

International Regulatory Update

IN THIS WEEK'S NEWS

- Commissioner Barnier discusses financial system reforms in Europe and US
- Securities law: European Parliament publishes paper on cross-border issues
- Poland sets out priorities for upcoming EU Council Presidency
- OTC derivatives and market infrastructures: Hungarian EU Council Presidency publishes compromise proposal
- Basel III: Basel Committee finalises capital treatment for bilateral counterparty credit risk
- AIMA publishes new guide for institutional investment
- Bank of England deputy governor discusses role of CCPs as system risk managers
- Bank of England publishes paper on intraday liquidity risks
- FSA issues policy statement on operational implementation of client money and asset return
- FSA issues policy statement on handbook changes following government reforms to workplace pension schemes
- FSA confirms new consumer complaint handling rules and increased Financial Ombudsman Service award limit
- French government proposes payment of bonuses by companies allocating dividends
- UCITS IV: Bundesrat passes implementing Act
- BaFin consults on draft regulation on electronic notification procedure for domestic investment asset pools
- SFC publishes papers to enhance transparency of regulatory and supervisory work
- SFC issues code of conduct for persons providing credit rating services
- HKEx consults on introduction of after-hours futures trading
- FSS announces additional regulatory measures for equity-linked warrant market
- Recent Clifford Chance briefings: Transaction Services Newsletter – June 2011; and more. [Follow this link to the briefings section.](#)

Commissioner Barnier discusses financial system reforms in Europe and US

Michel Barnier, EU Commissioner for the Internal Market and Services, has given a [speech](#) during which he discussed the implementation of reforms to the financial sector. M. Barnier highlighted the need for consistency

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in the regulation of derivatives and the risk that differences could lead to global arbitrage. He stressed the importance of having similar rules on scope and conditions for clearing, and on collateral and capital requirements, and the importance of recognition of each other's central counterparties and trade repositories. In addition, he noted fears about the extra-territorial effects of Dodd-Frank and stated that he knows this is not the intention.

With respect to Basel III, M. Barnier stressed that the European Commission's upcoming legislative proposal will stick closely to what has been agreed in Basel. With respect to accounting standards, M. Barnier stated that he is confident the US will deliver on its promise to bring true convergence in the area of financial reporting and that the patience of Europe is reaching its limits.

On the subject of crisis management and bank resolution, M. Barnier indicated that the Commission will put forward a proposal in the autumn to create a European framework to manage banking crises. He stated that recourse to taxpayers' money is no longer an option and that governments cannot afford it and citizens will rightly not accept it. He stressed that banks of every size must be allowed to fail, but without bringing the whole financial system with them.

With respect to remuneration for bankers, M. Barnier noted Europe are the only ones who have put in place binding rules on bonuses and that this is a point where he hopes to see change in the US.

Securities law: European Parliament publishes paper on cross-border issues

The European Parliament's ECON Committee has published a [paper](#) on cross-border issues of securities law and European efforts to support securities markets with a coherent legal framework. The paper considers how securities are held in practical terms, why cross-jurisdictional situations are complicated and the resulting problems, EU and international solutions, and the European Commission's November 2010 consultation paper on legislation on legal certainty of securities holding and disposition.

Poland sets out priorities for upcoming EU Council Presidency

On 1 July 2011, Poland will take over the EU's six-month rotating Council Presidency. With respect to financial services, the Polish Presidency has identified the following [priorities](#): (1) advancing the European Commission's upcoming draft principles on crisis management; (2) improving economic governance in the EU; (3) fostering economic growth through further development of the internal market; and (4) improving the conditions for small and medium sized enterprises (SMEs), with special focus on their access to capital.

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

The Hungarian EU Council Presidency has published a [compromise text](#) for the proposed regulation on over-the-counter (OTC) derivatives and market infrastructures. Key issues include: (1) scope – covering only OTC derivatives continues to be considered; (2) frontloading; (3) phase-in; (4) non-financial counterparties; (5) intra-group transactions; (6) collateral; and (7) third-country CCPs.

Basel III: Basel Committee finalises capital treatment for bilateral counterparty credit risk

The Basel Committee on Banking Supervision has announced that it has completed its review of and finalised the Basel III capital treatment for counterparty credit risk in bilateral trades. The review resulted in a minor modification of the credit valuation adjustment (CVA), which is the risk of loss caused by changes in the credit spread of a counterparty due to changes in its credit quality.

The Basel III framework, published in December 2010, sets out capital rules for CVA risk that include standardised and advanced methods. At the time it issued Basel III, the Committee noted that the level and reasonableness of the standardised CVA risk capital charge was subject to a final impact assessment, which has now been completed. It found that the standardised method as originally set out in the December 2010 rules text could be unduly punitive for low-rated counterparties with long maturity transactions. In order to narrow the gap between the capital required for CCC-rated counterparties under the standardised and the advanced methods, the Basel Committee has agreed to reduce the weight applied to CCC-rated counterparties from 18% to 10%.

The Committee has indicated that all other aspects of the regulatory capital treatment for counterparty credit risk and CVA risk remain unchanged from the December 2010 Basel III rules text. The Committee is currently completing its review of capitalisation of bank exposures to central counterparties (CCPs) and expects to finalise its December 2010 proposals before the end of 2011.

[Basel III – A global regulatory framework for more resilient banks and banking systems \(revised June 2011\)](#)

AIMA publishes new guide for institutional investment

The Alternative Investment Management Association (AIMA) has published a [guide](#) for institutional investment which outlines investors' views, expectations and preferences on a variety of operational and organisational issues. In particular, the paper covers: (1) governance; (2) risk; (3) investments; (4) capital; and (5) operations.

Bank of England deputy governor discusses role of CCPs as system risk managers

Paul Tucker, Bank of England Deputy Governor for Financial Stability, has given a [speech](#) on the role central clearing parties (CCPs) play in the financial system, during which he made a number of recommendations on how CCPs can contribute to preserving stability. In particular, he argued that CCPs should regard themselves and act as system risk managers, avoid heavily procyclical margining policies, and monitor the soundness of their clearing members and the risks they bring to the CCP.

Mr. Tucker also called for debates on whether clearing houses should set margin requirements on a gross basis rather than net, whether macro-prudential authorities should vary minimum margin requirements over the cycle, and on the development of an ex ante resolution framework for limiting disorder if a CCP were to fail. Mr. Tucker noted that a CCP resolution could involve either 'recapitalising' the CCP or unwinding its transaction book, but also stressed that questions about orderly resolution of a failed CCP have to involve clarity around the extent to which surviving clearing members absorb losses.

Bank of England publishes paper on intraday liquidity risks

The Bank of England has published a [paper](#) which outlines how intraday liquidity risks arise in large-value payment systems and explains how system participants currently manage these risks. The paper describes the policies that authorities in the United Kingdom and abroad are implementing to strengthen the resilience of payment systems to intraday liquidity stress. It notes that these actions on intraday liquidity risk are likely to increase the cost of system participation, which may change the incentive structure for system participants. The paper also presents a series of policy tools that authorities could use to mitigate any potential unintended behavioural changes that could arise as a result of forthcoming liquidity regulation.

FSA issues policy statement on operational implementation of client money and asset return

The FSA has published a [policy statement \(PS11/06\)](#) on implementing the client money and asset return (CMAR) for medium and large firms, which reports on the main issues arising from the FSA's February 2011 [consultation paper \(CP11/04\)](#) on how firms should report information on client money and assets through its online reporting system GABRIEL and sets out final rules.

In particular, PS11/06 indicates that the CMAR will be implemented on the GABRIEL system and that, for medium and large firms, the regime will come into effect from 1 October 2011, with the first submission due by 21 November 2011. The FSA has also provided guidance notes to help firms fill out the CMAR.

FSA issues policy statement on handbook changes following government reforms to workplace pension schemes

The FSA has published a [policy statement \(PS11/08\)](#) outlining changes to the FSA Handbook following the government's confirmation of workplace pension reforms. From October 2012, employers will be required to automatically enrol their eligible employees into a qualifying pension and contribute into it. Employers may choose the type of scheme they wish to use, including the National Employment Savings Trust, a multi-employer occupational pension scheme.

In its November 2010 [consultation paper CP10/26](#), the FSA proposed changes to its Conduct of Business sourcebook to ensure consumers remain protected and that there are no unnecessary barriers to employers using group personal pensions for automatic enrolment. PS11/08 discusses the responses received to CP10/26 and includes final rules.

The new rules and guidance come into effect from 1 October 2012.

FSA confirms new consumer complaint handling rules and increased Financial Ombudsman Service award limit

The FSA has published a [consultation paper \(CP11/10\)](#) which confirms a number of proposed changes to its complaints handling rules set out in its September 2010 [consultation paper CP10/21](#). CP11/10 sets out the FSA's final policy and rules and guidance, and consults on a proposed change to the definition of 'eligible complainant' in response to feedback received to CP10/21.

The proposals being made final include: (1) the abolition of the two-stage complaints-handling process; (2) an increase in the Financial Ombudsman Service award limit from GBP 100,000 to GBP 150,000; (3) requiring firms to identify a senior individual responsible for complaints handling; and (4) setting out further guidance on how firms might carry out root cause analysis of complaints and take account of ombudsman decisions and other guidance.

Comments are due by 31 August 2011.

French government proposes payment of bonuses by companies allocating dividends

The [draft law amending financing for social security for 2011](#), which contains the French government's initiative on the compulsory payment of bonuses, has been filed with the Assemblée Nationale, with a view to being submitted for Parliamentary debate shortly. The mandatory bonus would apply to commercial companies with 50 employees or more, as well as to some State-owned companies.

The draft law provides that, as of 1 January 2011, any such company that allocates, in respect of the last financial year, an increased amount of dividend per share compared to the average amount of dividend per share distributed in the two previous financial years, is required to pay a bonus for the benefit of all its employees. For companies belonging to a group in which a group committee (comité de groupe) has been set up by virtue of French employment law, payment of a bonus to the subsidiary's employees may be required if the parent company meets the requirement in terms of dividends.

The draft law is expected to be debated on 14 June 2011.

UCITS IV: Bundesrat passes implementing Act

The Bundesrat (the second chamber of the German Parliament) has [passed](#) the German Act implementing the UCITS IV Directive. Amongst other things, the Act amends the Investment Act and introduces minor changes to the German Banking Act, the German Securities Trading Act, the German Securities Sales Prospectus Act, as well as the German Anti-Money Laundering Act.

In addition to implementing the UCITS IV Directive and Level 2 measures in Germany, the Act contains provisions intended to strengthen investor protection and microcredit funds. The Act also contains amendments to the German Investment Tax Act addressing the tax treatment of cross-border fund management services and other tax issues.

The new Act will enter into force on 1 July 2011 (subject to execution by the President and publication in the Federal Law Gazette).

BaFin consults on draft regulation on electronic notification procedure for domestic investment asset pools

The Federal Financial Supervisory Authority (BaFin) has published a [consultation paper](#) on a 'Draft Regulation on the Electronic Notification Procedure for Domestic Investment Asset Pools Complying with Directive 85/611/EEC under the Investment Act' (EAlnvV). The EAlnvV is based on the German Act implementing the UCITS IV Directive, which was passed by the Bundestag (the first chamber of the German Parliament) on 8 April 2011, and the authorisation to issue ordinances under section 128 para 6 of the Investment Act (InvG).

Comments are due by 8 June 2011.

[Explanatory statement](#)

SFC publishes papers to enhance transparency of regulatory and supervisory work

The Securities and Futures Commission (SFC) has published two papers explaining its existing regulatory and supervisory framework for intermediaries. The first paper, '[Regulatory Framework for Intermediaries](#)', outlines the broad role and approach taken by, as well as the underlying philosophy that guides, the SFC in regulating intermediaries. The second paper, '[Approach to Supervision of Intermediaries](#)', focuses on the detailed processes underpinning the SFC's approach to the supervision of intermediaries. The papers are intended to enhance the transparency of the SFC's current regulatory and supervisory work in relation to intermediaries.

SFC issues code of conduct for persons providing credit rating services

The Securities and Futures Commission (SFC) has issued a code of [conduct for persons providing credit rating services](#). The code applies to persons licensed by or registered with the SFC for Type 10 regulated activities

(providing credit rating services), including representatives as defined under section 167 of the Securities and Futures Ordinance. As of 1 June 2011, all credit rating agencies and their rating analysts are required to be licensed by the SFC when carrying on credit rating business in Hong Kong. The creation of the regulatory regime for credit rating agencies follows a public consultation exercise conducted by the SFC in 2010.

Following the inclusion of credit rating services as a Type 10 regulated activity under the Securities and Futures Ordinance, the SFC has also revised the relevant licensing application and notification forms and updated its frequently asked questions on regulated activities, continuous professional training and licensing conditions. The code and the revised forms are effective from 1 June 2011.

[Revised forms and notifications](#)

[Updated FAQs](#)

HKEx consults on introduction of after-hours futures trading

Hong Kong Exchanges and Clearing Limited (HKEx) has published a [consultation paper](#) setting out its proposal to introduce after-hours futures trading. Under the proposed arrangements, after-hours trading of three futures contracts, Hang Seng Index (HSI) futures, H-Shares Index (HHI) futures and gold futures, will begin 30 minutes after the current market close (from 4:45 pm for the index futures and 5:30 pm for the gold futures) and end at 11:15 pm. In addition to aligning HKEx's futures market with other markets, after-hours futures trading is intended to allow investors in HKEx's HSI, HHI and gold futures to trade during most of Europe's business day and part of the business day in the United States.

Comments are due by 8 July 2011.

FSS announces additional regulatory measures for equity-linked warrant market

The Financial Supervisory Service (FSS) has [announced](#) additional regulatory measures to improve the soundness of the equity-linked warrant market. Amongst other things, the FSS intends to: (1) introduce a deposit requirement as an entry barrier to equity-linked warrant market investments; (2) revise market practices to help investors compare equity-linked warrant prices; and (3) with regard to order routing speed, allow brokerages to provide only a reasonable range of service to make sure all investors have a stable and equal access to the trading systems.

The Korea Exchange regulations will be amended in June 2011 to put these changes into effect after July 2011, and those matters requiring system upgrades will be put into effect after the third quarter of 2011.

RECENT CLIFFORD CHANCE BRIEFINGS

Transaction Services Newsletter – June 2011

Transaction Services Newsletter is a bi-monthly publication designed for business and legal professionals working in cash management and securities services. This issue examines the proposed Regulation on derivative transactions, central counterparties and trade repositories – formerly known as EMIR – which is still far from settled.

http://www.cliffordchance.com/publicationviews/publications/2011/06/transaction_servicesnewsletter-june2011.html

New CFC guidelines ease pressure on foreign issuing vehicles

The Italian tax authorities have released additional guidelines clarifying several open points on the application of the new, broader, CFC legislation. The guidelines are very welcome as Italian parent companies of foreign affected subsidiaries are currently facing the need to submit their CFC ruling application to the tax authorities.

This briefing outlines the relevant new provisions.

Please contact Barbara Kahn by email at barbara.kahn@cliffordchance.com for a copy of this briefing.

Sudden change to the usury rules

The Italian Government approved a new set of measures under Law Decree No. 70 dated 13 May 2011, to encourage the development and growth of the economy. One of these measures amends the existing legislative framework regulating interest rate restrictions in Italy, by changing the method for calculating the interest rate

thresholds. This amendment will result in an overall increase of the usury threshold for mortgage loans but also, to a lesser degree, for other types of lending in Italy, subject to certain upper limits.

The amendment introduces additional headroom but does not overcome the issues arising from the interpretation of the existing rules on usury, pursuant to which the usury thresholds fail to take into account risk factors such as the profile risk of the borrower or the nature of the financing. The change will primarily impact upon mortgage loan transactions which were at risk of exceeding the interest rate threshold determined under the existing rules on usury and the low interest rates in the current market (which are now predicted to increase).

This briefing outlines the relevant new provisions.

Please contact Barbara Kahn by email at barbara.kahn@cliffordchance.com for a copy of this briefing (available in English and Italian).

A new investment channel for QFIIs – China permits QFIIs to invest in stock index futures in a limited scope

On 4 May 2011, the China Securities Regulatory Commission officially allowed qualified foreign institutional investors (QFIIs) to trade in stock index futures in China subject to a set of guidelines. The guidelines restrict such trading activities to be solely for hedging purposes, and set trading thresholds based on the investment quota of the QFII.

This briefing provides an overview of the guidelines as to how QFIIs may apply to trade in stock index futures and the corresponding investment restrictions.

English version

http://www.cliffordchance.com/publicationviews/publications/2011/06/a_new_investmentchannelforqfiischin0.html

Chinese version

http://www.cliffordchance.com/publicationviews/publications/2011/06/a_new_investmentchannelforqfiischin.html

Reform of The Civil Code of Japan

Japan is about to reform its Civil Code (minpo), which will clearly affect international business in Japan. Formal government level discussions have already started, a number of legal magazines have already published articles relating to the possible reforms and numerous seminars/presentations have been provided by scholars and practitioners. The Ministry of Justice has submitted an outline of the reform plan for public comments between 1 June and 1 August 2011.

This briefing highlights the reasons why the contemplated reform of the Civil Code is important and its potential impact on the Japanese legal system (particularly relevant for those from common law jurisdictions), and which parts of the Civil Code are to be revisited as part of the reform.

http://www.cliffordchance.com/publicationviews/publications/2011/06/reform_of_the_civilcodeofjapan.html

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