

# International Regulatory Update

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## ESRB General Board holds inaugural meeting

The European Systemic Risk Board's (ESRB's) General Board has held its first meeting, at which:

- the ESRB rules of procedure were established;
- the members of the Steering Committee for the next three years were elected;
- Stefan Ingves, Governor of the Sveriges Riksbank was elected Chair of the Advisory Technical Committee for three years;
- Mandates for the Advisory Scientific Committee and the Advisory Technical Committee were adopted; and
- the General Board decided to approve the procedures to select the members of the Advisory Scientific Committee and to publish a call for expressions of interest for membership of the Committee – the ESRB has indicated that candidates will have three weeks to apply after publication in the Official Journal, which is expected in early February.

[Rules of Procedure](#)  
[Mandate of the Advisory Technical Committee](#)

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[Mandate of the Advisory Scientific Committee](#)  
[Procedures to select the members of the Advisory Scientific Committee](#)  
[Call for expressions of interest for external experts to be appointed as members of the Advisory Scientific Committee](#)

### **ESAs seek members for Joint Board of Appeal**

The European Supervisory Authorities (ESAs) have issued a [call for expression of interest](#) in the appointment as members of their [Joint Board of Appeal](#).

The Joint Board of Appeal will be composed of six members and six alternates, who must be individuals of a high repute with a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking, insurance, occupational pensions, securities markets or other financial services. The term of office of the members of the Board of Appeal will be five years and it may be extended once.

Applications are due by 18 February 2011.

### **European Commission publishes proposed Omnibus II Directive**

Following the launch of the three new European Supervisory Authorities (ESAs) on 1 January 2011, the European Commission has published its [proposal for a Directive](#) amending the Prospectus Directive and the Solvency II Directive in respect of the powers of the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) (Omnibus II Directive).

The Commission has indicated that changes to existing financial services Directives, laying down the precise scope for the ESAs to exercise certain of the new powers, are necessary in order for the ESAs to work effectively. A first set of technical amendments to 11 Directives was contained in the first Omnibus Directive (Omnibus I), which was agreed as part of the supervision package that entered into force on 1 January 2011. However, for technical reasons, those amendments did not cover the Solvency II Directive and parts of the Prospectus Directive.

The proposed Omnibus II Directive will now be sent to the EU Council and the European Parliament for consideration.

### **Credit rating agencies: ESMA issues call for evidence on criteria for endorsement**

The European Securities and Markets Authority (ESMA) has issued a [call for evidence](#) on the criteria for endorsement under Article 21 (2)(a) of the draft amended regulation on credit rating agencies (CRAs).

ESMA's call for evidence seeks input from interested parties, in particular CRAs and users of ratings, mainly on those aspects of the endorsement regime which have attracted particular attention or where ESMA perceives there is room for clarification. ESMA has indicated that the responses received will feed into a public consultation paper (including a cost-benefit analysis) on the updated guidelines.

The call for evidence period closed on 24 January 2011.

### **Basel Committee chairman sets out post-Basel III work programme**

The Basel Committee on Banking Supervision chairman, Nout Wellink, has delivered a [speech](#) on the Basel III reforms and the Committee's future work programme. Mr. Wellink indicated that Committee's work programme will cover the following areas: (1) the observation of certain elements of Basel III, including the liquidity coverage ratio, the net stable funding ratio and the leverage ratio; (2) further development of supervisory standards – policy development work continues on the market risk rules, systemically important banks, the reliance on external ratings and large exposures; and (3) efforts to improve supervisory practices and cross-border bank resolution practices.

In particular, Mr. Wellink stated that the Committee is conducting a fundamental review of the trading book and intends to consult with the industry as this work progresses. He also identified the Committee's work on systemically important banks, in collaboration with the Financial Stability Board (FSB), as a high priority, indicating that the Committee has developed a provisional methodology which includes both quantitative and qualitative indicators to identify systemically important banks at the global level, and is also examining the magnitude of additional loss absorbency that global SIFIs should have, which, he said, could be met through some combination of common equity, contingent capital and bail-in debt.

Finally, Mr. Wellink noted that, while many efforts focus on the prevention of crises, there is also a need to continue working on cross-border bank resolution, and indicated that the Committee is currently assessing implementation by its member countries of recommendations made by its Cross-border Bank Resolution Group.

### **FSA consults on proposed guidance on advertising ISAs and adverts for investment professionals**

The FSA has published for consultation [proposed guidance](#) on financial promotions and advertising ISAs and adverts for investment professionals. The FSA has issued the guidance to remind ISA providers of its expectations in relation to financial promotions rules, and to clarify its expectations in relation to adverts targeted at investment professionals. The guidance discusses compliance with the fair, clear and not misleading rule and issues of balance (potential benefits and relevant risks).

Responses are due by 11 February 2011.

### **Retail Distribution Review: FSA confirms professional standards for investment advisers from 2013**

The FSA has published a [Policy Statement](#) (PS11/01) which reports on the issues arising from consultation papers CP10/14 and CP10/22, and sets out the FSA's final rules on professional standards for investment advisers.

PS11/01 confirms that retail investment advisers will need to hold a Statement of Professional Standing (SPS) if they want to give independent or restricted advice after January 2013. The SPS is intended to provide customers with evidence that the adviser subscribes to a code of ethics, is qualified, and has kept their knowledge up to date.

PS11/01 also sets out a requirement for investment advisers to complete at least 35 hours of Continuing Professional Development (CPD) each year, at least 21 hours of which must be structured.

Most of the new rules and guidance in PS11/01 will come into effect at the end of 2012. However, the requirement for firms to alert the FSA when they identify competence and ethics issues with their advisers will come into effect in July 2011, and the FSA also intends to update the qualification lists with the status of qualifications that are appropriate under the RDR in February 2011, in order to provide clarity during the transition.

### **FSA consults on proposed guidance on financial promotions**

The FSA has published for consultation [proposed guidance](#) on financial promotions to consolidate previous messages to fund managers and others about what it considers to be fair, clear and not misleading in advertising, and how past performance can be dealt with.

The guidance being consulted on is aimed primarily at fund managers and comments on the importance of financial promotions both for consumers and as an indication of how firms treat their customers. It discusses compliance with the fair, clear and not misleading rule, and issues of balance. In particular, the guidance covers 'image' advertising and the past performance rules.

Responses are due by 25 February 2011.

### **FINMA provides progress update on implementation of remuneration schemes circular**

The Swiss Financial Market Supervisory Authority (FINMA) has reminded financial institutions that the transition period for implementing its circular on remuneration schemes ended on 31 December 2010. Financial institutions are required to submit an implementation report to FINMA by the end of April 2011 in accordance with the guidelines issued by FINMA.

FINMA notes that the relevant financial institutions have been reviewing their remuneration practices in light of the circular's principles and the requirements of the marketplace, and that particular progress has been made in the corporate governance of remuneration schemes. For example, FINMA has found: (1) more direct leadership by the boards of directors on remuneration; and (2) more involvement by the risk management and internal audit functions.

FINMA also notes that, while not all institutions are making the same progress, efforts have been made to redesign their remuneration instruments to align them better with risk and longer-term performance by reducing the percentage of cash in bonuses paid and increasing the percentage of deferred remuneration. Furthermore,

FINMA has also found that the conditions for deferred remuneration are being tightened, and alternatives, such as setting caps on the overall remuneration of any single manager, are being adopted.

[Press release](#)

### **Volcker Rule: Financial Stability Oversight Council publishes report**

As mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Financial Stability Oversight Council (FSOC) has completed a [study](#) on the implementation of Section 619 of the Act (the Volcker Rule), which generally prohibits proprietary trading activities and certain private fund investments. Amongst other things, the FSOC's report make recommendations about relevant requirements that the regulatory agencies should implement and impose on banking entities.

The FSOC has also completed a study on the implementation of Section 622 of the Dodd-Frank Act, which establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company, if the resulting company's consolidated liabilities would exceed 10% of the aggregate consolidated liabilities of all financial companies.

### **SEBI revises reporting requirements for offshore derivative instruments and participatory notes**

The Securities and Exchange Board of India (SEBI) has issued a [circular](#) revising the reporting requirements for foreign institutional investors issuing offshore derivative instruments (ODIs) or participatory notes (PNs) on underlying Indian securities.

Amongst other things, under the revised reporting requirements, foreign institutional investors are required to: (1) submit reports regarding their ODIs or PNs activities and their related underlying trades in a prescribed format set out in annexure A, B and C of the circular by the 10th of every month with a six month lag; and (2) submit a monthly summary report by the 7th of every month, providing a summary of the Indian ODI/PN activities for the immediately preceding month. The reports must also contain a revised undertaking that the issuance of the ODI is in compliance with applicable regulations, and that know-your-customer rules have been followed.

The first monthly summary report must be submitted for the month of April 2011 by 7 May 2011, and the first annexure A, B and C reports must be submitted by 10 October 2011 for the month of April 2011.

### **Japan's FSA extends temporary restrictions on short selling activities and relaxation of share buyback regulations**

The Japanese Financial Services Agency (FSA) has announced that it will extend the temporary restriction on short selling activities and relaxation of the share buyback regulations until 30 April 2011.

Under the temporary restriction on short selling activities: (1) 'naked' short selling activities, where shares are sold without first borrowing or arranging to borrow the relevant shares, are prohibited; and (2) any investor that holds a short sale position of 0.25% or more of the outstanding shares in the relevant listed entity has an obligation to report their short sale position to the stock exchange via a broker.

Under the temporary relaxation of the share buyback regulations: (1) the daily cap for share buybacks by a listed company is increased to 100% of the average daily number of shares traded over the preceding four-week period; and (2) share buybacks by a listed company can be made at any time during trading hours.

[Announcement \(Japanese\)](#)  
[Announcement \(English\)](#)

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Basel III – minimum requirements to ensure the loss absorbency of regulatory capital at the point of non-viability**

On 13 January 2011 the Basel Committee published the minimum requirements for regulatory capital to ensure loss absorbency at the point of non-viability. Together with the criteria set out in 'Basel III: A global regulatory framework for more resilient banks and banking systems' published in December 2010, we now have greater clarity as to the shape of bank capital in future years. However, questions still remain.

This briefing highlights some of the key issues.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/basel\\_iii\\_minimumrequirementsensureth.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/basel_iii_minimumrequirementsensureth.html)

### **ECB eligible collateral – changed criteria from 1 January 2011**

With effect from 1 January 2011 there has been a significant change in the eligibility criteria for collateral that counterparties for Eurosystem monetary policy operations are required to provide to the Eurosystem in order to obtain liquidity.

This briefing highlights the changes and the criteria which are currently applicable.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/ecb\\_eligible\\_collateralchangedcriteriafrom.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/ecb_eligible_collateralchangedcriteriafrom.html)

### **French thin-capitalisation rules now applicable to bank loans**

The Finance Act for 2011, which has been definitively adopted, includes new provisions modifying French thin-capitalisation rules, which limit the tax deductibility of interest incurred by French borrowers. The final text has been amended significantly compared to the initial draft proposed by the Senate and summarised in our client briefing of December 2010. These new rules will have a significant impact on the tax deductibility of interest on bank loans and will apply as soon as tax year 2010.

This briefing discusses the new provisions.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/regles\\_de\\_sous-capitalisationdesormai.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/regles_de_sous-capitalisationdesormai.html)

### **Luxembourg Law of 17 December 2010 on Undertakings for Collective Investment**

The Luxembourg law of 17 December 2010 on undertakings for collective investment was voted on by the Luxembourg Parliament on 16 December 2010 and entered into force on 1 January 2011. It implements the UCITS IV Directive and introduces a number of other changes to the Luxembourg legislation applicable to investment funds. As was the case in 1985 and 2002 with respect to the first UCITS Directive and the so-called UCITS III Directive, Luxembourg is the first country within the European Union to pass the UCITS IV Directive into national law.

This briefing discusses the 2010 Law.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/luxembourg\\_law\\_of17december2010o.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/luxembourg_law_of17december2010o.html)

### **Polish Legislation Newsletter**

The Polish Legislation Newsletter for November – December 2010 summarises selected recent changes to Polish law.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/polish\\_legislationnewsletternovemberdecember.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/polish_legislationnewsletternovemberdecember.html)

### **ESCA publishes draft regulations concerning investment funds and investment management activity**

The UAE Securities and Commodities Authority (ESCA) has published a Draft Decision on Investment Funds and a Draft Decision on Regulating Investment Management Activity for consultation. The consultation comes at a time of considerable development in the regulation of the asset management sector in the Middle East; both the Dubai International Financial Centre and the Qatar Financial Centre have revamped their investment fund regulatory regimes in the past year.

This briefing discusses the two draft decisions.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/esca\\_publishes\\_draftregulationsconcernin.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/esca_publishes_draftregulationsconcernin.html)

## China's competition regulators to target pricing and market power abuse

China's National Development and Reform Commission and the State Administration for Industry and Commerce have issued a swathe of new rules on price and monopoly related abuses, which will come into effect on 1 February 2011. These long-awaited rules will guide the enforcement of the Anti-Monopoly Law against price-related and non-price related anti-competitive conduct. While they offer some welcome clarity in these areas, they have also created new uncertainties in certain areas. With NDRC and SAIC each issuing a set of rules, there are also questions of overlap between the two regulators.

This briefing examines the key points of the new rules, identifies new issues raised, and considers the impact of the new rules as they will apply to everyday business in China.

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