is going to be a good thing for the English, Europe has already begun its efforts to ensure a painless separation… something of a pipe dream perhaps.

On the regulatory front there has been very little by way of decisions or anything to report on EMIR and CSDR-related issues. The Regulatory Technical standards (RTS) for example from ESMA and the EBA are still nowhere to be seen.

Perhaps this really was a summer break for all concerned.

On other fronts, however, some things appear to be moving along more rapidly than expected: the NIS Directive, dealing with cybersecurity across Europe; A newly proposed framework for an EU Financial Transaction Tax); And the resilience, recovery and resolution initiatives for CCP regulation.

All of this leads me to conclude that, despite the fact that the burden of regulation and legislation does not look like it's going to get any lighter, we may have a slight respite as the final quarter of this year draws to a close.

And, speaking of things coming to a close, Alex Merriman, who has written this publication for us over the past few years, will be taking early retirement and bringing his innings with us to an end. I would like to wish him well and thank him for everything he has done for us.

Thomas Zeeb
Chief Executive Officer
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EU Initiatives Affecting the Value Chain

With the summer break, little new on these dossiers, including EMIR and CSDR-related issues; NIS Directive is finalised; Commission launches te nder for a study on aspects of securities law.

a) General Overview

Changes since the last edition of Oversight are highlighted in **bold** in the table below. The finalisation of the CSDR package has been delayed once again:

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	**3 January 2018**
Clearing	Regulation on OTC Derivatives, central counterparties & Trade Repositories ("EMIR")	15 September 2010	4 July 2012	15 March 2013 (main Text) 21 June 2016 (Clearing Obligation)
Settlement	Central Securities Depositories Regulation (CSDR)	7 March 2012	28 August 2014	Q4 2016 (except Settlement Discipline Q4 2018)
Underpinning Law	Securities Law Legislation (SLL)	Further Work in CMU Action Plan by end-2018	?	?

b) The EU Regulation on OTC Derivatives, central counterparts, and trade repositories (EMIR)

The main news on EMIR concerns a tweaking of the provisions relating to the EU **Clearing obligation** with further granularity for small clearing members and an exemption for pension funds to have to put up collateral against clearing transactions (see section on Derivatives Clearing below).

At the time of writing, the Commission's white paper on the **Review of EMIR** was also still awaited.

c) Central Securities Depositories Regulation (CSDR)

At the time of writing this edition of Oversight, there was still no news about the outstanding RTSs from ESMA and EBA, which did not appear before the summer break, and may not even appear in September. Since the Commission intends to give the other EU institutions three months for their review, this means that the target date for applications by EU and non-EU CSDs under the CSDR are unlikely to be triggered until the end of the year at the earliest, and probably slipping into Q1 2017. As a result of this delay, SIX SIS has prioritized its domestic regulatory focus, that of applying to the FINMA for re-authorisation under the FMI Act 2016, which must take place by the end of this year.

d) MiFID II/MiFIR

AFME and other industry groups have asked the European Commission to ensure that market data are priced on a "reasonable commercial basis" under Europe's revised Markets in Financial Instruments Directive. Trading venues' second-quarter earnings reports showed that providing market data and research generated more profit than trading fees.

e) The EU Regulation on the Transparency of Securities Financing Transactions (TSFTR)

SIX SIS has been contacted by consultants to ESMA investigating aspects of the proposed ESMA RTS, which are expected to be published in draft in Q4. This study relates to:

- the transparency and data held in a trade repository;
- the use of ISO standard 20022 for reporting to trade repositories; and
- the registration regime for trade repositories.

And will run in parallel with the ESMA consultation.

f) Securities Law Legislation (SLL)

On 5 August, the EU Commission launched a call for tenders for an external study on the law applicable in respect of securities and claims traded on the financial

market. The study aims to evaluate the practical problems of types of risks caused by the current state of harmonisation of conflict-of-laws rules on third-party effects of transactions in securities, and claims and options for improving these rules. More particularly, the study seeks to aid the Commission in defining the problem caused by legal risks, to estimate the scale of the problem, to identify its cross-border dimension and finally, to evaluate whether action should be taken at the EU or at the member states level.

The Commission expects to publish a final external report including the study during the third quarter of 2017, and based on the results of the external study, the Commission might come forward with an initiative on securities law. The deadline for the call for tenders is 30 September 2016.

g) Cyber-security: the NIS Directive

The NIS Directive (see previous editions of Oversight), known as the Directive "concerning Measures for a high common level of security of network and information systems across the Union", was published in the EU Official Journal on 6 July. After the Directive has entered into force, Member States have until May 2018 to adopt the necessary national provisions. Following this period, they will have another 6 months to identify the essential services operators established in their territory which are to be covered by the NISD.

To re-cap, the NISD seeks to strengthen the security of network and information systems across the EU. It aims to increase cooperation between Member States and lay down security obligations for operators of essential services and digital service providers. Essential services operators are active in critical sectors such as energy, transport, health and finance. Digital services cover online marketplaces, search engines and cloud services. The requirements will be stronger for essential operators than for digital service providers. This reflects the degree of risk that any disruption to their services may pose to society and the economy.

Each EU country will also be required to designate one or more national authorities and set out a strategy to deal with cyber threats. Member States twill also have to develop a national NIS strategy (Article 3), to designate certain critical infrastructures (Article 5), and for these to manage their NIS risks appropriately (Article 15 et seq). These risks include business continuity, security and incident management. Trading Venues and CCPs are in scope. Member States may decide to include CSDs as well, as per article 5 of the Directive.

h) Tax Dossiers

The Slovak Presidency has confirmed that it will attempt to broker Member States' positions and progress the framework for an EU-wide FTT. The last compromise proposals were presented in June and a final decision on the FTT was consequently expected to be made in September. However, the working groups fine-tuning the proposals have not finished their work, so the deadline has been postponed. Under the June proposal:

- "harmonized taxation" would be applied to **stocks** issued in one of the 10 participating countries;
- "All" **shares** would be taxed after a transition period "unless participating Member States decide otherwise";
- "All" **derivatives** would also be covered, though initially products "with public debt to 100% as direct underlying" would be exempt;
- **Repurchase agreements,** as well as transactions of public debt managers, would also be excluded.

However, two "technical" issues apparently remain to be resolved, so the next round of discussions is now planned for the October Euro-group meeting. The delay doesn't indicate that fresh disagreements on the plan have emerged, although the German Finance Minister has said that he would prefer to tax financial transactions on a global level and that Europe was "hitting a wall" in trying to reach a separate solution.

The continued delay in agreeing the FTT may also be due to the focus of EU tax harmonization shifting towards tax subjects where progress can more easily be made, as outlined in the Commission's and Presidency's latest reports to the last Ecofin Council. Chief among these is the **Base Erosion and Profit Sharing** (BEPS) proposal, which was agreed at the July Ecofin, and which follows closely on already agreed work in the OECD.

Finally, the Commission published on 6 July a draft Directive, laying down rules against **tax avoidance practices that directly affect the functioning of the internal market.** A notable feature of this proposal is that, as part of the Commission's latest tax transparency/AML/anti-terrorist financing move, it includes both CCPs and CSDs in scope.

If you would like to find out more on EU financial market infrastructure legislation or on any other regulatory topic, please contact: Urs Wieland, Head Regulatory Relations (urs.wieland@six-group.com) or by phone to +41 58 399 4314. From October, Oversight will be compiled by the new Head of Market Policy, Matthias Heer. Previous editions of Oversight and other regulatory information about us are also available at: www.six-securities-services.com

CCP Regulation: Focus on Resilience and RRPs

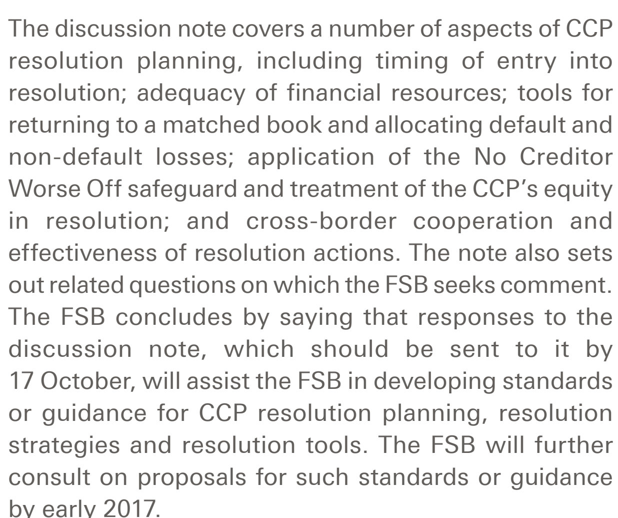
FSB and the CPMI-IOSCO issue guidance and consult on various aspects of resilience, resolution and recovery; guiding the Commission's proposal on RRPs for CCPs; FSB updates on Key Attributes; much commentary from public officials on CCP aspects; Commission publishes BRRD RTS on the valuation of liabilities arising from derivatives.

On 16 August, the Financial Stability Board (FSB) and the CPMI-IOSCO issued their long-awaited follow-up work on the resilience of CCPs. This takes the form of a number of separate initiatives:

– The FSB's discussion note on **Essential Aspects of CCP Resolution Planning,** which seeks comment on aspects of central counterparty (CCP) resolution that are considered core to the design of effective resolution strategies.

– A second FSB report, jointly with the Basel Committee, the CPMI and IOSCO, a progress report on the **CCP work plan** to enhance the resilience, recovery planning and resolvability of CCPs.

The FSB comments that, with CCPs being an increasingly important part of the financial system through their ability to mitigate and manage counterparty credit risk, particularly following post-crisis reforms to mandate central clearing of certain standardised over-the-counter derivatives, it is vital that CCPs do not themselves become a new source of too-big-to-fail risk. The FSB highlights that its **Key Attributes of Effective Resolution Regimes for Financial Institutions** (Key Attributes) and implementation guidance on FMI resolution in Appendix II-Annex 1 to the Key Attributes set out a framework for FMI resolution. This framework states the objectives of FMI resolution and a **range of powers and tools** that should be made available to resolution authorities to resolve a failing FMI. However, while the Key Attributes and existing guidance describe a number of tools that should be available to authorities, they do not discuss how those tools could be used or combined to develop strategies for the effective resolution of CCPs. In some areas, further guidance may be required to assist jurisdictions with implementing effective resolution regimes and to assist resolution authorities with developing credible resolution strategies and plans.



The discussion note covers a number of aspects of CCP resolution planning, including timing of entry into resolution; adequacy of financial resources; tools for returning to a matched book and allocating default and non-default losses; application of the No Creditor Worse Off safeguard and treatment of the CCP's equity in resolution; and cross-border cooperation and effectiveness of resolution actions. The note also sets out related questions on which the FSB seeks comment. The FSB concludes by saying that responses to the discussion note, which should be sent to it by 17 October, will assist the FSB in developing standards or guidance for CCP resolution planning, resolution strategies and resolution tools. The FSB will further consult on proposals for such standards or guidance by early 2017.

In developing this guidance, the FSB has ensured that the resolution work is coordinated closely with other elements of the CCP work plan, which includes resilience and recovery. A third leg of this work from the CPMI and the IOSCO was also published on 16 August, as follows:

- A **consultative report on Resilience and recovery of central counterparties:** This includes further guidance on the PFMIs, plus a report on Implementation monitoring of PFMI – Level 3 assessment (see also below), which sets out **the financial risk management and recovery practices of 10 derivatives CCPs.**
- Finally, a data collection exercise on the interdependencies in central clearing was launched last week, as part of a study on independencies that began last year.

Elke König, Chair of the FSB Resolution Steering Group and Chair of the European Single Resolution Board, said: "CCPs form a central part of the post-crisis reforms of OTC derivatives markets to help reduce risk in the financial system. But we must also ensure that CCPs are themselves robust and this includes appropriate resolution regimes. There has already been much industry comment on CCP resolution, and we welcome further public comment in response to this discussion note to support the work of the FSB as part of the overall CCP workplan."

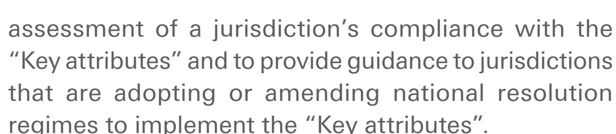
The CPMI-IOSCO and FSB work will guide the Commission's finalisation of its **future proposal on RRPs for CCPs.** Separately, Oversight understands that this could now see the light of day in late November.

The Financial Stability Board (FSB) has published a new webpage with guidance, both general and sector-specific, on the implementation of its **Key attributes** of effective resolution regimes for financial institutions. The FSB adopted the "Key attributes" following endorsement from G20 leaders of policy measures aimed at systemically important financial institutions (SIFIs) that might have a systemic impact were they to fail. General guidance is available on:

- temporary stays on early termination rights;
- information sharing for resolution purposes;
- cooperation and information sharing with host authorities of jurisdictions where a global SIFI has a systemic presence that are not represented on its crisis management group;
- institution-specific cross border cooperation agreements;
- resolvability assessments; and
- recovery and restitution plans.

In addition, there is sector-specific guidance for banks, insurers, financial market infrastructures (FMIs), FMI participants and financial firms holding client assets.

The FSB notes that the final version of the assessment methodology for the "Key attributes" for banks will be published in late 2016, following an earlier consultation. The purpose of the methodology is to guide the



assessment of a jurisdiction's compliance with the "Key attributes" and to provide guidance to jurisdictions that are adopting or amending national resolution regimes to implement the "Key attributes".

The subject of CCP resilience was once again the subject of much comment during the last quarter. Here is the pick of regulator and markets commentary.

In a CEPS paper, published in June, its author argues that FMIs are the **backbone of the financial system:** they enable market participants to transact with one another in an efficient manner. FMIs are inherently systemic, as their very names imply: payments systems, securities settlement systems (SSSs) and central counterparties (CCPs). If an FMI were to cease operation, it could put a stop to payments and/or securities and derivatives transactions. That in turn could destabilise financial markets and possibly the economy at large. In effect, FMIs are "single points of failure": they reduce risk as long as they remain robust, but they concentrate risk and serve as a conduit for contagion, if they do fail. Moreover, the risks posed by FMIs are highly correlated. Each G-SIB is generally a member of several FMIs, so that if a G-SIB enters resolution many or all FMIs may come under pressure at the same time.

Two responses are in order, the author suggests. First, to make FMIs less likely to require resolution; and, second to improve the resolution regime applicable to FMIs. Considerable progress has been made with respect to the first item. So the failure of a FMI should be an extremely remote event, a "tail of the tail" risk. But it is an event that could conceivably occur, and if it did occur, it could have catastrophic consequences. Therefore, it is of the utmost importance to ensure that FMIs are resolvable. To this end, FMIs should prepare recovery plans and authorities should prepare resolution plans. This chapter of the CEPS Resolution Task Force Report highlights the issues that such plans should consider and outlines some options on how the plans might address them.

In an August speech, Shane Worner, senior economist at the International Organization of Securities Commissions, and Jeremy Bray, principal of the Halevi.Tarleton consultancy noted that progress has been made to ensure that **central counterparties can survive systemic shocks,** but some concerns remain about how "bulletproof" they are. The Use of catastrophe bonds to prefund a pool of assets to replenish default funds could also be used to mitigate the risks, they said.

In an August paper, Bank of England economists argued that Regulations requiring banks to hold **collateral on non-cleared derivatives** trades could limit its supply just when demand is highest in times of market stress, report. They urge regulators to analyse the effects of future rules on the supply of high-quality collateral before taking action.

Finally, the EU continues to complete its BRRD framework and the Commission published regulatory technical standards "for methodologies and principles on the valuation of liabilities arising from derivatives" in the Official Journal on 23 August. These RTS concern particularly the valuation of derivatives between an institution under resolution (clearing member) and a CCP, covering aspects such as:

- **Destruction of value** comparison between close-out and bail-out
- Decision to **close out**
- **Netting**
- **Valuation** principles for early termination
- Determination of close-out amount.

The RTS enter into force on 12 September.

Other CCP Regulatory Issues & Derivatives Clearing

Commission's letter on OTC derivative risk mitigation techniques; FSB updates on progress of G-20 reform agenda for OTC Derivatives.

In early August, the European Commission published a letter to the Joint Committee of the European Supervisory Authorities (ESAs) informing them that it intends to endorse, with amendments, the draft regulatory technical standards (RTS) **on risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty** (CCP) under the European Market Infrastructure Regulation (EMIR).

The Commission said that it intended to make a number of amendments, including:

- introducing a recital containing reasoning for the delayed phase-in of the requirements for equity options;
- clarifying that EU counterparties wishing to rely on the intragroup exemption may submit their application after the RTS enter into force;
- clarifying that cash initial margin may be held with equivalent third country institutions (as well as with authorised EU credit institutions);
- clarifying that requirements relating to foreign exchange (FX) contracts should start to apply from the date of application of the relevant delegated act under the revised Markets in Financial Instruments Directive framework, as opposed to the date of entry of the delegated regulation; and
- changes to one provision relating to concentration limits for pension scheme arrangements.

The Commission has also proposed an adjusted implementation timeline as it believes that the implementation dates proposed by the ESAs, although in line with international principles, are no longer viable. In terms of next steps, the ESAs have six weeks to amend the draft RTS and resubmit them to the Commission in the form of a formal opinion.

Shortly thereafter, the Commission followed this up with an **addendum** to the draft RTS for risk-mitigation techniques for OTC derivative contracts not cleared by a CCP. The Commission stated in the addendum that some clarifications needed to be made to the draft RTS on margins in Articles 34 and 36 on application timing and in Annex III where a formula is missing. The Commission intends to have the first wave of the initial margins requirements applied from one month after the date of entry into force of the RTS. This was the intention of paragraph 1 in Article 36. However, the Commission is of the view that the reading of the interaction with the other paragraphs of the same article is not clear, and therefore, it considers the amendment introduced by the addendum to be necessary.

On 26 August, the FSB published its eleventh progress report on the implementation of the reforms to the **over-the-counter (OTC) derivatives market,** particularly on implementation of reforms that and on removal of barriers to trade reporting, that were agreed by the G20 in September 2009. It follows the FSB's last progress report that was published in November 2015. The key findings include that:

- 14 of the 24 FSB member jurisdictions have frameworks in force for determining when OTC derivatives should be centrally cleared;
- trade reporting requirements were in place for over 90 per cent of OTC derivatives transactions in 19 of the 24 FSB member jurisdictions;
- frameworks for determining platform trading requirements are in force in 11 jurisdictions; and
- whilst 20 jurisdictions have in force higher capital requirements for non-centrally cleared derivatives (NCCDs), only three FSB member jurisdictions have margin requirements in place for NCCDs.

Switzerland comes out well in the survey, having implemented the required reforms, via FinfraG 2016, to the trading, central clearing and reporting of OTC, with the exception of trade reporting. In addition, the FSB has published a report on its members' plans to address legal barriers to reporting and accessing OTC derivatives transaction data. The report assesses the progress of FSB member jurisdictions in ensuring that regulators have access to trade reporting data. Again, the Swiss authorities reported that they were in conformity, as legal barriers did not exist. A further progress report will be published by the FSB in July 2017.

EU Institutional Developments

A new EU Commissioner for financial services is appointed; Brexit effects; UK eschews its 2017 Presidency; ESMA latest; Commission publishes draft implementing Act incorporating EU financial services acts under the EEA Agreement.

a) Dombrovkis replaces Jonathan Hill as EU Commissioner

Following Jonathan Hill's resignation post-Brexit vote, Vaskis Dombrovskis has replaced Hill as the Commissioner responsible for financial stability, financial services and CMU (DG FISMA), with effect from 16 July. In a widely quoted speech to the Atlantic Council in mid-July, Dombrovkis confirmed the continuation of making progress in the major financial files:

- **Banking Union,** and notably the deposit protection EDIS proposal;
- **Capital Markets Union** (fine-tuning proposals on securitization, venture capital funds, as well as harmonization of insolvency regimes); together with
- The fine-tuning of the **CRR bank capital regime,** finalizing Basel III implementation in the EU, notably TLAC and MREL;
- Finally the establishment of the **Financial Markets Regulatory Dialogue w**ith the United States, to build on the success of the mutual recognition of CCP supervisory regimes.

b) Brexit

Readers will be interested to know what the potential implications will be of the UK's intention to leave the EU, and how this will effect counterparts in Switzerland, or those dealing with UK-based or incorporated firms. There is much uncertainty over the exact timetable, but Oversight understands so far that:

- The UK is still considering its negotiating position which realistically will not be fleshed out in broad detail until the end of 2016 (and this is accepted by the main players in the EU). This task is complicated by the fact that no fewer than three ministries: the Foreign Office (which normally leads on EU negotiations), and the newly-created Departments for Leaving the EU, and International Trade are competing for the negotiation lead.

- The Article 50 clause is unlikely to be invoked until early 2017, which means that negotiations, given two years to be concluded, will not result in the UK leaving the EU until 2019, at the earliest.

- Much will depend on the eventual outcome, and particularly whether the UK can reach an agreement to "grandfather" access to the Single Market for its firms, including those from the financial sector, by virtue of UK rules, post-Brexit, being judged "equivalent to EU ones.

The main effects, according to Oversight's analysis, are that:

- The UK will no longer host EU agencies and authorities, such as EBA.

- Until the UK formally leaves the EU, all EU rules and regulations will continue to apply.

- Once the UK leaves the EU, it will need to replace the EU rules and regulations which have been largely subsumed under the 1972 European Communities Act (which will be repealed). Typically, EU Regulations (the highest form of EU legal acts) will no longer apply directly.

– For UK FMIs, it means that there will have to be successor rules (to MiFID, EMIR and CSDR).

– As a Third Country, institutions incorporated and based in the UK will no longer benefit from the passport for access to the EU Single Market. So, for instance, Barclays Bank becomes a Third Country bank. Swiss institutions dealing with Barclays Bank from the date of the EU formally leaving the EU, will therefore be dealing with another Third Country institution, and not an EU credit institution. This also means that Swiss firms operating from the UK will also no longer have automatic access to the EU Single Market.

Brexit poses a number of serious economic and other challenges for the UK. The Financial Policy Committee (FPC) of the Bank of England (BoE) published in early July, its first half of 2016 edition of its bi-annual **Financial Stability Report** (FSR).

In March, the FPC identified the referendum on the UK's membership of the EU as presenting the most significant near-term domestic risks to financial stability. In its July report, the FPC noted that some of these risks have started to crystalise. It assessed the outlook for financial stability as challenging, and expects a period of uncertainty and adjustment. The FPC identified the main risks to financial stability as:
– financial market fragility;
– the UK's current account deficit;
– the UK commercial real estate market;
– UK household indebtedness; and
– the global environment, including subdued growth and increased market volatility and risk premia in markets following the UK's vote to leave the EU.

The second part of the report weighs the risks against the resilience of the UK financial system. The FPC notes that resilience has improved in recent years. It points in particular to:
– the increase since 2008 in UK banks' capital and liquidity buffers;
– the UK's regulatory framework for financial services, which permits the system to draw upon capital and liquidity buffers; and
– the extensive contingency planning, involving the BoE, HM Treasury and international bodies, that took place before the EU referendum.

The FPC will monitor closely the risks of:
– a further deterioration in investor appetite for UK assets;
– tightening credit conditions in commercial real estate markets;
– the increasing number of very highly indebted UK households, and the behaviour of buy-to-let investors;
– the outlook for the global economy; and
– reduced and fragile liquidity in core financial markets.

c) Future Presidencies of the EU

As readers will know, EU Member States takes it in turn to "preside" over, and drive the EU agenda every six months. Following the UK's decision to leave the EU, the UK government decided that would not take up its Presidency in the second half of 2017. The UK will be replaced by Estonia, which means that the next three Presidencies: Slovakia (H2 2016), Malta (H1 2017) and Estonia will all be held by newer and less experienced EU Member States. However, the main EU current challenges of Growth, Employment, Migration, Energy sufficiency and Security are not expected to change.

d) ESMA

We reported extensively last time on ESMA's strategy and work programme for 2016. More recently, ESMA's focus has been on more granular topics, namely (i) delivering some 26 MifiD RTS, as well as (ii) initiating a consultation on the regulation of Blockchain, and particularly, Distributed Ledger Technology (which closed on 2 September); and (iii) the afore-mentioned consultation on AIFMD and UCITs liability etc. issues.

Separately, ESMA published on 30 August its latest Report on Trends, Risks and Vulnerabilities in EU securities Markets, covering market developments from January to June 2016. It found that the overall assessment of risk levels in EU markets under its remit remains unchanged. Market and credit risks remain **very high** – the highest level – while liquidity and

contagion risk remain **high.** The risk outlook has deteriorated following the result of the UK referendum on EU membership. Market, liquidity and contagion risks may increase going forward, as political and event risks have intensified, and the macroeconomic environment may deteriorate. The deteriorating liquidity risk outlook reflects increased fund outflows following the referendum, leading to the suspension of redemptions in a number of open-ended funds holding UK commercial property.

In the first part of the reporting period, key trends included high volatility in equity and commodity markets, reflecting valuation concerns, slower emerging markets growth and turmoil in the energy sector caused by falling oil prices. Volatile fund returns and a reassessment of credit risk premia also contributed to portfolio and investment fund outflows. Towards the end of the semester, the outcome of the UK EU referendum had a significant impact in foreign exchange and equity markets, while EU financial market infrastructures proved resilient.

The topical articles feature analyses around the following issues:

- **Proxy advisors** in the EU: Institutional investors increasingly make use of shareholder advice services. ESMA's research provides an overview of the EU proxy advisory services market as part of ESMA's investor protection objective.

- **Financial innovation** scoreboard: ESMA uses a framework that provides a ranking relating product features to ESMA's objectives to prioritise which financial innovations require deeper analysis and potential policy responses.

- **Circuit breakers** in the EU: a first-time overview provided on their use by EU trading venues, and one of the main findings is that circuit breakers may help to increase market quality.

- **Corporate bond market** liquidity in the EU: no systematic trends were observed in liquidity levels in the period analysed, but episodes of decreasing market liquidity were found when wider market conditions deteriorate.

- Synthetic leverage in the **asset management industry:** evidence suggests that reliance by investment funds on leverage built through the use of derivatives may be on the rise, with potential financial stability implications.

e) Incorporation of EU Financial Services Acts under the EEA Agreement

As mentioned in the last issue of Oversight, this is moving to a (fairly) swift conclusion. Following approval at the July Ecofin, the draft EU implementing measure incorporating important financial services acts such as EMIR, AIFMD, SSR and the ESAs Regulations, was published by the Commission in July. Thereby signaling agreement on the part of the EU. Final ratification from the EEA side awaits the approbation of the Icelandic Parliament; Liechtenstein and Norwegian legislatures having done so already.

Market Infrastructure Initiatives by Other Standard-setters

Continuing CPMI-IOSCO Work on implementation and refinement of the PFMIs and UPIs; update on T2S; IOSCO policy.

a) CPMI-IOSCO Guidance on cyber resilience and Further CP on the UPI

As Oversight went to Press last time, the CPMI-IOSCO finalised, on 29 June, its **Guidance on Cyber Resilience** for FMIs. In its paper the CPMI-IOSCO listed recommended international best practices around cyber security. The recommendations are expected to be used by regulators worldwide in their assessments of CSDs against the Principles for FMIs.

ECSDA (and the WFC) had had earlier commented on the draft guidance in February. ECSDA has continued to comment that "unfortunately, the wording of the guidance is largely unchanged, and very few of our suggestions for improvement have been taken into account. In particular, our request to implement the 2-hour recovery time objective in a flexible way seems to have been ignored and CSDs are expected to 'develop concrete plans to improve their capabilities in order to meet the 2-hour recovery time objective' within the next 12 months." Attention now moves to how these recommendations will be implemented at the national level in the relevant jurisdictions, including Switzerland.

CPMI-IOSCO also released a second consultative report on Unique Product Identifier (UPI) on 18 August. This is one part of the CPMI-IOSCO Harmonisation Group's response to its mandate. Following the 2014 FSB Feasibility study on approaches to aggregate OTC derivatives data, the FSB asked the CPMI and IOSCO to develop global guidance on the harmonisation of data elements reported to TRs and important for the aggregation of data by authorities, including the Unique Transaction Identifier (UTI) and the Unique Product Identifier (UPI).

This latest report makes proposals for the harmonised global UPI, whose purpose is to uniquely identify OTC derivative products that authorities require to be reported to TRs. The UPI system will assign a code to each OTC derivative product that maps to a set of data elements describing the product in a corresponding reference database. The first consultative report on the Harmonisation of the UPI was issued in December 2015. The focus of this second consultative report is the format of the UPI code and the content and granularity of the UPI data elements. The report seeks comments from respondents by 30 September 2016.

Besides the consultative reports on the harmonisation of the UPI, the CPMI-IOSCO have already issued a consultative report on Harmonisation of the Unique Transaction Identifier (UTI) and Harmonisation of key OTC derivatives data elements (other than UTI and UPI) – first batch and plan to issue consultative reports on further batches of key data elements (other than UTI and UPI) in the coming months.

To re-cap, G20 Leaders agreed in 2009 that all over-the-counter (OTC) derivatives contracts should be reported to trade repositories (TRs) as part of their commitment to reform OTC derivatives markets in order to improve transparency, mitigate systemic risk and protect against market abuse. Aggregation of the data reported across TRs is necessary to help ensure that authorities are able to obtain a comprehensive view of the OTC derivatives market and activity.

b) PFMI Implementation update

At about the same time also at the end of June, CPMI-IOSCO published the third update to the level 1 assessments of implementation monitoring of the

principles for financial market infrastructures (PFMI). Level 1 assessments are based on self-assessments by individual jurisdictions on how they have adopted, within their regulatory and oversight frameworks, the PFMI's 24 Principles for FMIs and four of the five Responsibilities for authorities. The initial Level 1 assessment was conducted in mid-2013, and a report was published in August 2013. The current report is the third update to the Level 1 assessments, and reflects the status of jurisdictions' legal, regulatory or policy frameworks as at 8 January 2016. Switzerland (covered in page 31) enjoys a "4" rating and a green light, which indicates implementation with the addition of the TR framework.

Overall, the report shows that further progress has been made among those participating jurisdictions that had not completed their implementation measures at the time of the previous update in 2015. In particular, 19 of the 28 jurisdictions have now completed their implementation measures for all FMI types (15 jurisdictions in the previous update). The next update of the Level 1 assessment will be conducted in 2017. Alongside their updates to the Level 1 assessment, the CPMI and IOSCO continue to monitor jurisdictions' progress at Levels 2 and 3. These assessments consider, respectively, the completeness of jurisdictions' implementation measures and their consistency with the PFMI, and consistency in the outcomes of such frameworks.

c) European Central Bank

At the time of writing, Oversight understood that preparations were well in hand for the third migration wave of **T2S,** due on 12 September. This will have 5 CSDs from the Euroclear ESES markets and the VP group in Denmark and Luxembourg, joining, and adding around a further 25% of flow to T2S transactions.

On 15 July, the Governing Council of the ECB approved a revised **Eurosystem oversight policy** framework document which describes the role of the Eurosystem in the field of oversight of payment, clearing and settlement systems and payment instruments. The revised document takes stock of major developments that have affected the Eurosystem oversight function since the last version was published in 2011, notably the publication of the CPMI- IOSCO Principles for financial market infrastructures, the adoption of EMIR, the adoption of the CSDR, the adoption of Regulation ECB/2014/28 on oversight requirements for systemically important payment systems (the SIPS Regulation) and the launch of TARGET2-Securities.

d) Initiatives by IOSCO

No other major relevant initiatives other than those issued in tandem with the CPMI and explained above.

e) The Swiss Legal Framework for FMIs

SIX SIS has begun to communicate what changes can be expected in the wake of the new requirements, notably in relation recently to separation of accounts. Applications for re-authorisation under FinfraG for SIX SIS, SIX x-clear, and the Swiss Exchange will all have to be made by the end of this year.

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A glossary of acronyms

AIFMD	Alternative Investment Fund Management Directive	Governing regulation of hedge funds
BIS	Bank for International Settlements	Global standard setter for major NCBs
BRRD	Directive on the Recovery & Resolution of Banks	EU harmonizing measure for NRA Responsibilities and tools
CFTC	Commodity Futures Trading Commission	US regulator covering regulation of futures & clearing houses
CPMI	Committee for Payments & Market Infrastructures	BIS Committee of central banks' Payment & MI experts
CSDR	Central Securities Depository Regulation	EU measure governing requirements for CSDs
CMU	Capital Markets Union	A Commission plan for regenerating finance for firms
DG FISMA	Directorate-General for Financial Stability, Financial Services & CMU	Commission entity responsible for financial services initiatives
ECON	Economic & Monetary Affairs Committee	of the European Parliament
EEA	European Economic Area	The 28 Member States plus Iceland, Norway & Liechtenstein ('The 3')
EEA Agreement		The mechanism through which EU Laws/Acts become law in 'The 3'
EBA	European Banking Authority	Pan-European banking regulator
ECB	European Central Bank	Requires no explanation
EDs	Equivalence Decisions	Commission confirming compatibility of a Third Country's regime (e.g. CCPs)
EDIS	European Deposit Insurance Scheme	Commission proposal to mutualise bank deposit protection schemes
EIOPA	European Insurance and Occupational Pensions Authority	Pan-European insurance & Pension Fund regulator
EMIR	European Market Infrastructure Regulation	Governing requirements for CCPs, derivatives clearing & trade repositories
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)
FMIs	Financial Market Infrastructures	CCPs, CSDs & Trade Repositories
FSB	Financial Stability Board	Forum of central banks, regulators from major market economies
IOSCO	International Organisation of Securities Commissions	Forum of global securities regulators
MAR	Market Abuse Regulation	Tackling insider trading & market abuse
MiFID/MiFIR	Market in Financial Instruments Directive/Regulation	Rules governing requirements for, and supervision of, investment firms & trading venues
NCAs	National Competent Authorities	MS regulators and supervisors
NCBs	National Central Banks	Central banks of the EU

NRAs	National Resolution Authorities	Bodies empowered with resolving failing institutions
PFMIs	Principles for Financial Market Infrastructures	Guidance for FMIs' management of business and risks
RRPs	Recovery & Resolution Plans	Plans by which firms will mitigate threat of failure and authorities will alleviate systemic contagion
SRB	Single Resolution Board	Euro-area banking resolution authority
SRD	Shareholder Rights Directive	EU measure prioritizing rights of shareholders 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 capital resources above regular capital adequacy
TSFTR	Regulation on transparency of SFTs	Commission Regulation on reporting of Securities Financing Transactions and re-use of collateral
TTIP	Trans-Atlantic Trade & Investment Partnership	Framework for EU – US liberalization of trade & investment (in negotiation)
T2S	Target 2 Securities	Single euro settlement platform project by the ECB
UCITS	Units of Collective Investment In Transferable Securities (Directive)	Products known as Unit Trusts in UK or SICAVs in France or Belgium

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