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SPECIAL POINTS OF INTEREST:

- FSMA publishes its 2013 annual report
- FSMA communicates on the on-line distribution of non-mainstream financial products
- ESMA publishes the recordings of two of the MiFID II open hearings
- ESMA publishes a short guide explaining the impact of MiFID II

Dear Colleagues,

Dear Members,

The summer is almost gone, holidays are behind us and as most of us are now back to work and back to a reality full of complexity and diversity which enriches our daily life. It was sufficient to read and as the case may be to comment on the various consultation papers made available in July and August to understand that the devil is in the detail once one speaks about further regulations. Over-simplification will obviously lead to erroneous approaches. This Newsletter provides you with a range of references to important consultation papers recently issued.

All this did not make the summer too quiet: between the answers to be delivered in a short time frame, there were: the meetings with ESMA, those with FATF for which the Forum was solicited, the follow-up on the FSMA Inspection on the duty of care, the implementation of the "Transversal" Royal Decree and of "AssurMiFID", the concrete interpretation of the new law on financial planning, the monitoring (tests of design and effectiveness) of the law "Laruelle", the data protection developments linked to the cloud, the economic law book, the new banking law with a.o. the split of the Audit Committee, the mandates, the remuneration, the "Fit & Proper" requirements..., and the extreme uneasiness to correctly apply the US and EU embargos on Russia. No need to say that time was not particularly too relax and this was only a mere starting point. We will certainly be occupied the coming months with the abovementioned provisions and with some more.

Holiday period is also an opportunity to free up some time to reflect upon all what the Compliance Officers have been involved in in the course of the last years and to appraise the way forward. I am personally convinced about the following:

- More than ever, priorities have to be well managed and conducted actions need to be efficient. There is no point in deploying huge theoretical frameworks. Things have to be kept as pragmatic as possible.

- More than ever, I am a strong believer in monitoring. Self-assessments without controls (I mean true testings on a sample base and proper first line controls) never sufficiently anticipate the events and reflect often a too positive and therefore false image of the reality.

- Training and awareness become more and more crucial, especially in such a fast growing regulatory environment. If we want to be ready, we need to invest more and more in this. All businesses concerned need to have a good view on the features of the products they advise and of the needs of their clients.

The role of the Compliance function has to be respected. Its duties and responsibilities are not to compare with those of the legal counsel, the risk manager or even the auditor. Attributions, roles and minimal domains to cover have been clearly defined by legal and regulatory provisions and have to be respected. Whether some like it or not, there is more and more on the plate of the Compliance Officer every day: his/her areas of competence have not stopped being broadened the last few

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EDITORIAL (PART II)

years and there is no sign this might change in the future, to the contrary. So, one might say that we have to re-think our yearly planning but as the list of incompressible tasks has expanded, serious risks will have to be taken by Board members in the event the Compliance functions do not have the necessary means to properly perform their duties both on the operational side but also on the governance one. In other words, the support of Top Management in what should be essentially a top down approach is vital.

Some Compliance Officers told me this summer that things would be highly simplified if they would not have to spend so much time convincing the first line about what they consider as being obvious implementation aspects and that their firm would have been much further or would even have avoided troubles if they had been listened to at earlier stages. A feeling which is largely shared by representatives of the sector and which reminds me of something I read in a historical judgment, due to the level of the sanctions, also published this summer. Confronted with huge sanctions, several large international banking groups have not hesitated to staff since then their Compliance function adequately or more accurately had no other choice anymore... We can be wrong thinking it can only happen to others !

Excellente rentrée à toutes et tous en veel moed voor de komende uitdagingen !

With kind regards,

Marie-France De Pover

Chairwoman

DUTCH GOVERNMENT SUBMITS PROPOSALS TO EXPAND BANKERS' OATH TO ALL BANK EMPLOYEES

All Dutch bank employees who have direct contact with clients will have to swear an oath of integrity

The Dutch Finance minister Jeroen Dijsselbloem is introducing new legislation which will require all bank employees who have direct contact with clients to swear an oath of integrity.

Since the beginning of this year senior executives and supervisory board members at financial institutions have to take the oath, as part of efforts to improve confidence in the financial sector. However, the minister now wants to extend this to all staff who have contact with clients and are directly involved in the provision of financial services and to those whose job could affect the institution's risk profile, such as brokers.

This supplements the existing requirement for policy makers of Dutch financial institutions to swear the oath.

The new requirement would extend the oath to almost all bank employees.

In addition, a new regime of professional disciplinary sanctions will be introduced to which the bank employees would be subject should they violate the industry's binding standards of integrity and duty of care.

Such a regime would resemble self-regulatory tribunals that have long been standard for medical professionals. Bank employees would be subject to the disciplinary rules on the basis of private law. However, the Netherlands Authority for the Financial Markets (AFM) and the Dutch Central Bank (DCB) would monitor compliance by the banks.

According to the proposal, the disciplinary rules should provide adequate safeguards for a due process and be applied and implemented by an independent and external expert agency.

The AFM and the DCB would monitor whether banks would actually make the rules work in practice. The further development and organisation of the disciplinary regime is left to the respective banks and the banking sector.

Implementation of both proposed measures would take place through amendments to the Financial Supervision Act

THE JOINT COMMITTEE OF THE ESAS REMINDS FINANCIAL INSTITUTIONS OF THEIR RESPONSIBILITIES

The Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA) published on July 31, 2014, a reminder to banks and insurance companies across the EU on the consumer protection requirements that apply to certain financial instruments they issue. In addition, ESMA highlighted specific risks posed to investors by contingent convertible instruments (CoCos).

As part of their mandates to protect investors, depositors and policyholders, EBA, ESMA and EIOPA have analysed the practices employed by some financial institutions to comply with the new EU capital rules and requirements. These practices concern institutions engaging in 'self-placement', i.e. placing with their clients financial instruments that they, or their group companies, have issued and that are eligible to comply with specific prudential requirements.

The ESAs have stressed that these practices may breach some of the rules governing financial institutions and may result in significant consumer detriment. Institutions should not allow the pressure on their capitalisation needs to affect their compliance with EU requirements in terms of provision of services to consumers.

In particular, the Joint Committee noted that the loss bearing features of many self-placement products expose consumers to significant risks that do not exist for most other financial instruments, such as the risk of having to share losses (risk of bail-in). Furthermore, these products often lack fully harmonised structures, trigger points and loss absorption, making it difficult for consumers to compare them with other financial products and to fully comprehend what they are buying.

The Joint Committee reminded financial institutions across the EU about their responsibility to comply with rules governing conflicts of interest, remuneration, provision of advice and suitability and appropriateness of products. Respecting consumer needs and demands, as well as providing investors and customers with appropriate information, remains compulsory for financial institutions.

Furthermore, ESMA issued a separate additional statement on potential risks associated with contingent convertible instruments (CoCos), a specific category of instruments issued by financial institutions to comply with their prudential requirements. CoCo structures are highly complex and are non-homogenous in terms of trigger levels, necessary capital buffer levels and loss absorption mechanisms.

While they can play an important role in inhibiting risk transfer from debt holders to taxpayers, it is unclear as to whether consumers fully understand the potential risks and are capable of correctly factoring these into their decisions. As investing in CoCos requires a sophisticated level of financial literacy and a high risk appetite, these may not be appropriate for retail investors and ESMA recommends that investors take into account the relevant risks before investing

Self-placement products expose consumers to significant risks that do not exist for most other financial instruments

EBA PUBLISHES REVISED GUIDELINES ON HIGH EARNERS DATA COLLECTION AND REMUNERATION BENCHMARKING

The European banking Authority (EBA) published on July 16, 2014, revised Guidelines on the data collection exercise regarding high earners and on the remuneration benchmarking exercise. The update ensures that the data collection is in line with the amended provisions laid down in the Capital Requirements Directive (CRD IV), which provides for higher quality of the collected data and will increase transparency of remuneration paid to high earners.

ESMA AND EBA PUBLISH HARMONISED GUIDELINES FOR HANDLING CONSUMER COMPLAINTS ACROSS THE EU

The European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) published on June 13, 2014, their Joint Committee final Report on guidelines for handling consumer complaints in the securities and banking sectors. The document aims to increase market confidence and for the benefit of consumers and firms alike it will ensure a harmonised approach to handling complaints for all 28 EU Member States and across all financial services sectors.

The final report is part of the efforts of the European Supervisory Authorities to bring further supervisory convergence across the securities and banking sectors. It was developed on the basis of the existing complaints-handling guidelines established by EIOPA (the European Insurance and Occupational Pensions Authority) for the insurance sector. The report was launched for a public consultation last year and this final version takes into consideration the feedback received.

ESMA and the EBA consider that these guidelines will ensure a consistent approach to complaints-handling across the EU. Consumers can purchase financial services and products in the investment, banking and insurance sectors across the entire EU Single Market and these guidelines will allow them to refer to a single set of complaints-handling arrangements. EU consumers will therefore be able to rely on the same approach irrespective of what type of product they have purchased and where they have purchased it.

In addition to strengthening consumer protection -a key statutory objective for ESMA and for the EBA-, the guidelines will also allow firms, some of which sell products from more than one sector across the EU, to streamline and standardise their own complaints-handling arrangements. National regulators too will be able to supervise the same harmonised requirements across all sectors of financial services in their own jurisdictions.

The EBA monitors the market for structured deposits which are marketed, distributed or sold in the European Union

EBA CONSULTS ON CRITERIA FOR INTERVENTION ON STRUCTURED DEPOSITS UNDER MIFIR

The European Banking Authority (EBA) published on August 5, 2014, a paper laying out criteria for its task of exercising intervention powers on structured deposits. The paper is launched for a public consultation that will run until 5 October 2014. The work is carried out in accordance with the Markets in Financial Instruments Regulation (MiFIR) which requires the EBA to monitor the market for structured deposits marketed, distributed or sold in the European Union.

In accordance with MiFIR, the EBA is tasked with monitoring the market for structured deposits across the European Union. Under certain specific circumstances, either specified by the regulation or by the EBA itself, the EBA can also temporarily prohibit or restrict the marketing, distribution or sale of certain structured deposits.

The European Commission recently requested the EBA to provide technical advice on the criteria and factors to be taken into account when exercising these powers. As the MiFIR establishes an identical framework for the intervention powers of the European Securities and Markets Authority (ESMA) on financial instruments, the EBA based its own work on the criteria identified by ESMA. In its paper, the EBA proposes a set of criteria and includes explanatory notes to provide the rationale for each deviation from the criteria published by ESMA. The EBA considered that some of those criteria were not applicable to structured deposits, while others needed to be adapted and in some cases, new criteria had to be introduced, so as to take into account characteristics that are specific to structured deposits.

EBA PROPOSES POTENTIAL REGULATORY REGIME FOR VIRTUAL CURRENCIES

The European Banking Authority (EBA) published on July 4, 2014, an Opinion addressed to the EU Council, European Commission and European Parliament setting out the requirements that would be needed to regulate 'virtual currencies'. The Opinion is also addressed to national supervisory authorities and advises to discourage financial institutions from buying, holding or selling virtual currencies while no regulatory regime is in place.

Following a thorough assessment of virtual currencies carried out jointly with other European authorities, each within its relevant mandate, such as the European Central Bank (ECB) and the European Securities and Markets Authority (ESMA), the EBA has concluded that, while there are some potential benefits from virtual currencies, such as faster and cheaper transactions, as well as financial inclusion; however risks outweigh the benefits, which in the European Union remain less pronounced.

The EBA identified in particular more than 70 risks across several categories, including risks for users, market participants, risks related to financial integrity, such as money laundering and other financial crimes, and risks for existing payments in conventional (so-called fiat) currencies.

The causes for these risks were also investigated by the EBA. These include for instance that a virtual currency scheme can be created -and its function subsequently changed- by anyone, and in the case of decentralised schemes, such as Bitcoins, by anyone with a sufficient share of computational power, and anonymously so.

The EBA also added that individuals validating transactions (so-called miners) can also remain anonymous, and so can payers and payees; IT security cannot be guaranteed; and the financial viability of some market participants remains uncertain.

Based on this assessment, the EBA is of the view that a regulatory approach to address these risks would require a substantial body of regulation, some components of which would need to be developed in more detail. In particular, a regulatory approach would need to cover governance requirements for several market participants, the segregation of client accounts, capital requirements and, most importantly, the creation of 'scheme governing authorities' accountable for the integrity of a particular virtual currency scheme and its key components, including its protocol and transaction ledger.

However, considering that no such regime is in place as of now, some of the more pressing risks will need to be mitigated in other ways. As an immediate response, the EBA therefore advises national supervisory authorities to discourage credit institutions, payment institutions and e-money institutions from buying, holding, or selling virtual currencies.

> **The EBA issued a public warning to make consumers aware that virtual currencies are not regulated**

EU PARLIAMENT PUBLISHES PAPER MAPPING SIGNIFICANT ECONOMIC AND FINANCIAL LEGISLATION

The EU Parliament's Policy Department has published a paper prepared for the Committee on Economic and Monetary Affairs (ECON) mapping significant EU economic and financial legislation. The paper sets out an overview of the major pieces of legislation within the fourteen policy areas relevant for ECON. Only the main Directives and Regulations are presented, the lists are not intended to be complete, and in general delegated and implementing acts are omitted.

The paper was finalised in May 2014, before publication in the Official Journal for some pieces of legislation, which are mentioned in their proposed state.

FCA FINES STONEBRIDGE LTD £ 8.4M IN RELATION TO SALES OF INSURANCE POLICIES

The Financial Conduct Authority (FCA) has fined Stonebridge International Insurance Limited (Stonebridge) £8,373,600 in relation to sales of accident insurance products.

Between April 2011 and December 2012, Stonebridge targeted low and middle income customers without college degrees or professional qualifications, with its personal accident, accidental death and accidental cash plan insurance products. Outsourcing companies sold policies over the telephone, with those responsible for sales, encouraging people to buy more expensive products, whilst companies responsible for post-sale support actively discouraged customers from cancelling their policies.

The products were sold over the phone to retail customers in the UK, Germany, France, Italy and Spain, with lists of potential customers provided by Stonebridge's business partners, including catalogue sales firms, online retailers, banks and credit card companies. In return, Stonebridge paid the firms a percentage of the premiums.

The FCA found that the telesales scripts that Stonebridge designed for its outsourcing companies did not provide clear, fair and balanced information. It also found that Stonebridge's poor systems and controls, and inadequate oversight of its outsourcing companies breached the FCA's requirements that firms treat customers fairly and have appropriate systems and controls in place.

Stonebridge is carrying out an independent review of its past sales in the UK and EU. Up to 486,444 customers across the UK and EU could be affected. Stonebridge is contacting affected customers to determine whether they should be compensated as a result of its poor sales practices.

Stonebridge has already paid redress worth a total of £400,000 to affected customers in the UK.

Customers are entitled to expect firms to provide them with fair and balanced information

FCA RESTRICTS DISTRIBUTION OF COCOS TO RETAIL INVESTORS

In the first use of new consumer protection powers, the UK Financial Conduct Authority (FCA) will restrict firms from distributing contingent convertible securities (CoCos) to the mass retail market from 1 October 2014.

Contingent convertible instruments (commonly known as CoCos) are hybrid capital securities that absorb losses when the capital of the issuer falls below a certain level. They are risky and highly complex instruments. CoCos can be written off (in part or entirely) or converted into equity when the issuer's capital position falls, while issuers can have unusually broad discretion in relation to coupon payments making it extremely difficult for investors to assess, understand and price CoCos. The FCA believes they are unlikely to be appropriate for the mass retail market, so has stepped in to temporarily restrict their distribution only to professional, institutional and sophisticated or high net worth retail investors.

Christopher Woolard, FCA director of policy, risk and research said: "In a low interest rate environment many investors might be tempted by CoCos offering high headline returns. However, they are complex and can be highly risky, and the FCA has used its new powers to ensure that CoCos are not inappropriately made available to the mass retail market. while still allowing access."

This announcement reflects the FCA's objective to secure appropriate protection for consumers and follows announcements by the the European Securities and Markets Authority and Joint Committee of European Supervisory Authorities highlighting the risks of CoCos and firms responsibilities when selling them.

FCA FINDS FIRMS FAIL TO DELIVER BEST EXECUTION

Retail and professional clients are being failed by firms that don't properly apply the rules on best execution when trading on their behalf, according to a review by the UK Financial Conduct Authority (FCA).

Looking at 36 firms the FCA found that many firms do not understand key elements of the rules and are not adequately controlling client costs when executing orders. These failings were compounded by insufficient managerial oversight or engagement from front office staff for delivering best execution.

Firms must take a range of factors into account (such as price, speed and order size) to ensure they consistently deliver the best result when executing client orders. However the FCA found:

- The rules were often poorly understood or incorrectly applied with frequent attempts by firms to limit their obligations to clients.
- Four firms attempted to evade FCA rules by changing the description of services they offered to clients so they could continue to receive payment for order flow, despite clear guidance on this in 2012. The reviewed firms have ceased this practice and the FCA will take action against any firm where it continues.
- Most firms lacked the capability to effectively monitor order execution or identify poor client outcomes.
- Firms were often unable to demonstrate how they managed conflicts of interest when using connected parties or internal systems to deliver best execution for their clients.
- It was often unclear who was responsible for best execution. Reviews often focused on process rather than client outcomes, with insufficient front office engagement.

The FCA expects all firms to review their best execution arrangements in light of these findings and take immediate action to ensure that they comply with our rules.

This review comes ahead of the introduction of enhanced EU-wide rules on best execution and is linked to the FCA's work on firms' use of client dealing commission and how they discharge their duty to act as good agents.

Firms consider that best execution is a simple commercial imperative

THE PRA AND THE FCA CONSULT ON PROPOSALS TO IMPROVE RESPONSIBILITY AND ACCOUNTABILITY

The Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published on July 30, 2014, two joint consultation papers aimed at improving individual responsibility and accountability in the banking sector.

These changes include:

- A new approval regime for the most senior individuals whose behaviour and decisions have the potential to bring a bank to failure, or to cause serious harm to customers; and
- New rules on remuneration to strengthen the alignment between long-term risk and reward in the banking sector.

These proposals are significant and will make it easier for firms and regulators to hold individuals to account.

Accountability

In the joint consultation paper, '*Strengthening accountability in banks: a new regulatory framework for individuals*', the PRA and FCA proposals include introducing:

- A new Senior Managers Regime which will clarify the lines of responsibility at the top of banks, enhance the regulators' ability to hold senior individuals in banks to account and require banks to regularly vet their senior managers for fitness and propriety;
- A Certification Regime requiring firms to assess

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THE PRA AND THE FCA CONSULT ON PROPOSALS TO IMPROVE RESPONSIBILITY AND ACCOUNTABILITY (PART II)

fitness and propriety of staff in positions where the decisions they make who could pose significant harm to the bank or any of its customers; and

A new set of Conduct Rules, which take the form of brief statements of high level principle, setting out the standards of behaviour for bank employees.

Remuneration

In the accompanying joint consultation paper *'Strengthening the Alignment of Risk and Reward: New Remuneration Rules'*, the PRA and FCA proposals include:

Increasing the alignment between risk and reward over the longer term, by requiring firms to defer payment of variable remuneration (e.g. bonuses) for a minimum of five or seven years depending on seniority, with a phased approach to vesting;

Further enhancing the ability of firms to recover variable remuneration, even if paid out or vested, from senior management if risk management or conduct failings come to light at a later date;

Options to address the problem that employees can sometimes evade the application of malus – reductions in unvested awards – by changing firms; and

Strengthening the existing presumption against discretionary payments where banks have been bailed out.

The PRA and FCA aim to publish final rules in early 2015.

FCA IMPOSES RECRUITMENT BAN ON THE FINANCIAL GROUP FOR FAILING TO CONTROL ITS REPRESENTATIVES

The Financial Conduct Authority (FCA) has used its suspension power for the first time, banning two of the Financial Group's (the Group) subsidiaries, Financial Limited and Investments Limited, from recruiting new Appointed Representatives (ARs) and individual advisers for a period of four and a half months.

The sanction is intended to send a message of deterrence to the rest of the industry, and serve as a reminder that the FCA takes systems and controls failings very seriously and is able to respond with sanctions that target the specific revenue streams of different types of business.

The firms failed to ensure that their ARs and individual advisers were adequately supervised and controlled to minimise the risk of mis-selling and the provision of unsuitable advice to consumers.

The FCA found that, between 20 August 2008 and 30 April 2013, there were systemic weaknesses in the design and execution of the firms' systems and controls and risk management framework.

The FCA found that the firms' failings were directly attributable to the firms' cultural focus which viewed the ARs and individual advisers, rather than their customers, as the end consumer. This culture created an environment which allowed poor standards of business to continue for a significant period of time. At its peak, the network was responsible for approximately 400 ARs and 500 individual advisers , who gave advice to over 60,000 customers, including in relation to high risk transactions such as UCIS, pension switching and occupational pension transfers.

Of significant concern to the FCA was the firms' inadequate systems and controls relating to the recruitment, training, monitoring and control of its ARs and the firms' compliance and file checking processes which did not adequately identify and assess risks.

Were it not for the firms' financial position, the FCA would have imposed a penalty of £12,589,134 on Financial and £621,583 on Investments.

The UK Financial Conduct Authority (FCA) has used its suspension power for the first time

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COUNCIL ADOPTS RULES ON PAYMENT SERVICES AND ACCOUNT FEES

The Council of the European Union adopted on July 23, 2014, a directive aimed at guaranteeing access to basic payment services and improving information on fees related to payment accounts

The directive will enable consumers to make informed choices when opening a payment account by improving the transparency and comparability of information on account fees, whilst eliminating discrimination based on residency. It will also enable consumers to switch accounts more easily.

According to surveys and consultations carried out by the Commission and complaints received, many European consumers face difficulties in opening a payment account due to their lack of a permanent address in the member state where the services provider is located.

The directive sets rules and conditions guaranteeing the provision of payment accounts with basic features to any consumer residing legally in a member state of the EU. Consumers may be required to show a genuine interest in opening an account, though the requirement must not be too burdensome.

A fee information document must be provided, using a clear and standardised format, and member states must ensure access, free of charge, to at least one website comparing fees charged by service providers.

The directive also establishes rules on the switching of accounts within a member state, and making it easier to open an account in another member state.

Member states will have two years to transpose the directive into national law.

COUNCIL ADOPTS NEW RULES ON INVESTMENT FUNDS

The Council of the European Union adopted on July 23, 2014, a directive amending EU rules on investment funds as concerns depository functions, remuneration policies and sanctions.

The text amends directive 2009/65/EC on undertakings for collective investment in transferable-securities (UCITS), introducing specific provisions on the depository's safekeeping and oversight duties, and defining the conditions in which safekeeping duties can be delegated to a sub-custodian.

Rules on depositories have remained unchanged in substance since the original UCITS directive was adopted in 1985. Under the current rules, all assets of a UCITS fund must be entrusted to a depository. The depository is liable for losses suffered as a result of a failure to perform its duties, though the precise contours of those duties are currently defined by the laws of the member states.

The new directive therefore sets out a list of entities that are eligible to act as UCITS depositories, and clarifies the depository's liability in the event of the loss of a financial instrument held in custody. It also includes provisions on redress.

On sanctions, the text lists the main breaches that have been encountered in implementing directive 2009/65/EC and lays down the administrative sanctions and measures that the authorities should be empowered do apply. Sanctions will generally be published, Administrative sanctions for legal persons are set to 10 % of total annual turnover or up to at least €5 million, for natural persons up to at least €5 million, or in both cases up to at least twice the amount of the benefit derived from the infringement, if this benefit can be determined.

As concerns remuneration, the directive introduces a requirement for the UCITS management company to implement policy that is consistent with sound risk management and complies with minimum principles.

Administrative sanctions for UCITS depositories are set to 10 % of total annual turnover

COUNCIL ADOPTS RULES ON CENTRAL SECURITIES DEPOSITORIES

The Council of the European Union adopted on July 16, 2014, a regulation aimed at improving safety in the securities settlement system and opening the market for central securities depositories.

The regulation introduces an obligation to represent all transferable securities in book entry form, i.e. recorded electronically, and to record them in CSDs before trading them on regulated venues.

It harmonises settlement periods and settlement discipline regimes across the EU and introduces a common set of rules, inspired by international standards, addressing the risks of CSD operations and services.

As a result CSDs will benefit from uniform requirements for licensing and an EU-wide "passport", which will help remove barriers of access to the market.

Adoption of the regulation will enable the European Central Bank's "Target2-Securities" initiative for the settlement of securities transactions in euros to begin operating as planned in 2015.

Securities settlement systems in the EU settled approximately €920 trillion worth of transactions in 2010, and held almost €39 trillion of securities at the end of that year. There are over 30 CSDs in the EU, generally one in each country, and two international CSDs (ICSDs) that are specialised in the issuance of international bonds.

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ESMA DETAILS NEW MARKET ABUSE REGIME

New trading platforms and technologies may result in new possibilities for abusive behaviour

The European Securities and Markets Authority (ESMA) has launched, in July 2014, a consultation on the new Market Abuse Regulation (MAR) which entered into force on 2 July 2014. It is issuing two consultation papers seeking stakeholders' views on the draft regulatory and implementing technical standards (RTS/ITS) and Technical Advice (TA), ESMA has to develop for the implementation of the new MAR framework which will become applicable in July 2016.

In order to increase the prevention of market manipulation, and increase the level of investor protection, ESMA's draft RTS/ITS and TA specify the application of MAR to new products, venues and trading techniques and addresses transparency and governance issues.

ESMA's technical provisions address the potential for a financial instrument to be manipulated not only by executing transactions on a trading venue, or across different venues, but assume that manipulation or attempted manipulation of financial instruments may also consist in placing orders which are not executed.

A financial instrument may also be manipulated through behaviour occurring outside a trading venue or within an automated trading environment through the use of electronic means of trading, such as algorithms including high frequency trading strategies. To this end ESMA's technical work updates and strengthens the existing framework by defining how to address these new markets and trading strategies and by introducing new requirements.

The draft ESMA RTS/ITS and Technical Advice cover the following main areas:

- market manipulation indicators;
- prevention and detection of market abuse, including suspicious transactions and order reporting;
- accepted market practices;
- market soundings;
- conditions for and disclosure of buy-back programmes and transaction stabilisation;

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ESMA DETAILS NEW MARKET ABUSE REGIME (PART II)

- disclosure of managers' transactions;
- provisions for insider lists;
- disclosure of inside information, including possible exemptions and delays; and
- investment recommendations or other information recommending or suggesting an investment strategy by staff, including the avoidance of conflicts of interests.

Both Consultation Papers are open for feedback until 15 October 2014.

SEC CHARGES FORMER BANK EXECUTIVE AND FRIEND WITH INSIDER TRADING AHEAD OF ACQUISITION

On August 18, 2014, the US Securities and Exchange Commission charged a former bank executive in Massachusetts and his friend with insider trading in advance of the bank's acquisition of another financial institution.

The SEC alleges that Patrick O'Neill, then a senior vice president at Eastern Bank, learned through his job responsibilities that his employer was planning to acquire Wainwright Bank & Trust Company. O'Neill tipped Robert H. Bray, a fellow golfer with whom he socialized at a local country club. In the two weeks preceding a public announcement about the planned acquisition, Bray sold his shares in other stocks to accumulate funds he used to purchase Wainwright securities. Bray had never previously purchased Wainwright stock. After the public announcement of the acquisition caused Wainwright's stock price to increase nearly 100 percent, Bray sold all of his shares during the next few months for nearly $300,000 in illicit profits.

According to the SEC's complaint filed in federal court in Boston, regulators began requesting information from Eastern Bank and others about trading in Wainwright stock a few months after the trades occurred, and O'Neill quit his job at Eastern Bank rather than respond to such inquiries.

"Country clubs or similar venues may give people a false sense of security that leads them to think they can get away with trading on unlawful stock tips," said Paul G. Levenson, director of the SEC's Boston Regional Office. "But as in any social setting, people who trade securities based on confidential information they receive are taking a huge risk that their illegal tipping and trading will be identified by the SEC."

People who trade securities based on inside information are taking a huge risk

SEC CHARGES BROKERAGE FIRM WITH OVERCHARGING CUSTOMERS IN $18 MILLION SCHEME

On August 14, 2014, the Securities and Exchange Commission charged the New York-based brokerage firm Linkbrokers Derivatives for unlawfully taking secret profits of more than $18 million from customers by adding hidden markups and markdowns to their trades.

According to the SEC's order instituting administrative proceedings, certain representatives on Linkbrokers' cash equity desk defrauded customers by purporting to charge them very low commission fees, but in reality extracting fees that in some cases were more than 1,000 percent greater than represented.

These brokers hid the true size of the fees they were collecting by misrepresenting the price at which they had bought or sold securities on behalf of their customers.

The scheme was difficult for customers to detect because the brokers charged the markups and markdowns during times of market volatility in order to (continued on next page)

SEC CHARGES BROKERAGE FIRM WITH OVERCHARGING CUSTOMERS IN $18 MILLION SCHEME (PART II)

conceal the false prices they were reporting to customers.

Linkbrokers has agreed to pay $14 million to settle the SEC's charges. The SEC previously charged four former brokers on the cash equities desk at Linkbrokers, and three of them later agreed to settle those charges by consenting to judgments ordering more than $4 million in disgorgement plus interest.

According to the SEC's order instituting a settled administrative proceeding against Linkbrokers, the scheme occurred from at least 2005 to February 2009 and involved more than 36,000 transactions.

The surreptitiously embedded markups and markdowns ranged from a few dollars to $228,000. Linkbrokers secured additional illicit profits by stealing a portion of customers' trades.

When customers placed limit orders seeking to purchase or sell shares at a specified maximum or minimum price, the brokers filled the orders at the customers' limit price but withheld that information from the customers. Instead, they monitored the movement in the price of the securities and purchased or sold portions of these positions back to the market, keeping the profit for the firm. The brokers then falsely reported to the customers that they could not fill the order at the limit price.

SEC ANNOUNCES AWARD FOR WHISTLEBLOWER

On July 31, 2014, the US Securities and Exchange Commission announced an award of more than $400,000 for a whistleblower who reported a fraud to the SEC after the company failed to address the issue internally.

This whistleblower provided the agency with specific, timely, and credible information that allowed for a more rapid investigation than otherwise would have been possible.

The whistleblower had tried on several occasions and through several mechanisms to have the matter addressed internally at the company.

"The whistleblower did everything feasible to correct the issue internally. When it became apparent that the company would not address the issue, the whistleblower came to the SEC in a final effort to correct the fraud and prevent investors from being harmed," said Sean McKessy, chief of the SEC's Office of the Whistleblower. "This award recognizes the significance of the information that the whistleblower provided us and the balanced efforts made by the whistleblower to protect investors and report the violation internally."

Whistleblower awards can range from 10 percent to 30 percent of the money collected in a case

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