

International Regulatory Update

20 – 24 February 2012

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AIFM Directive: ESMA consults on key concepts and types of AIFM

ESMA has published a [discussion paper](#) on the policy orientations it has identified in order to progress its work to achieve a harmonised application of the AIFM Directive, and on the draft regulatory technical standards required by Article 4(4) of the Directive. ESMA must develop draft regulatory technical standards to determine types of AIFM, where relevant in the application of the AIFMD, and to ensure uniform conditions of application of the AIFMD.

Comments are due by 23 March 2012.

ESMA will develop a consultation paper in Q2 2012 setting out its formal proposals for draft regulatory technical standards on Article 4(4) of the AIFMD. The results of that consultation will be used by ESMA in finalising the draft regulatory technical standards to be submitted to the European Commission for endorsement by the end of 2012.

Short selling and CDS: EU Council approves regulation

The EU Council has formally adopted the regulation on short selling and certain aspects of credit default swaps (CDS). The regulation contains a ban on uncovered sovereign CDS, i.e. buying CDS protection otherwise than for hedging purposes, but subject to a limited power for national regulators temporarily to suspend the ban when it interferes with sovereign debt markets. It also includes new rules on reporting of net short positions to regulators and to the market and new powers for ESMA to coordinate Member State actions.

The regulation will enter into force on the day following its publication in the Official Journal and will apply from 1 November 2012.

[Adopted text](#)

European Commission consults on future of European company law

The European Commission has launched a [consultation](#) on the future of European company law.

The Commission is seeking views both on the general orientation of European company law and on more specific initiatives that could be envisaged in the future. In particular, the consultation covers: (1) the objectives, the scope and the codification of European company law; (2) the future of company legal forms at European level; (3) cross-border mobility for companies; (4) groups of companies; and (5) the capital regime for European companies.

Comments are due by 14 May 2012. The Commission intends to publish a feedback statement summarising the results of the consultation in mid-2012.

[Consultation questionnaire](#)

[FAQs](#)

IOSCO consults on suitability requirements for complex financial products

IOSCO has published a [consultation report](#) on suitability requirements with respect to the distribution of complex financial products, which sets out proposed principles relating to the customer protections, including suitability and disclosure obligations, which relate to the distribution by intermediaries of complex financial products to retail and non-retail customers.

In particular, the proposed principles cover: (1) the classification of customers; (2) general duties irrespective of customer classification; (3) disclosure requirements; (4) protection of customers for non-advisory services; (5) suitability protections for advisory services; (6) compliance function and internal suitability policies and procedures; (7) incentives; and (8) enforcement.

Comments are due by 21 May 2012.

IOSCO consults on principles for ongoing disclosure for asset-backed securities

IOSCO has published a [consultation report](#) which sets out principles designed to provide guidance to securities regulators who are developing or reviewing their regulatory regimes for ongoing disclosure for ABS. The proposed principles have been developed as a complement to its '[Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities](#)', issued in April 2010, which provides guidance on disclosure regimes for offerings and listings of ABS but do not expressly address continuous reporting disclosure mandates or requirements to disclose material developments.

The proposed principles recommend disclosures for those securities that are primarily serviced by the cash flows of a discrete pool of receivables or other financial assets – either fixed or revolving – that by their terms convert into cash within a finite period of time. The principles would not apply to securities backed by asset pools that are actively managed, such as securities issued by investment companies or collateralised debt obligations, or that contain assets that do not by their terms convert to cash.

Comments are due by 21 May 2012.

Hedge Fund Standards Board publishes revised standards

The Hedge Fund Standards Board (HFSB) has published a revised version of its [Hedge Fund Standards](#). The standards were originally developed in the context of the UK regulatory environment and included specific references to the FSA's 'Principles for Businesses'. According to the HFSB, this approach was followed because the majority of hedge fund managers in Europe are based in the UK and were therefore familiar with the FSA's regulatory regime. The amendments are intended to ensure that the standards are equally relevant to a broader international constituency – in particular, US managers – and are not perceived as being tied to a particular national regulatory regime. In addition to internationalising the standards, the changes are intended to strengthen disclosure to investors, improve risk management practices, and ensure consistency in valuation and that policies are in place to prevent market abuse.

The HFSB has also published a [feedback paper](#) summarising the responses received to its August 2011 consultation paper (CP3/2011) on the amendments.

Joint Forum reports on intra-group support measures

The Joint Forum, which comprises the Basel Committee on Banking Supervision, IOSCO and the International Association of Insurance Supervisors, has published a [report](#) intended to assist national supervisors in gaining a better understanding of the use of intra-group support measures in times of stress or unexpected loss by financial groups across the banking, insurance and securities sectors. It is based on the findings of a survey, conducted by the Joint Forum Working Group on Risk Assessment and Capital, which examined the use of intra-group support measures available to banks, insurers and securities firms. The report provides an overview and analysis of the types and frequency of intra-group support measures used in practice.

Market abuse: UK opts out of proposed criminal sanctions directive

20 February

The Financial Secretary to the Treasury, Mark Hoban, has [announced](#) that the UK government has decided not to opt in to the European Commission's [proposal for a directive on criminal sanctions for market abuse](#), although it hopes to be in a position to do so in the future. The Commission's proposal was published on 20 October 2011 and requires Member States to introduce criminal sanctions for the

offences of insider dealing and market manipulation where these are committed intentionally.

Mr. Hoban indicated that the government's decision not to opt in at this point in time is a reflection of the sequencing of the Commission's proposal, rather than particular concerns as to the substance. In particular, he noted that the proposed directive is dependent on the outcome of the Market Abuse Regulation and the MiFID, both of which are currently in early stages of negotiation, and which will determine the new regulatory landscape for financial services. The government believes that it is difficult to assess the implications, scope and way the proposed directive may develop considering the broader uncertainty of the market abuse framework being itself simultaneously subject to a major review. However, Mr. Hoban emphasised that although the government has decided that the UK should not opt in to the proposal now, it intends to participate fully in the negotiations in the hope that it will be able to opt in later, not least as the UK already covers all these offences in its criminal law.

Dutch government consults on amendments to premium pension institution legislation

The Dutch government has launched a [consultation](#) on proposed amendments to the legislation governing premium pension institutions (PPIs), which entered into force on 1 January 2011. The amendments follow concerns expressed by the Dutch regulators in relation to the current capital, solvency and ranking provisions that are applicable to PPIs.

Amongst other things, the proposed amendments include: (1) increasing the required minimum amount of own funds of PPIs from EUR 225,000 to EUR 500,000; (2) requiring PPIs to maintain a solvency buffer of 0.2% of the pension assets under management; (3) requiring a professional liability insurance for PPIs, or a similar provision; and (4) amending the current ranking arrangement to clarify its implications.

Comments were due by 26 February 2012.

[Recent Clifford Chance briefing paper on the first year of PPI legislation](#)

RBI issues draft guidelines on liquidity risk management and Basel III framework on liquidity standards

The Reserve Bank of India (RBI) has published its [draft guidelines](#) on liquidity risk management and the Basel III framework on liquidity standards proposed for

implementation in the Indian banking sector. The draft guidelines incorporate the Basel Committee on Banking Supervision's proposals under the 'Principles for Sound Liquidity Risk Management and Supervision' and 'Basel III: International framework for liquidity risk measurement, standards and monitoring', announced in September 2008 and December 2010 respectively.

The draft guidelines are divided into the following two sections: Section I consolidates the various instructions/guidance on liquidity risk management issued by the RBI from time to time in the past, and where appropriate, harmonises and enhances these instructions/guidance to align with the Basel Committee's proposals; and Section II covers the Basel III guidelines on liquidity risk and their proposed implementation schedule.

Comments are due by 21 March 2012.

Competition Commission of Singapore consults on proposed revisions to merger procedure guidelines

The Competition Commission of Singapore (CCS) has published a [consultation paper](#) on the proposed revisions to its Guidelines on Merger Procedure. The revisions are intended to: (1) enhance transparency of the CCS' merger review procedures; (2) streamline the merger notification process in order to minimise the burdens on businesses; and (3) maximise the benefits of Singapore's voluntary merger notification system.

Comments are due by 20 March 2012.

MAS consults on proposed regulatory framework for financial holding companies and insurance group-wide supervision

The Monetary Authority of Singapore (MAS) has published two consultation papers.

The [consultation paper on the proposed regulatory framework for non-operating financial holding companies](#) (FHCs) proposes to introduce a Financial Holding Companies Act to provide greater clarity to the industry and other stakeholders on the prudential standards and expectations applicable to FHCs.

The [consultation paper on insurance group-wide supervision](#) sets out a framework for insurance groups in line with developments in international standards. Details of the supervisory methodology and approach for insurance groups will be addressed in a separate consultation paper to be issued by the MAS at a later date.

Comments are due by 19 March 2012.

UPCOMING CLIFFORD CHANCE EVENT

The new EU regulation on OTC derivatives

Clifford Chance cordially invites you to attend a briefing on the new EU Regulation on OTC derivatives (EMIR), which will take place at Clifford Chance's offices in 10 Upper Bank Street, London from 8:30 am to 10:15 am on 2 March 2012.

Leading lawyers from Clifford Chance will provide an introductory overview of the key provisions of the regulation, a stock-take on the outcome of the negotiations and some of the key differences from (and similarities to) the US regime under the Dodd-Frank Act and a forward look at the next steps and what market participants will need to do to implement the new regime.

[Registration form](#)

RECENT CLIFFORD CHANCE BRIEFINGS

The New FATF 40 Recommendations – A Framework for the Future

The Financial Action Task Force (FATF) has revised its International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation. FATF is the inter-governmental organisation with responsibility for drawing up measures to combat money laundering, terrorism financing and the proliferation of weapons of mass destruction. Over 180 countries participate in the formulation and implementation of the recommendations.

This briefing discusses the new FATF 40 Recommendations.

http://www.cliffordchance.com/publicationviews/publications/2012/02/the_new_fatf_40_recommendationsaframeworkfo.html

The Flex BV – an improved legal framework for structured finance transactions

It is expected that, after a long legislative process, on 1 July 2012 a considerable number of amendments will be made to the rules of Dutch company law that apply to a Dutch private limited liability company (BV). The current rules follow many of the EU rules that apply on a mandatory basis to a public limited company. These rules do, however, not apply to BVs and they are therefore currently more strictly regulated than required from an EU law perspective. The amendments will create a very flexible regime, making a BV an even more attractive vehicle for structured finance transactions.

This briefing provides a summary of the main changes that may be relevant for the structured finance practice.

http://www.cliffordchance.com/publicationviews/publications/2012/02/the_flex_by_an_improvedlegalframeworkfo.html

CONSOB simplifies prospectus and disclosure requirements for listed companies

CONSOB has passed Order No. 18079 of 20 January 2012, approving a first round of changes to Regulation No. 11971/99 intended to simplify and to rationalise the disclosure obligations for listed companies and other market participants. The changes form part of a wider process to give easier access to the regulated markets, especially for smaller and medium businesses, with the ultimate aim of bolstering the competitive position of the Italian markets. A second round of regulatory changes will be ready for consultation in the next few weeks, with the expectation that the streamlining of the regulatory framework will be completed by early summer. CONSOB also took this opportunity to implement the recent European Directive 2010/73/EU, which amends the Prospectus Directive and the Transparency Directive.

This briefing discusses the changes.

http://www.cliffordchance.com/publicationviews/publications/2012/02/consob_simplifiesprospectusanddisclosur.html

Taxation of Eurobonds – Russian MinFin Proposes New Regime

Further to our January 2012 briefing paper entitled 'Beneficial Ownership Test in the Context of Eurobond Transactions – New Reality' this briefing discusses the proposals recently published by the Russian Ministry of Finance (MinFin) in response to the market reaction to their intention to levy withholding tax on interest payments under Russian Eurobond structures.

http://www.cliffordchance.com/publicationviews/publications/2012/02/taxation_of_eurobondsrussianminfinpropose.html

'Beneficial Ownership Test in the Context of Eurobond Transactions – New Reality'

http://www.cliffordchance.com/publicationviews/publications/2012/02/beneficial_ownershiptestinthecontexto0.html

A Comparison of Takeovers of Hong Kong, Mainland China and Singapore listed Chinese Companies

This briefing paper provides a comparison of takeovers of Hong Kong, Mainland China and Singapore listed Chinese Companies.

http://www.cliffordchance.com/publicationviews/publications/2012/02/a_comparison_of_takeoversofhongkongmainlan.html

Obtaining certification documents

Until recently certification documents of entities registered in Thailand could only be obtained from the office of the Department of Business Development (DBD) and its provincial offices. The DBD recently announced that these certification documents can now be obtained through certain commercial banks or the website of the DBD.

This briefing provides a brief overview of the changes.

http://www.cliffordchance.com/publicationviews/publications/2012/02/obtaining_certificationdocuments.html

SEC Amends Definition of 'Qualified Client' under the Investment Advisers Act of 1940

On 15 February 2012, the Securities and Exchange Commission adopted amendments to rule 205-3 under the Investment Advisers Act of 1940. The rule amendments alter dollar amount thresholds that determine a 'qualified client' under the rule, mandate adjustments for inflation, exclude the value of a natural person's primary residence from the rule's net worth test and add certain transition provisions. The rule amendments take effect 90 days after publication in the Federal Register.

This briefing discusses the amendments.

http://www.cliffordchance.com/publicationviews/publications/2012/02/sec_amends_definitionofqualifiedclientunde.html

CFTC Significantly Limits the Exemption from Commodity Pool Operator Registration for Registered Investment Advisers and Rescinds the Registration Exemptions for Private Fund Managers and Trading Advisers

On 9 February 2012, the CFTC issued a final rule to remove the exemptions that permitted many registered investment advisers and private investment fund managers to avoid the need to register as commodity pool operators (CPOs) or commodity trading advisors (CTAs) in the United States. The final rule imposes extensive reporting requirements on certain registered CPOs and CTAs.

This briefing discusses the final rule.

http://www.cliffordchance.com/publicationviews/publications/2012/02/cftc_significantlylimitstheexemptionfro.html

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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