

International Regulatory Update

10 – 13 April 2012

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Third Anti-Money Laundering Directive: European Commission reports on application; ESAs publish two reports on implementation

The European Commission has published a [report](#) on the application of the Third Anti-Money Laundering Directive, which analyses how the different elements of the existing framework have been applied and considers how the framework may need to be changed. The report follows the adoption of a new set of Financial Action Task Force (FATF) recommendations in February 2012 and the Commission's own review process. It contains an examination of the provisions of the Directive, and in general concludes that although the existing framework appears to work well and no fundamental shortcomings have been identified which would require substantial changes, some modifications are necessary to adapt to the evolving threats posed.

Responses are due by 13 June 2012. The Commission intends to bring forward a proposal for a fourth anti-money laundering Directive in autumn 2012.

In addition, the Joint Committee of the three European Supervisory Authorities (ESAs) has published [two reports](#) on the implementation of the Third Anti-Money Laundering Directive.

The 'Report on the legal, regulatory and supervisory implementation across EU Member States in relation to the Beneficial Owners Customer Due Diligence requirements' analyses EU Member States' current legal, regulatory and supervisory implementation of the anti-money laundering/counter terrorist financing (AML/CTF) frameworks related to the application by different credit and financial institutions of customer due diligence measures on their customers' beneficial owners. The report seeks to identify differences in the implementation of the Directive and to determine whether such differences create a gap in the EU AML/CTF regime that could be exploited by criminals for money laundering and terrorist financing purposes.

The 'Report on the legal and regulatory provisions and supervisory expectations across EU Member States of Simplified Due Diligence requirements where the customers are credit and financial institutions' provides an overview of EU Member States' legal and regulatory provisions and supervisory expectations in relation to the application of simplified due diligence requirements of the Directive. The report focuses exclusively on one particular situation of low risk where simplified due diligence is applicable, namely where the customer is a credit or

financial institution situated in an EU/EEA state or in a country that imposes equivalent AML/CFT requirements.

Both reports conclude that there are significant differences in the implementation across EU Member States, and that some of these differences could have undesirable consequences for the common European anti-money laundering regime. The reports find that some of these differences are not due to the Directive's minimum harmonisation approach, but instead appear to stem from different national interpretations of the Directive's requirements. Both reports also call on the EU to consider addressing these problems.

[FAQs](#)

OTC derivatives and market infrastructures: European Parliament's position on proposed regulation published

The text of the proposed regulation on OTC derivatives and market infrastructures, as approved by the European Parliament's plenary session on 29 March 2012, has been published. The text reflects the outcome of negotiations between representatives of the Parliament, the EU Council and the European Commission. The regulation now needs to be formally approved by the Council and will enter into force 20 days after its publication in the Official Journal.

[Approved text](#)

Basel III: Basel Committee publishes results of monitoring exercise

The Basel Committee on Banking Supervision has published the [results](#) of its Basel III monitoring exercise as of 30 June 2011. The study found that, based on data as of 30 June 2011 and applying the changes to the definition of capital and risk-weighted assets, the average common equity Tier 1 capital ratio (CET1) of Group 1 banks was 7.1%, as compared with the Basel III minimum requirement of 4.5%. In order for all Group 1 banks to reach the 4.5% minimum, an increase of EUR 38.8 billion CET1 would be required. The overall shortfall increases to EUR 485.6 billion to achieve a CET1 target level of 7.0% (including the capital conservation buffer). This amount includes the surcharge for global systemically important banks where applicable.

For Group 2 banks, the average CET1 ratio stood at 8.3%. In order for all Group 2 banks in the sample to meet the new 4.5% CET1 ratio, the additional capital needed is estimated to be EUR 8.6 billion. They would have required an additional EUR 32.4 billion to reach a CET1 target 7.0%.

The Committee also assessed the estimated impact of the liquidity standards. Assuming banks were to make no changes to their liquidity risk profile or funding structure, the study found that as of June 2011, the weighted average Liquidity Coverage Ratio (LCR) for Group 1 banks would have been 90% while the weighted average LCR for Group 2 banks was 83%. The aggregate LCR shortfall is EUR 1.76 trillion, which represents approximately 3% of the EUR 58.5 trillion total assets of the aggregate sample. The weighted average Net Stable Funding Ratio (NSFR) is 94% for both Group 1 and Group 2 banks. The aggregate shortfall of required stable funding is EUR 2.78 trillion.

BIS working paper on systemic risks in global banking published

The Bank for International Settlements (BIS) has published a [working paper](#) on systemic risks in global banking, which argues that systemic risk analysis is severely hampered by the lack of consistent data that capture the international dimensions of finance.

The paper suggests that, while currently available data can be used more effectively, supervisors and other agencies need more and better data to construct even rudimentary measures of risks in the international financial system. Similarly, market participants need better information on aggregate positions and linkages to appropriately monitor and price risks. In addition, ongoing initiatives that will help close data gaps include the G20 Data Gaps Initiative, which recommends the collection of consistent bank-level data for joint analyses and enhancements to existing sets of aggregate statistics, and enhancements to the BIS international banking statistics.

The BIS has emphasised that the views expressed in the paper are those of its authors and not necessarily the views of the BIS.

BIS working paper on loan loss provisioning practices of Asian banks published

The Bank for International Settlements (BIS) has published a [working paper](#) on the loan loss provisioning practices of Asian banks. The paper notes that, in the wake of the Asian financial crisis, many regimes in Asia adopted stricter provisioning requirements, as well as discretionary measures, with the objective of increasing provisioning in good times in response to rising levels of risk. Based on a sample of 240 banks in 12 Asian economies, the authors conclude that countercyclical loan loss provisioning has dominated throughout emerging Asia, most strikingly so in the case of India. They further state that loan loss

provisioning did not simply become more conservative at all points in time subsequent to the Asian financial crisis, but actively leaned in a fashion that ameliorated swings in earnings and the macroeconomy.

The BIS has emphasised that the views expressed in the paper are those of its authors and not necessarily the views of the BIS.

Czech Ministry of Finance consults on draft of new Collective Investment Act

The Czech Ministry of Finance has published [consultation material](#) including a draft of the new Collective Investment Act and launched a public consultation. Amongst other things, the draft Act implements the AIFM Directive, sets out the difference between the fund trustee and the administrator, and enables the incorporation of the investment fund in form similar to the joint stock company or limited partnership.

Responses are due by 11 May 2012.

Bank of Italy consults on its 2012 agenda regarding second-level regulatory provisions

The Bank of Italy has issued a [consultation paper](#) on its proposed agenda for the publication of second-level regulatory provisions during the year 2012 and early 2013.

Amongst others, the Bank of Italy intends to issue rules and regulations on the following matters:

- review of the administrative procedure and sanction framework (by June 2012);
- review of the disclosure/reporting provisions on the offering of financial instruments under section 129 of the Italian Banking Act (by September 2012);
- modification of reporting obligations applicable to banks following the introduction of the implementing technical standards issued by the EBA, ensuring coordination with existing Italian provisions (by November 2012);
- implementation of CRD 4 provisions, to the extent first-level legislative instruments are issued in Italy to that effect (by Q4 2012 – Q2 2013); and
- reporting provisions applicable to asset managers and funds in light of the implementation of the UCITS IV Directive (by December 2012).

In addition, the Bank of Italy intends to complete its 2011 agenda in the course of 2012, including, amongst other things, the second-level provisions required to technically finalise the implementation of the UCITS IV Directive, on

collective investment schemes, and Directive 2007/44/EC as regards acquisitions and increase of holdings in the financial sector.

Comments are due by 26 April 2012.

Polish Parliament considers clearing novation for transactions cleared through CCPs and related changes to capital markets regulations

The Polish Parliament is currently working on a [bill](#) which amends the Act on Trading in Financial Instruments to introduce to the Polish legal system the concept of clearing novation used in transactions cleared through a central counterparty (CCP), most notably certain OTC derivatives.

SGX proposes rule changes to enhance risk controls in derivatives market

The Singapore Exchange (SGX) has published a [consultation paper](#) setting out proposed rule changes as part of risk control enhancements in its derivatives trading market. The SGX is proposing to introduce exchange-hosted pre-trade risk checks on available customer credit for incoming orders before they reach the SGX's order matching engine. Under the proposals, clearing members may set limits on customers' orders, as part of customer credit management.

Along with the introduction of these risk checks, the consultation paper proposes certain rule changes governing direct access to the SGX's derivatives markets, in alignment with international standards.

Comments are due by 22 April 2012. The SGX expects to implement the rule changes in the second quarter of 2012.

SEC requests comment on investor testing regarding target date retirement funds

The SEC is [seeking comments](#) on the results of investor testing regarding target date retirement funds. The SEC will consider the comments before acting on a 2010 proposed rule intended to enhance the information provided to individuals investing in such funds. The proposed rule would generally require target date retirement funds to more prominently disclose the fund's asset allocation at the target date. The disclosure would have to be placed adjacent to the fund's name the first time the name appears in marketing materials. In addition, the proposal requires marketing materials for target date retirement funds to include a table, chart, or graph depicting the fund's asset allocation over time.

Comments are due 45 days after publication in the Federal Register, which is expected shortly.

UPCOMING CLIFFORD CHANCE EVENTS

Current developments and trends in corporate finance – Spring/Summer 2012 Webinar Series

From May to July 2012, 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. The Spring/Summer series of webinars provides commentary on current developments and trends in corporate finance. Partners from Clifford Chance's corporate practice, together with other experts from across the Clifford Chance network will share their perspectives during the series on:

- Sector Focus – Real Estate – All change;
- Cross-border M&A in the current economic environment;
- Corporate borrowers – meeting the challenges of 2012 and new developments in restructuring techniques;
- Navigating M&A deals in the complex world of merger control;
- Managing global risks; and
- Sea of Change for Corporates.

Each webinar contains 25 minutes panel discussion with 15 minutes response to questions submitted by the audience.

All sessions qualify for Law Society, Bar Council non-accredited CPD points. Registration queries should be directed to Nikki Moore on +44 20 7006 4509 or nikki.moore@cliffordchance.com.

[Registration page](#)

RECENT CLIFFORD CHANCE BRIEFINGS

Towards a new regulatory regime for concessions

The European Commission has issued a draft directive that aims to incorporate operators of concessions into the European Union's public procurement regime.

This briefing explores the key issues and draws some conclusions.

http://www.cliffordchance.com/publicationviews/publications/2012/04/towards_a_new_regulatoryregimeforconcessions.html

Belgian Federal Budget 2012 – Corporate tax measures

The Program Law of 29 March 2012 containing a set of new corporate tax measures has been published in the Belgian State Gazette. The final adopted provisions are largely in line with the proposals made in January. Some specific topics (such as the notional interest deduction) will be covered by a separate law that should be put to vote in parliament shortly.

This briefing summarises the most important new corporate tax measures.

http://www.cliffordchance.com/publicationviews/publications/2012/04/belgian_federal_budget2012corporateta.html

The JOBS Act – Removing Significant Regulatory Obstacles to Capital Formation in the United States

The Jumpstart Our Business Startups Act (the JOBS Act) was signed into law by President Obama on 5 April 2012. The JOBS Act seeks to encourage more initial public offerings in the United States and to facilitate other forms of capital formation by reducing some of the burdens imposed on growth-stage companies under US federal securities laws. Several provisions of the JOBS Act became effective immediately while others will not become effective until the SEC adopts implementing rules.

This briefing discusses the JOBS Act.

http://www.cliffordchance.com/publicationviews/publications/2012/04/the_jobs_act_removingsignificantregulator.html

A Practical Guide to Chinese Merger Control

This briefing explains the current practices and procedures that have developed under China's Anti-Monopoly Law, the accompanying Regulations on Notification Thresholds for Concentrations between Undertakings (the Implementation Regulations), as well as a variety of Guidelines and Rules on procedure and substance issued by MOFCOM primarily in 2009 and 2010 to inform the merger control process.

http://www.cliffordchance.com/publicationviews/publications/2012/04/a_practical_guidetochinesemergercontrol.html

The TOKYO PRO-BOND Market

The end of March 2012 saw the first programme listing on the TOKYO PRO-BOND Market, a new professional debt

securities market that was established by TOKYO AIM in May 2011, with a draw-down bond issue listing under the programme taking place in mid-April 2012.

This briefing explores the requirements of this unique Japanese market which, while being a listed securities market where certain disclosure is required, caters for securities to be sold within the framework of a private placement, where only professional investors and certain non-residents of Japan are permitted to participate in the market. The briefing is aimed at issuers considering accessing this market as a possible alternative to traditional 'samurai bonds', and their advisers.

http://www.cliffordchance.com/publicationviews/publications/2012/04/the_tokyo_pro-bondmarket.html

Opportunities for Fund Managers – Relaxed Licence Scheme

To strengthen the foundations of the capital markets and financial business in Japan, the Financial Instruments and Exchange Act was amended to, among other things: (a) consolidate the disclosure regulations for rights offerings; (b) expand the scope of disclosure permitted in English; (c) expand the scope of business in which banks can engage; (d) expand the scope of permitted borrowers of commitment line agreements; (e) introduce a relaxed registration scheme for qualified investors investment management business; and (f) introduce human resources requirements for investment advisory/agency businesses. In addition, fund managers must also pay attention to the related cabinet office ordinance which was amended to (g) introduce additional notification matters for the QII Special Exemption (as defined below) to accommodate the changes brought about by the Amendment.

This briefing looks at the latter three changes which are closely related to the fund business – introduction of: (i) the relaxed registration scheme for qualified investors investment management business; (ii) human resources requirements for investment advisory/agency businesses; and (iii) additional reporting matters for the QII Special Exemption.

http://www.cliffordchance.com/publicationviews/publications/2012/04/opportunities_forfundmanagersrelaxedlicenc0.htm

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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