

International Regulatory Update

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OTC derivatives and market infrastructures: ECON Committee reports on proposed regulation

The European Parliament has issued a draft report on the proposed regulation on OTC derivatives and market infrastructures. The draft report, which has been prepared by Werner Langen MEP, Rapporteur to the Parliament's ECON Committee, is currently only available in German. An English translation is expected to be made available when the report is in its final form, at the latest.

Please contact Barbara Kahn by email at barbara.kahn@cliffordchance.com for the German version of this report.

CRD 4: European Commission consults on strengthening bank capital requirements for counterparty credit risk

The European Commission has published a [consultation paper](#) on counterparty credit risk, focusing on two specific issues: (1) the capitalisation of bank exposures to central counterparties (CCPs); and (2) the treatment of incurred credit valuation adjustment (CVA).

The proposed measures are based on the work of the Basel Committee on Banking Supervision, and will form part of the Commission's upcoming legislative proposal (CRD 4) to implement Basel III reforms into EU law, which is expected to be published in summer 2011. The review of the treatment of counterparty credit risk in the CRD complements the Commission's other regulatory initiatives in this area, in particular the proposed Regulation on OTC derivatives, central counterparties and trade repositories that was issued in September 2010.

Responses are due by 9 March 2011.

[FAQs](#)

Bank levy: George Osborne announces increased rates for 2011

The Chancellor of the Exchequer, George Osborne, has [announced](#) an increase in the rate of the bank levy to be charged in 2011. The government initially announced that a reduced rate of 0.05% would apply in 2011, recognising the uncertain market conditions prevailing at the time, but it now no longer considers this necessary.

From 1 March 2011 the rate of the levy will be 0.1% for 2 months, to offset the lower rate of 0.05% charged in January and February, before moving to 0.075%. The government has indicated that this change will increase the revenue from the levy in 2011 by GBP 800 million to GBP 2.5 billion, the same as the target revenue for future years. Previously the 2011 yield was forecast to be GBP 1.7 billion.

UK Chancellor confirms agreement with UK banks on remuneration and lending

Chancellor of the Exchequer George Osborne has issued a statement in the House of Commons regarding the Project Merlin agreement that has been reached between the Government and the major UK banks.

With respect to pay and bonuses, the Chancellor indicated that four major British banks have agreed that total bonuses for their UK-based staff will be lower than last year and that the independent non-executive director that chairs each bank's Remuneration Committee must confirm personally in writing to the FSA that their pay accord conforms with the new commitments. The banks have also agreed to seek explicit approval from their board's Remuneration Committee for the pay of the ten highest paid employees in each of their main business units. In addition, from 2011 onwards, the four major banks have committed to disclose the pay details of the top five highest paid executives on the board in addition to the pay details of their executive board members. The Chancellor indicated that the Government will consult on whether to make it a mandatory requirement from 2012 on all large UK banks to publish the pay of both the board plus the eight highest paid senior executive officers.

With respect to support for regional growth and the Big Society, the banks announced support of GBP 1.2 billion, in addition to the GBP 1.5 billion that had been pledged in 2010 to a new Business Growth Fund. With respect to lending to businesses, the banks have stated a capacity and willingness to lend GBP 190 billion of new credit to business in 2011.

[Chancellor's statement](#)
[Banks' statement](#)
[Letter to Chancellor](#)
[Government statement](#)
[Chancellor's response](#)

Collective redress: European Commission launches consultation

The European Commission has launched a [consultation](#) to identify common legal principles on collective redress. The consultation is intended to help examine how such common principles could fit into the EU legal system and into the legal orders of the EU Member States. The paper sets out a first set of common core principles to guide any possible EU initiatives for collective redress.

Responses are due by 30 April 2011.

Short selling and CDS: Hungarian EU Presidency publishes compromise proposal

The Hungarian EU Presidency has published a [compromise text](#) for the proposed regulation on short selling and certain aspects of credit default swaps (CDS).

MiFID review: Mark Hoban sets out UK approach

The Financial Secretary to Her Majesty's Treasury, Mark Hoban MP, has delivered a [speech](#) in which he outlined the UK government's approach to the MiFID review.

Mr. Hoban noted that, as a result of MIFID, new forms of trading platform have emerged, which require a more tailored regulatory framework. However, he argued that the suggestion of creating a further category of 'organised trading facilities' is ill defined. He also emphasised that not all derivatives deemed eligible for central clearing will necessarily be suitable for platform trading. In addition, he highlighted a number of areas where more analysis is needed before a decision can be made on what action, if any, is required. These included high frequency trading and dark pools – Mr. Hoban argued that the case for intervention in relation to the latter is often exaggerated.

OTC derivatives and market infrastructures: Hungarian EU Presidency publishes compromise proposal

The Hungarian EU Presidency has published a [compromise text](#) for the proposed regulation on OTC derivatives and market infrastructures.

FSA provides update on transition to new regulatory structure

The FSA has published a '[Dear CEO](#)' letter providing an update on its plans for the transition to the new regulatory structure announced by the Chancellor of the Exchequer in his Mansion House speech on 16 June 2010.

The letter indicates that the FSA is making changes to its current management structure to help it evolve from one unitary regulator into the proposed new structure over the next two years. These changes will begin on 4 April 2011, when the FSA will replace its current Supervision and Risk business units with a Prudential Business Unit (PBU) and a Consumer & Markets Business Unit (CMBU). Hector Sants will be the chief executive of the Prudential Regulatory Authority (PRA) as well as head of the PBU, and will be supported by Andrew Bailey, who will join the FSA on 4 April 2011 as a Bank of England secondee to act as the deputy head of the PBU. Martin Wheatley will be chief executive of the Consumer Protection and Markets Authority (CPMA) as well as head of the CMBU.

The reorganisation is only the beginning of a gradual process of change to ensure that the FSA is ready to move to the 'twin peaks' approach to supervision in 2012, and integrated supervision will continue until new regulatory processes have been designed and piloted and staff have been trained.

The FSA has also published an [organisation plan](#) illustrating the changes described in the letter. In addition, the FSA intends to publish papers during the first half of 2011 providing more detail on its approach to the transition to regulation by the CPMA and PRA and their emerging philosophies.

Investment Bank Special Administration Regulations 2011 enter into force

The [Investment Bank Special Administration Regulations 2011](#) have entered into force. The regulations provide for a new special administration regime for investment banks, which is intended to ensure that there is minimum disruption to financial markets as a result of their insolvency.

[Explanatory Memorandum](#)

Second E-Money Directive: FSA issues policy statement on implementation

The FSA has published a [policy statement \(PS11/02\)](#) on the implementation of the second Electronic Money Directive, which was adopted by the European Parliament and the EU Council on 16 September 2009, and must be transposed into UK law by 30 April 2011.

HM Treasury is implementing the Directive through the Electronic Money Regulations 2011, and PS11/02 sets out the FSA's final rules to enable it to carry out its responsibilities.

FSA consults on operational implementation of client money and asset return

The FSA has published a [consultation paper \(CP11/04\)](#) setting out its proposals on how firms should report information on client money and assets through its online reporting system GABRIEL. In particular, the FSA is proposing that: (1) CASS medium and large firms will need to submit the client money and asset return on a monthly basis; and (2) CASS small firms will not initially have to submit the return, but instead will have to complete a half-yearly survey to notify the FSA of their highest client money balance and value of client assets.

The FSA has invited comments on some of the proposals in CP11/04 by 10 April 2011 and on others by 10 March 2011.

The FSA intends to publish a policy statement on implementing the client money and asset return for medium and large firms in May 2011, and rules will enter into force on 1 June 2011. In addition, it intends to publish a Handbook Notice in relation to small firm reporting requirements in April 2011.

German Parliament approves Act on strengthening investor protection

The German Parliament (Bundestag) has approved an Act on the strengthening of investor protection and enhancing the functionality of the capital markets. Following controversial discussions, the parties in the Bundestag have agreed on: (1) introducing a register of compliance officers, sales officers and employees providing investment advice; (2) mandatory product information sheets for retail investment products when providing investment advice; and (3) minimum holding periods, valuation and liquidation rules for regulated open-end real estate funds.

The second chamber of the German Parliament (Bundesrat) still has to vote on the Act, which is expected to enter into force in March 2011. The current version contains various transitional provisions and grandfathering clauses.

[Draft Act](#)

[Comment by Bundesregierung](#)

[Financial Committee report on the new Act](#)

[Financial Committee recommendation](#)

BaFin consults on revised circular on MaComp

The German Federal Financial Supervisory Authority (BaFin) has published a [consultation paper](#) on a revised circular on minimum requirements for compliance and further obligations regarding conduct, organisation and transparency under section 31 et seq. of the German Securities Trading Act (WpHG) for investment firms (MaComp). Amongst other things, the revised circular covers: (1) amendments as regards the scope for investment management companies under the German Investment Act; (2) the abolition of the general exemption for bonds issued by Member States of the EFTA for purposes of monitoring employees' personal transactions; and (3) a new module as regards investment advice records under section 34 para 2a of the WpHG.

Comments are due by 31 March 2011.

Dutch government to regulate providers of instant credit

The Dutch Ministry of Finance has [announced](#) that providers of consumer credit repayable within three months will be regulated before summer 2011. The government notes that a number of small enterprises, often providers of text message services, have been aggressively marketing small sum credits to consumers. As these credits have to be repaid within three months, they do not fall within the scope of the Financial Market Supervision Act.

The government has indicated that the instant credits will in future be regulated through the implementation of the new Consumer Credit Directive. The first Consumer Credit Directive did not address credits repayable within

three months, leaving policymaking regarding these loans entirely to Member States. Under the current directive, only when insignificant charges are payable are short term credits disregarded.

Although the Consumer Credit Directive should have been implemented in June 2010, it is now expected that the Dutch implementing legislation will be enacted in the first half of 2011.

Spanish Royal Decree establishing State Registry of financial intermediaries and companies granting mortgage loans to consumers published

[Royal Decree 106/2011](#), dated 28 January 2011, which creates the State Registry of companies provided for in Law 2/2009, dated 31 March 2009, regulating loan and credit agreements entered into with consumers and intermediation services related to such loan and credit agreements, and determines the minimum amount to be covered by the bank guarantee for carrying out such activities, has been published in the Official State Gazette.

The Royal Decree creates and regulates the State Registry of financial intermediaries and companies granting mortgage loans to consumers. Registration will be mandatory for foreign companies wishing to carry out these activities in Spain, and for Spanish companies incorporated in Autonomous Communities which have not created such registries pursuant to Law 2/2009. Apart from keeping information regarding the registered companies, the Registry will analyse and evaluate the contents of brochures and contractual documentation provided to consumers. In accordance with Law 2/2009, the brochures of registered companies will be published on the Registry's website.

FRB issues final rule implementing Volcker Rule conformance period

The Board of Governors of the Federal Reserve System (FRB) has [approved](#) a final rule implementing provisions of the Dodd-Frank Act that give banking firms a period of time to conform their activities and investments to the prohibitions and restrictions of the Volcker Rule. The final rule is substantially similar to a proposed rule published in November 2010, and will come into effect on 1 April 2011.

Publication of the final rule in the Federal Register is expected shortly.

Federal reserve proposes definitions related to designation of systemically important nonbank financial companies

The Federal Reserve Board (FRB) has requested comment on a proposed rule pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act that would: (1) establish criteria for determining whether a company is 'predominantly engaged in financial activities'; and (2) define the terms 'significant nonbank financial company' and 'significant bank holding company'.

Under the proposal, a financial firm would be considered 'significant' if it has USD 50 billion or more in total consolidated assets or has been designated by the Financial Stability Oversight Council as systemically important. A nonbank financial company or a bank holding company that is considered to be 'significant' does not become subject to any additional supervision or regulation by virtue of such designation, but the relationships between other entities and significant nonbank financial companies and significant bank holding companies may be a relevant factor in other determinations under the Dodd-Frank Act.

Comments are due by 30 March 2011.

[Press release](#)

FDIC approves final rule of assessments, dividends, assessment base and large bank pricing

The Federal Deposit Insurance Corporation (FDIC) has [approved](#) a final rule on 'Assessments, Dividends, Assessment Base and Large Bank Pricing' which implements changes to the deposit insurance assessment system authorized by the Dodd-Frank Act and modifies the assessment system applicable to large banks to remove the reliance on debt issuer ratings and make it more progressive. Dodd-Frank required that the base on which deposit insurance assessments are charged be revised from one based on domestic deposits to one based on assets.

The new large bank pricing system will result in higher assessment rates for banks with high-risk asset concentrations, less stable balance sheet liquidity, or potentially higher loss severity in the event of failure. Over the long term, large institutions that pose higher risk will pay higher assessments when they assume these risks rather than when conditions deteriorate.

[Supplementary information](#)

Federal agencies consult on proposed changes to reporting requirements for OTS-regulated savings associations and savings and loan holding companies

The Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) have proposed changes to reporting requirements for savings associations and savings and loan holding companies regulated by the OTS.

Amongst other things, the proposed changes would: (1) require savings associations to file quarterly call reports, beginning with the 31 March 2012 report date; (2) require savings associations to file data through the Summary of Deposits with the FDIC, beginning with the 30 June 2011 report date; (3) end collection of monthly median cost of funds data from savings associations, effective 31 January 2012; and (4) require savings and loan holding companies to file the same reports with the Federal Reserve that bank holding companies file, beginning with the 31 March 2012 report date.

Comments on the proposed changes will be accepted for 60 days following their publication in the Federal Register, which is expected shortly.

[Press release](#)

Russia adopts legislation on clearing and netting

The President of the Russian Federation, Dmitry Medvedev, has signed into law two long-awaited bills on clearing and clearing activity (the 'Clearing Law') and on amendments to certain laws which provide for recognition and enforceability of close-out netting arrangements in the context of derivative transactions, repos as well as FX and securities transactions documented under eligible master agreements.

The netting amendments will become effective six months from the date of their official publication and are subject to the adoption of secondary legislation. The Clearing Law will enter into force on 1 January 2012.

[Official website of the President of Russia](#)

UPCOMING CLIFFORD CHANCE EVENTS

Perspectives Legal Development Series Spring 2011

Clifford Chance will be holding its next series of 'Perspectives' seminars in London from March to June 2011, covering a number of developments of relevance to finance and capital markets professionals.

Each seminar will be held at Clifford Chance's Upper Bank Street offices on Tuesday evenings and will be repeated in the City at Saddlers' Hall on Wednesday mornings.

Registration queries should be directed to Beverly Otoki on +44 (0)20 8834 1087 or registration@cliffordchance.com.

Current developments and trends in corporate finance – Spring/Summer 2011 Webinar Series

From March to June 2011, Clifford Chance will be holding a series of webinars, 40 minute live and interactive audio-visual broadcasts which are free to attend and easily accessible from your desktop.

Partners from Clifford Chance's corporate practice, together with other experts from across the Clifford Chance network will share their perspectives during the series. The list of webinars is available on the Registration page at <http://inform.cliffordchance.com/vf/7831j9297V7161Hfv8>.

Registration queries should be directed to Sara Engqvist on +44 20 7006 8704 or sara.engqvist@cliffordchance.com.

RECENT CLIFFORD CHANCE BRIEFINGS

EU issues consultation on collective redress

The European Commission's consultation paper 'Towards a Coherent European Approach to Collective Redress' asks a number of questions about an appropriate collective redress regime for Europe, but starts by asking whether it is necessary at all.

This briefing provides an overview of the issues on which the Commission is seeking views.

http://www.cliffordchance.com/publicationviews/publications/2011/02/eu_issues_consultationoncollectiveredress.html

Q&A on the Bribery Act for private equity firms

The deadline for implementation of the UK Bribery Act 2010 has now been delayed, apparently as a result of submissions from business leaders and the scrutiny of the government's growth review. Nevertheless, the Ministry of Justice's final guidance on the adequate procedures commercial organisations should have in place to prevent bribes being paid on their behalf is still expected to be published shortly. Private equity firms are among those currently introducing or enhancing anti-bribery controls, but what risks do they need to address, and what are the particular implications of the Bribery Act for private equity firms?

This briefing contains a set of questions and answers addressing some of the issues.

http://www.cliffordchance.com/publicationviews/publications/2011/02/q_a_on_the_briberyactforprivateequityfirms.html

OFT subscribes to self help remedies for underwriting markets

On 27 January 2011, the Office of Fair Trading (OFT) published its report on the market for equity underwriting and associated services, and its provisional decision not to refer the market for a detailed investigation by the Competition Commission.

This briefing describes and comments on the OFT's conclusions and proposed next steps.

http://www.cliffordchance.com/publicationviews/publications/2011/02/oft_subscribes_toselfhelpremediesfo.html

Contentious Commentary – a review for litigators

'Contentious Commentary' provides a summary of recent developments in litigation. The newsletter is produced by lawyers in the litigation and dispute resolution practice at Clifford Chance.

http://www.cliffordchance.com/publicationviews/publications/2011/02/contentious_commentaryareviewforlitigators.html

Italy turns the spotlight onto directors' compensation

In recent years, the matter of directors' compensation has been the focus of continuous attention worldwide, and, in the wake of the recent financial crisis, it has become one of the central issues of discussions on promoting the stability of the financial markets. At the European level, the growing attention to directors' compensation is documented by numerous recent EU initiatives. In 2004, the EU Commission issued its first Recommendation (2004/913/EC), fostering an appropriate regime for the remuneration of directors of listed companies and, in 2005, a second Recommendation (2005/162/EC) on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board. Finally, in 2009, the Commission issued Recommendation 2009/385/EC, which supplements its two prior recommendations.

In accordance with the provisions of the Commission's Recommendations, the Italian Government has recently approved Legislative Decree No. 259 dated 30 December 2010, which introduced into our legal system new and more stringent requirements for director compensation policies of listed companies. The Decree was published in the Gazzetta Ufficiale on 7 February 2011 and will become effective on 22 February 2011.

This briefing discusses the impact of the Decree.

http://www.cliffordchance.com/publicationviews/publications/2011/02/italy_turns_the_spotlightontodirectors.html

New indirect tax regime of real property leasing

The yearly Italian finance act (now known as the 'Stability Law') has amended significantly the tax regime of real property leasing. The changes have been introduced to ensure that the indirect tax regime of real property leasing is neutral in determining the choice of financing the purchase of real property. The new regime will apply to leasing contracts on property acquired by the leasing company on or after 1 January 2011.

This briefing provides an overview of the old and new regimes.

http://www.cliffordchance.com/publicationviews/publications/2011/02/new_indirect_taxregimeofrealpropertyleasin g.html

Russia adopts legislation on clearing and netting

This briefing paper discusses the proposed amendments to the Russian Securities Market Law, the Insolvency (Bankruptcy) Law and the Credit Organisations Insolvency (Bankruptcy) Law that are currently being considered by the State Duma of the Russian Federation (the lower chamber of the Russian Parliament). While we do not generally issue client briefings on draft legislation, the importance and the possible impact of this draft law on the Russian financial markets warranted an earlier circulation. The discussion in the briefing is based on the draft legislation that was adopted by the State Duma in the third reading.

http://www.cliffordchance.com/publicationviews/publications/2011/01/netting_in_russialightattheendofthetunnel.ht ml

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