

International Regulatory Update

23 – 27 April 2012

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Shadow banking conference: Commissioner Barnier discusses Green Paper consultation; Paul Tucker discusses policy agenda; FSB publishes interim report on securities lending and repos

The European Commission has held a conference on the shadow banking system. During his keynote speech, Commissioner Michel Barnier stated that the regulation of the shadow banking system is one of the Commission's priorities for 2012. In particular, M. Barnier discussed the Commission's recently published Green Paper consultation, highlighting the need to establish a clear definition of shadow banking and to reach an agreement on what this concept means. He also indicated that, based on the work carried out by the FSB, the Commission has identified securitisation and securities lending or borrowing with repurchasing ('repo') as two main activities that will be given attention. In addition, M. Barnier noted that the Commission will be careful not to call into question the alternative financing chains, which complement bank lending and which are of direct benefit to the real economy. He also stated that he does not think that financial intermediation should be left entirely and solely in the hands of the banks. Responses to the Green Paper are due by 1 June 2012.

Paul Tucker, the Bank of England's Deputy Governor for Financial Stability and a member of both the Financial Policy Committee (FPC) and the Monetary Policy Committee (MPC) also gave a speech during which he outlined his recommendations for a possible concrete policy agenda. He stated that the objective should not be to curb non-bank finance in general, but to recognise where a form of intermediation is banking in substance or in the risks it creates for the system as a whole.

In addition, to coincide with the Commission's conference, the FSB has published its interim report, 'Securities Lending and Repos: Market Overview and Financial Stability Issues' which describes the segments, operations and practices of securities financing markets which may constitute an important element of the shadow banking system. The FSB is examining the regulation of securities financing markets from a financial stability perspective as part of its wider work on shadow banking. Comments on the FSB's interim report are due by 25 May 2012. The FSB will issue recommendations by the end of 2012.

[Commissioner Barnier's speech](#)

[Paul Tucker's speech](#)

[FSB interim report](#)

[Green Paper on shadow banking \(19 March 2012\)](#)

AIFM Directive: ESMA begins co-operation discussions with non-EU supervisors

ESMA has [announced](#) that it will begin discussions with non-EU supervisors of entities subject to the requirements of the AIFM Directive about supervisory co-operation issues. This follows the agreement by ESMA's Board of Supervisors to follow a common policy in relation to the co-operation arrangements under the AIFMD, which should be in place between EU and non-EU securities supervisors by July 2013.

ESMA will lead on the negotiation of co-operation arrangements with non-EU authorities on behalf of EU supervisors. This will be done through a common memorandum of understanding (MoU), which will facilitate the cross-border supervision of those entities subject to the AIFMD, such as managers of alternative investment funds, depositaries and entities performing tasks under delegation by the manager. The MoU will be based on the IOSCO's Principles Regarding Cross-Border Supervisory Co-operation.

While ESMA will negotiate on behalf of the EU competent authorities, the final signature of the individual MoUs will be the responsibility of each EU competent authority.

ECB consults on recommendations for security of internet payments

The European Central Bank (ECB) has published for consultation a set of [recommendations](#) for the security of internet payments, in the context of the work undertaken by the European Forum on the Security of Retail Payments. The recommendations are organised into three categories:

- general control and security environment of the platform supporting the internet payment service – recommendations in the first category address issues related to governance, risk identification and assessment, monitoring and reporting, risk control and mitigation issues as well as traceability;
- specific control and security measures for internet payments – recommendations in the second category cover all of the steps of payment transaction processing, from access to the service (customer information, enrolment, authentication solutions) to payment initiation, monitoring and authorisation; and
- customer awareness, education and communication – recommendations in the third category include customer protection, what customers are expected to do in the event of an unsolicited request for personalised security credentials, how to use internet

payment services safely and, finally, how customers can check that the transaction has been executed.

Comments are due by 20 June 2012.

CEPS and ECMI publish paper on rethinking asset management

The Centre for European Policy Studies (CEPS) and the European Capital Markets Institute (ECMI) have published a [paper](#), 'Rethinking Asset Management: From Financial Stability to Investor Protection and Economic Growth'. CEPS and ECMI formed a Task Force composed of market participants, international experts, regulators and academics who met regularly throughout 2011 to closely examine the workings of the asset management industry and its contribution to the EU economy. This report is based on those discussions.

This report draws the link between asset management and several key issues, including financial stability, product integrity, investor protection, and the real economy. The report evaluates the many legislative proposals that are currently under consideration, including implementation of the AIFM Directive, MiFID II and PRIIPS, as well as the discussions on product integrity in UCITS and 'shadow banking'.

IOSCO consults on money market fund systemic risk analysis and reform options

IOSCO has published a [consultation report](#), 'Money Market Fund Systemic Risk Analysis and Reform Options', which provides a preliminary analysis of the possible risks that money market funds (MMFs) could pose to systemic stability and consults on an exhaustive range of policy options to address those risks.

IOSCO analyses the features of MMFs that make them vulnerable to risk, and explains some of the implications for policy options that they have. IOSCO asks its members and others to comment on options that fall within the following categories and are aimed at reinforcing the robustness and safety of money market funds.

Comments are due by 28 May 2012.

IOSCO consults on principles of liquidity risk management for collective investment schemes

IOSCO has published a [consultation report](#) on principles of liquidity risk management for collective investment schemes, which outlines a set of principles against which both the industry and regulators can assess the quality of

regulation and industry practices relating to liquidity risk management for collective investment schemes.

According to IOSCO, the fundamental requirement of liquidity risk management is to ensure that the degree of liquidity that the open-ended collective investment scheme manages allows it in general to meet redemption obligations and other liabilities. The principles provide details on how compliance with this requirement can be achieved.

Comments are due by 2 August 2012.

ISDA publishes best practices for OTC commodity derivatives trade processing

ISDA has published a [paper](#), 'OTC Commodity Derivatives Trade Processing Lifecycle Events', which analyses existing and potential opportunities for further standardisation in the OTC commodity derivatives markets to drive improvements in operational efficiency, reduce operational risk, and increase netting and clearing for appropriate products. The paper also provides a summary of OTC commodity derivatives markets' trade processing lifecycle events and an overview of the current industry state of processing.

The paper outlines three areas for potential improvement: (1) lifecycle processes; (2) OTC settlement processes; and (3) settlement matching processes.

IMF staff discussion paper on bail-in published

The IMF has published a [staff discussion paper](#), 'From Bail-out to Bail-in: Mandatory Debt Restructuring of Systemic Financial Institutions', which studies the effectiveness of a statutory bail-in power in restoring the viability of distressed institutions, discusses potential risks when a bail-in power is activated, and proposes design features to mitigate these risks.

The paper notes that, as a going-concern form of resolution, bail-in could mitigate the systemic risks associated with disorderly liquidations, reduce deleveraging pressures, and preserve asset values that might otherwise be lost in a liquidation. However, the authors also warn that, if the use of a bail-in power is perceived by the market as a sign of the concerned institution's insolvency, it could trigger a run by short-term creditors and aggravate the institution's liquidity problem. According to the authors, bail-in should therefore ideally be activated when a capital infusion is expected to restore a distressed financial institution to viability, with official liquidity support as a backstop until the bank is stabilised.

The IMF has emphasised that the paper represents the views of its authors and does not necessarily represent IMF views or IMF policy.

G20 meeting: Financial Stability Board reports on progress of financial regulatory reforms

The Financial Stability Board (FSB) has published a [letter](#) to the G20 Finance Ministers and Central Bank Governors, reporting on progress in the financial regulatory reform programme.

In addition, the FSB has published:

- a report on progress in extending the framework for Global Systemically Important Financial Institutions (G-SIFIs) to domestic systemically important banks – the FSB and Basel Committee on Banking Supervision intend to submit their proposals in this area to the G20 Ministers and Governors meeting in November 2012;
- a report on progress in strengthening the oversight and regulation of the shadow banking system – the FSB is focusing in particular on banks' interactions with shadow banking entities, money market funds (MMFs), other shadow banking entities, securitisation, and securities lending and repos, and intends to publish its recommendations in all these areas by the end of 2012; and
- a joint report from the International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB) on their progress in converging their standards, together with a report on enhancements to the governance of the IASB.

[Progress report on extending framework for G-SIFIs to domestic systemically important banks](#)

[Progress report on strengthening the oversight and regulation of the shadow banking system](#)

[Joint IASB / FASB report on accounting convergence G20 communiqué](#)

FRC consults on UK Corporate Governance Code, Stewardship Code and Auditing Standards

The Financial Reporting Council (FRC) has launched a consultation on proposed revisions to the UK Corporate Governance Code and International Standards on Auditing (UK and Ireland) to give effect to its Effective Company Stewardship proposals. The FRC is also consulting on updates to the Stewardship Code.

The proposed changes to the UK Corporate Governance Code include: (1) requesting FTSE 350 companies to put the external audit contract out to tender at least every ten

years; (2) asking boards to explain why they believe their annual reports are fair and balanced; (3) encouraging more meaningful reporting by audit committees; and (4) providing more guidance on explanations that should be provided to shareholders when a company chooses not to follow the Code. The new Code will also embody provisions previously announced requiring boards to report on their gender diversity policies.

The proposed changes to the Stewardship Code include: (1) clarifying what is meant by stewardship, and the respective responsibilities of asset owners and asset managers; and (2) asking investors to disclose their policy on stock lending, and whether they recall lent stock for voting purposes.

The FRC is also consulting on proposed changes to the Guidance for Audit Committees to support the changes to the UK Corporate Governance Code and to give effect to the FRC's Effective Company Stewardship proposals.

Comments on all three consultation papers are due by 13 July 2012. Subject to the outcome of the consultations, all the proposed changes will apply to financial years beginning on or after 1 October 2012.

[Consultation paper on revisions to UK Corporate Governance Code and Guidance on Audit Committees](#)
[Consultation paper on revisions to UK Stewardship Code](#)
[Consultation paper on revisions to International Standards on Auditing \(UK and Ireland\)](#)

FSA consults on changes to Training and Competence sourcebook

The FSA has published a [consultation paper \(CP12/08\)](#) on proposed changes to the Training and Competence sourcebook. In particular, CP12/08 sets out proposals to add three qualifications to the 'appropriate qualification tables' in the Training and Competence sourcebook and to amend the details for three qualifications on the 'appropriate qualification list' in the Training and Competence sourcebook.

Comments are due by 31 May 2012.

SFC issues guidance relating to derivative products under Code of Conduct

The Securities and Futures Commission (SFC) has issued a [circular](#) to licensed corporations and registered institutions relating to derivative products under the Code of Conduct for Persons Licensed by or Registered with the SFC. The guidance is intended to assist intermediaries in performing their product due diligence.

The SFC notes that it is the obligation of an intermediary to conduct product due diligence for the purpose of the Code of Conduct. In determining whether a fund is a derivative product, it is open to the intermediary to take account of the classification assigned to it by the issuer and it should also take the guiding actions set out in the circular.

FSA consults on draft cabinet office ordinances for mandatory clearing obligations and trade data storage and reporting obligations

The Japanese Financial Services Agency (FSA) has commenced a [public consultation procedure](#) for the draft cabinet office ordinances and the draft administrative notice, which will end on 28 May 2012 noon Tokyo time. The Draft sets out the details and scope of the requirements for: (1) the mandatory clearing of obligations at a central counterparty; and (2) the storage and reporting of transaction data, in respect of OTC derivative transactions.

These requirements were introduced by amendments to the Financial Instruments and Exchange Act (Act No. 25 of 1948, the 'FIEA') in May 2010. Those parts of the amendments to the FIEA and the relevant cabinet office ordinances and the administrative notice are expected to be effective on 1 November 2012.

RECENT CLIFFORD CHANCE BRIEFINGS

Major Developments and Policy Issues in EU Competition Law

This briefing provides a detailed analysis of the most significant EU cases relating to anti-competitive agreements, abuses of dominance and merger control in the last 12 months.

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

Development of CCP in Japan – Interest Rate Swap Clearing

With respect to certain types of OTC derivative transactions, the mandatory clearing of obligations at a central counterparty (CCP) are to be imposed by November 2012. The Japan Securities Clearing Corporation (JSCC) has already commenced its operation as a CCP with regard to CDS transactions in Japan. In March 2012, JSCC released the draft outline of interest rate swap clearing with a view to commencing its clearing operations for interest rate swaps by November 2012.

This briefing discusses the mandatory clearing obligations and the draft outline.

English version

http://www.cliffordchance.com/publicationviews/publications/2012/04/development_of_ccpinjapaninterestrateswa0.html

Japanese version

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

Overview for fund managers – MAS consultation paper on proposed revisions to regulatory capital framework

On 3 April 2012, the Monetary Authority of Singapore (MAS) issued a public consultation paper entitled 'Proposed Revisions to the Regulatory Capital Framework for Holders of Capital Markets Services Licences' following their review of the current regulatory capital framework contained in the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations.

This briefing provides an overview and comparison of both the existing and proposed regulatory capital requirements under the consultation paper affecting a fund manager.

Please contact Mhairi Appleton by email at mhairi.appleton@cliffordchance.com for a copy of this briefing.

Myanmar liberating its financial sector?

Myanmar has taken several steps over the past year to open up its economy. In one of the most dramatic and radical economic reforms to date, Myanmar has introduced a series of measures aimed at developing its inadequate financial system. The first significant step was a managed currency float which occurred on 2 April 2012.

This briefing summarises recent reforms in the financial sector.

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

Come you back to Mandalay

In the last year the new regime in Burma, headed by President U Thein Sein, has introduced some key reforms which may pave the way for foreign investment in the country. This briefing looks at the current status of foreign sanctions. It also considers key issues which have an impact on decisions to invest in Burma and the opportunities afforded by the changes underway to laws

designed to encourage foreign investment and the easing of sanctions.

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

Consultation opens on OTC derivatives changes in Australia

The Australian Council of Regulators' has released a report and consultation paper on the implementation of G20 commitments on OTC derivatives in Australia. The framework implementation paper released by the Council for consultation does not introduce any trade reporting, central clearing or trade execution obligations for OTC derivatives transactions. At this stage, the move to reporting, electronic creation, clearing and the form of CCP are to be left to market-led outcomes.

The release indicates that there will be no mandated local CCP for clearing of OTC derivatives. How derivatives are cleared will (at least initially) be driven by the market. Therefore, clients will need to be aware of the clearing options available and how to re-paper their relationships to access relevant CCPs in response to market demands and strategic opportunities.

This briefing summarises the key points of the consultation paper.

Please contact Mhairi Appleton by email at mhairi.appleton@cliffordchance.com for a copy of this briefing.

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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