

# International Regulatory Update

28 May – 8 June 2012

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- Recent Clifford Chance briefings: Federal Reserve Board Acts on Basel III Implementation, Market Risk Capital Rule; Into the Light – A response to the EU Commission Green Paper on Shadow Banking; and more. [Follow this link to the briefings section.](#)

### **Crisis management: European Commission publishes legislative proposal for bank recovery and resolution**

The European Commission has published its proposal for a directive establishing an EU framework for the recovery and resolution of credit institutions and investment firms. The proposed tools are divided into powers of prevention, early intervention and resolution, with intervention by the authorities becoming more intrusive as a bank's situation deteriorates. In particular, the proposed directive sets out the following resolution tools: (1) sale of business; (2) bridge institutions; (3) asset separation; and (4) bail-in.

The bail-in tool would involve recapitalising the banks with shareholders wiped out or diluted, and creditors having their claims reduced or converted to shares. To this end, banks would be required to have a minimum percentage of their total liabilities in the shape of instruments eligible for bail-in.

The framework also establishes the mechanisms for cooperation between national authorities so that where a cross-border banking group fails, national authorities can coordinate resolution measures to protect financial stability in all affected Member States.

[Crisis management page](#)  
[Proposed directive \(provisional version\)](#)  
[Impact assessment](#)  
[FAQs](#)

### **Banking union: European Commission issues memorandum**

The European Commission has issued a [memorandum](#) putting forward the concept of a banking union to enable deeper economic integration as one of the remedies to the financial crisis. The memo clarifies that the banking union is not a new legal instrument to be drafted but, rather, a political vision for increased EU integration intended to build on recent major steps to strengthen the regulation of the banking sector.

The President of the European Council, Herman Van Rompuy, will present a report in close collaboration with the President of the European Commission, José Manuel Barroso, the Chair of the Eurogroup, Jean-Claude Juncker,

and the President of the European Central Bank, Mario Draghi, to the next European Council (28-29 June). The main building blocks towards a deeper economic and monetary integration, including the banking union, will be extensively discussed as well as the working methods. In particular, the memorandum suggests that the following proposals should be considered when mapping out the next steps towards a banking union: (1) an integrated system for the supervision of cross-border banks; (2) single deposit guarantee scheme; (3) an EU resolution fund.

Once this idea is agreed at political level, the Commission will propose the measures to implement its policy objective.

### **Short selling: notification of existing national measures**

The EU regulation on short selling and certain aspects of credit default swaps applies from 1 November 2012, but Article 46 of the regulation provides that existing national measures falling within the scope of the regulation, in force before 15 September 2010, may remain applicable until 1 July 2013 provided that they were notified to the European Commission by 24 April 2012.

The most recent survey produced by ESMA shows the Member States who had existing short selling measures as at 29 May 2012. However, the only notification on the Commission webpage relating to Article 46 of the regulation is the notification given by Austria on 16 April 2012.

[Regulation](#)  
[Commission short selling page](#)  
[Austrian notification \(German\)](#)  
[ESMA survey \(29 May 2012\)](#)

### **CRD 4: EBA consults on draft implementing technical standards on disclosure for own funds and certain supervisory reporting requirements**

The EBA has published three consultation papers setting out draft implementing technical standards on:

- disclosure for own funds ([EBA/CP/2012/04](#));
- supervisory reporting requirements for liquidity coverage and stable funding ([EBA/CP/2012/05](#)); and
- supervisory reporting requirements for the leverage ratio ([EBA/CP/2012/06](#)).

The consultation papers relate to the European Commission's legislative proposals for a fourth package of amendments to the Capital Requirements Directive (CRD 4), which were published in July 2011 and set out prudential requirements which are expected to be applicable as of 1 January 2013.

Comments on EBA/CP/2012/04 are due by 31 July 2012 and on EBA/CP/2012/05 and EBA/CP/2012/06 by 27 August 2012.

#### **MiFID review: MEPs table further amendments to Ferber reports**

The European Parliament's ECON Committee has published a further set of proposed additional amendments to Markus Ferber's draft reports on the European Commission's proposal for a regulation on markets in financial instruments and amending the regulation on OTC derivatives, central counterparties and trade repositories (MiFIR), and its proposal for a directive on markets in financial instruments repealing Directive 2004/39/EC (MiFID 2).

[Draft report on MiFIR \(March 2012\)](#)

[Proposed additional amendments to MiFIR: amendments 97 – 322](#)

[Proposed additional amendments to MiFIR: amendments 323 – 620](#)

[Proposed additional amendments to MiFIR: amendments 621 – 824](#)

[Draft report on MiFID 2 \(March 2012\)](#)

[Proposed additional amendments to MiFID 2: amendments 218 – 367](#)

[Proposed additional amendments to MiFID 2: amendments 368 – 640](#)

[Proposed additional amendments to MiFID 2: amendments 641 – 944](#)

[Proposed additional amendments to MiFID 2: amendments 945 – 1210](#)

[Proposed additional amendments to MiFID 2: amendments 1211 – 1321](#)

#### **CRD 4: EBA consults on data point model related to implementing technical standards on supervisory reporting**

The EBA has published a draft data point model based on its draft implementing technical standards on supervisory reporting requirements for credit institutions and investment firms, as set out in consultation papers [CP50 \(December 2011\)](#) and [CP51 \(February 2012\)](#). The draft implementing technical standards relate to the European Commission's legislative proposals for a fourth package of amendments to the Capital Requirements Directive (CRD 4), which were published in July 2011 and set out prudential requirements which are expected to be applicable as of 1 January 2013.

In order to assist a uniform implementation of the implementing technical standards on supervisory reporting

requirements, the data items included in CP50 and CP51 have been translated into a data point model. The data point model is a structured representation of the data, identifying all the business concepts and its relations, as well as validation rules. It contains all the relevant technical specifications necessary for developing an IT reporting solution.

Comments are due by 11 June 2012. The EBA expects to publish the final implementing technical standards documentation (including the data point model) in July 2012.

[Consultation page](#)

#### **Credit rating agencies: EU Council publishes general approach on Commission proposals**

The EU Council has published its [general approach](#) on the European Commission's proposal for a regulation amending Regulation 1060/2009 on credit rating agencies (CRAs).

#### **IOSCO consults on global developments in securitisation regulation**

IOSCO has published a [consultation report](#) on global developments in securitisation regulation, which seeks feedback on policy issues arising from the work of its Task Force on Unregulated Markets and Products.

The consultation paper has been published in response to a request from the Financial Stability Board for IOSCO, in coordination with the Basel Committee on Banking Supervision, to conduct a stock-taking exercise on the requirements for risk retention and measures enhancing transparency and standardisation of securitisation products, and to develop policy recommendations as necessary.

Amongst other things, the paper includes policy recommendations addressing: (1) differences in approaches to risk retention; (2) improvements in transparency; and (3) measures to standardise disclosure.

Comments are due by 6 August 2012.

#### **IOSCO reports on international standards for derivatives market intermediary regulation**

IOSCO has published a [report](#) on international standards for derivatives market intermediary regulation, which recommends high-level international standards for the regulation of market participants that are in the business of dealing, making a market or intermediating transactions in OTC derivatives.

The report follows the commitment by G20 leaders in 2009 to reform the OTC derivatives market in response to the financial crisis. It takes into account distinctions between the OTC derivatives market and the traditional securities markets, and the differences in jurisdictional approaches of international market authorities. The recommendations in the report are intended to address: (1) derivatives market intermediary obligations that should help mitigate systemic risks; (2) requirements intended to manage counterparty risk in the OTC derivatives markets; and (3) protecting participants in the OTC derivatives markets from unfair, improper or fraudulent practices.

#### **Retail Distribution Review: FSA issues finalised guidance on independent and restricted advice**

The FSA has published finalised [guidance](#) on the Retail Distribution Review (RDR) rules on independent and restricted advice, which were published in March 2010 and apply from 31 December 2012. The guidance is intended to help firms with the implementation of these rules, including by providing additional material on commonly asked questions.

Amongst other things, the guidance covers: (1) the key components of the standard for independent advice; (2) the requirements for firms providing restricted advice; (3) the requirements for how firms hold themselves out; (4) a number of advice tools and investment strategies, and how their use may influence the ability of firms to meet the independent advice rules; and (5) professional standards and how differences between the qualifications and skills of advisers may affect the ability of advice to meet the independent advice rules.

#### [Summary of feedback received](#)

#### **Bank of England publishes paper on precautionary contingent capital**

The Bank of England has published a [paper](#) which takes stock of the current debate about precautionary contingent capital. The paper describes various possible designs of contingent capital and highlights the key potential systemic risk implications of these instruments. The paper also suggests the considerations any policymaker would need to make if considering in future whether contingent capital is an appropriate means of ensuring banks' resilience. In particular, it states that policymakers should consider the risk that it would be possible for holders of precautionary contingent capital to run before a conversion occurs, and whether the conversion trigger is designed so that instruments would convert to equity prior to the time equity

was needed. According to the authors, policymakers should also consider the possibility that precautionary contingent capital instruments lead to wider systemic problems because investors have incentives to manipulate the conversion trigger to generate a conversion or bank equity holders or management have incentives to take actions (such as fire-selling assets) to try to avoid a conversion occurring.

The Bank of England has emphasised that the views expressed in the paper are those of the authors, and not necessarily those of the Bank of England.

#### **FSA and FRC consult on product projections, transfer value analysis and statutory money purchase illustrations**

The FSA and the Financial Reporting Council (FRC) have published a [joint consultation paper \(CP12/10\)](#) on product projections, transfer value analysis and statutory money purchase illustrations. As well as updating the assumptions to be used for non-MiFID product projections and transfer value analysis, the proposed changes are designed to make the FSA's rules for personal pensions more consistent with the FRC assumptions.

Amongst other things, the FSA is consulting on: (1) updating the mortality assumption to be used when illustrating a personal pension; (2) introducing a separate Consumer Prices Index (CPI) assumption for transfer value analysis when benefits under a defined benefit pension scheme are compared with the possible benefits under a personal pension scheme; and (3) changes to the investment return assumptions (projection rates) in the Conduct of Business sourcebook (COBS).

The FRC is consulting on possible changes to the assumptions used for statutory money purchase illustrations, to make them more consistent with the FSA assumptions in COBS (amended as proposed by the FSA in the fourth chapter of CP12/10).

Comments on CP12/10 are to be submitted by the following deadlines:

- Chapter 2 on mortality assumptions – comments to the FSA by 29 June 2012;
- Chapter 3 on transfer value analysis – comments to the FSA by 31 August 2012;
- Chapter 4 on investment return assumptions – comments to the FSA by 31 August 2012; and
- Chapter 5 on statutory money purchase illustrations – comments to the FRC by 31 August 2012.

### FSA introduces rules to raise consumer awareness of deposit protection

The FSA has published a [policy statement \(PS12/10\)](#) which reports on the main issues arising from its December 2011 [consultation paper \(CP11/29\)](#) on its proposals to require deposit takers to prominently display stickers and posters in branches and on websites (in electronic form) explaining their compensation arrangements.

PS12/10 also sets out the FSA's final rules in this area, which aim to raise consumer awareness of deposit protection and its limits. The rules will require all banks, building societies and credit unions to prominently display posters and stickers in branches and on websites explaining which deposit guarantee scheme applies to their customers' deposits. If customers are using the UK branch of a foreign bank from the European Economic Area (EEA), the posters will have to set out that those customers are not covered by the UK's Financial Services Compensation Scheme (FSCS). In this case, they would have to specify which national scheme will provide protection.

The rules will take effect from 31 August 2012.

### Basel III: Swiss Federal Council adopts bank regulation package

The Swiss Federal Council has [adopted](#) a package of measures to implement Basel III. The Basel III capital requirements will be written into Swiss law through a complete revision of the Capital Adequacy Ordinance, which will enter into force on 1 January 2013. Amongst other things, the package includes the following measures:

- normal banks will be required to hold minimum capital representing 8% of risk-weighted assets (RWA) and an additional capital buffer of 2.5% of RWA, to improve their ability to bear losses and reduce the dependence and interconnectedness between banks;
- systemically important ('too big to fail') banks will be subject to supplementary capital and risk diversification requirements – in particular, these include higher capital requirements, consisting of a basic component representing 4.5% of RWA and a capital buffer of 8.5% of RWA, and a progressive component based on the total assets and market share of the bank; and
- systemically important banks must also present an effective emergency plan to the Swiss Financial Market Supervisory Authority (FINMA), demonstrating how the bank can ensure that functions which are systemically important for Switzerland can be maintained in the event of threatened insolvency.

The package also contains two measures which are to be implemented immediately in the current Capital Adequacy Ordinance. These include:

- a mechanism for the Federal Council to activate a countercyclical buffer requirement in the event of excessively strong credit growth – this will require banks to hold an additional capital buffer of up to 2.5% of RWA; and
- a requirement that banks hold more capital underpinning residential mortgage lending if the borrower does not contribute a minimum sum of 10% of the collateral value from a source other than pension contributions, or does not amortise the mortgage within a specified timeframe.

### SFC announces commencement of short position reporting

The Securities and Futures Commission (SFC) has [announced](#) that the Securities and Futures (Short Position Reporting) Rules, except for the publication of aggregated short positions data, will come into effect on 18 June 2012. The SFC has indicated that market participants must report short positions using its online system, which will go live on the same day. The specified form for reporting and a [guidance note](#) explaining how certain aspects of the rules operate have been published on the SFC website. The SFC proposes to commence publishing data on aggregated short positions under Rule 6 on 7 September 2012, subject to the legislative process.

### Basel III: Japanese Financial Services Agency consults on draft guidelines and Q&A

The Financial Services Agency of Japan (FSA) has launched a public consultation on:

- draft amendments to the guidelines for the supervision of banks and financial instruments business operators (including securities firms); and
- a Q&A document providing further guidance on the administrative notice finalised on 30 March 2012.

Currently, the administrative notice does not provide for a capital conservation buffer, countercyclical buffer and leverage ratio as stipulated in the Basel III rules text. However, the draft guidelines state that financial institutions should start to consider these additional buffers, which will be required from 2016, and that they will also need to calculate their leverage ratios on a quarterly basis. The draft guidelines also provide that financial institutions should prepare for compliance with the liquidity coverage ratio and net stable funding ratio which will apply from 2015



and 2018, respectively. In addition, the draft guidelines and Q&A include further guidance on the requirements of the administrative notice, including the requirements for additional tier 1 capital and tier 2 capital. The new guidelines will not apply to purely domestic banks.

Comments are due by 6 July 2012. The new guidelines will apply from 31 March 2013.

[Press release – banks \(Japanese\)](#)

[Press release – financial instruments business operators](#)

#### **MAS consults on proposed enhancements to regulatory requirements for unlisted margined derivatives offered to retail investors**

The Monetary Authority of Singapore (MAS) has published a [consultation paper](#) on proposed enhancements to the regulatory requirements for unlisted margined derivatives offered to retail investors. The proposals are intended to address the specific risks posed by unlisted margined derivatives, such as contracts for differences and leveraged foreign exchange products which are currently available to retail investors.

In particular, the proposed measures are intended to: (1) enhance credit risk management by derivative product dealers and mitigate the risk of over-leveraging by retail investors; (2) ensure derivative dealers are adequately capitalised and financially sound in the operation of their business; (3) enhance the protection and recovery of retail investors' moneys and assets in the event of insolvency of the dealer; and (4) enhance risk disclosure to retail investors to better highlight the specific risks associated with trading unlisted margined derivatives so as to help them make informed decisions on the suitability of such products.

Comments are due by 2 July 2012.

#### **US Federal agencies sign memorandum of understanding on supervisory coordination**

In accordance with the provisions of the Dodd-Frank Act, the Board of Governors of the Federal Reserve System (FRB), the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration, and the Office of the Comptroller of the Currency (OCC) have signed a [memorandum of understanding](#) clarifying how the agencies will coordinate aspects of their supervision of insured depository institutions with more than USD 10 billion in assets and their affiliates.

The MoU clarifies that the agencies will coordinate examinations and other supervisory activities and share certain material supervisory information concerning: (1) compliance with federal consumer financial laws and certain other federal laws that regulate consumer financial products and services; (2) consumer compliance risk management programs; (3) activities such as underwriting, sales, marketing, servicing, and collections, if they are related to consumer financial products or services; and (4) other related matters that the agencies may mutually agree upon.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Into the Light – A response to the EU Commission Green Paper on Shadow Banking**

1 June 2012 marked the original closing date of the consultation on the EU Commission Green Paper on Shadow Banking. The Green Paper has generated a great deal of interest, perhaps explaining why the consultation period has been extended until 15 June. It represents the EU's participation in the wider debate on how to regulate 'shadow banking', which was initiated by the G20 in Seoul in 2010 and which has been gaining traction recently, notably under the auspices of the Financial Stability Board (FSB), the body charged by the G20 with thought leadership on how to regulate shadow banking.

Clifford Chance responded to the Green Paper, and this briefing examines some of the issues raised, reflects on where the debate is heading and discusses the wider implications of regulating shadow banking.

[http://www.cliffordchance.com/publicationviews/publications/2012/06/into\\_the\\_light\\_aresponsetotheeucommissio.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/into_the_light_aresponsetotheeucommissio.html)

### **Wall crossing – Walking the regulatory tightrope**

Confidential pre-soundings and pre-marketing activities take place in advance of capital raisings, refinancing and other transactions, prior to formal announcements, to gauge interest in, or support for, a particular transaction (and its potential pricing, where relevant). As part of such activities, inside information is likely to be imparted to market participants. Wall crossing is the act of making a person an 'insider' by providing them with inside information. There is a tension between active shareholder engagement and the inherent risks of committing market abuse through improper disclosure of inside information.

This briefing considers the art of walking the regulatory tightrope when carrying out wall crossing.

[http://www.cliffordchance.com/publicationviews/publications/2012/05/wall\\_crossing\\_walkingtheregulatorytightrope.html](http://www.cliffordchance.com/publicationviews/publications/2012/05/wall_crossing_walkingtheregulatorytightrope.html)

### **The Eurozone crisis and its impact on the international financial markets**

How are current events in the Eurozone affecting the international financial markets? What are the likely outcomes ahead and how can market participants prepare for them?

Clifford Chance partners from the firm's sovereign debt rescheduling, regulatory and leverage finance practices discuss the crucial issues.

[http://www.cliffordchance.com/publicationviews/publications/2012/05/the\\_eurozone\\_crisisanditsimpactonth.html](http://www.cliffordchance.com/publicationviews/publications/2012/05/the_eurozone_crisisanditsimpactonth.html)

### **Antitrust Review for March – April 2012**

The Antitrust Review provides commentary on the main developments in national and international antitrust law and policy.

[http://www.cliffordchance.com/publicationviews/publications/2012/05/antitrust\\_reviewmarchapril2012.html](http://www.cliffordchance.com/publicationviews/publications/2012/05/antitrust_reviewmarchapril2012.html)

### **UK Employment Update**

The June 2012 edition of UK Employment Update explores the myriad proposed employment law reforms that, amongst other matters, address unfair dismissal compensation, compensated no fault dismissals and the abolition of discrimination questionnaires. It also looks at a case on the right to suspend without pay.

[http://www.cliffordchance.com/publicationviews/publications/2012/06/uk\\_employment\\_update-june2012.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/uk_employment_update-june2012.html)

### **Noteholder Meetings – Paying the Price for Change?**

In a recent decision, the English court has confirmed that payments offered to holders of debt securities in return for their consent to amendments to the terms of the notes are not bribes or illegal where they are made openly to all noteholders and no noteholders are prevented from voting. Payments only to those noteholders who vote in favour of a resolution are permissible and do not breach the requirement to treat note holders as a class and distribute any payments *pari passu*.

This briefing discusses the decision.

[http://www.cliffordchance.com/publicationviews/publications/2012/05/noteholder\\_meetingspayingthepriceforchange.htm](http://www.cliffordchance.com/publicationviews/publications/2012/05/noteholder_meetingspayingthepriceforchange.htm)

### **Liability management – green light in Italy**

Following a market consultation process commenced on 22 March 2012 and concerning tender offer regulations, CONSOB (the Italian securities regulator) issued Resolution No. 18214 on 9 May 2012, approving new secondary regulations which aim to simplify the procedure applicable to tender and exchange offers for debt securities, as well as to reduce the costs and the administrative burden of these transactions and ensure that rules on offers for debt securities are consistent with European practice. The amendments are contained in Title II, Part I of the CONSOB Regulation No. 11971, as subsequently amended.

The new regime set forth in the Resolution will enter into force on 6 June 2012. This briefing paper outlines the main new provisions.

Please contact Mhairi Appleton by email at [mhairi.appleton@cliffordchance.com](mailto:mhairi.appleton@cliffordchance.com) for a copy of this briefing.

### **Luxembourg Legal Update – May 2012**

The Luxembourg Legal Update offers a regular 360° view on recent legal developments in Luxembourg. The newsletter provides a compact summary and guidance on the new legal issues which may impact your business, particularly in relation to banking, finance, capital markets, corporate, litigation, funds & investment management, employment and tax laws.

[http://www.cliffordchance.com/publicationviews/publications/2012/05/luxembourg\\_legalupdate-may2012.html](http://www.cliffordchance.com/publicationviews/publications/2012/05/luxembourg_legalupdate-may2012.html)

### **Taxation of Eurobonds – special offer (but for a limited time only)**

This briefing discusses the law adopted by the State Duma on 6 June 2012 that exempts interest payments under Russian eurobonds from withholding tax, but makes this exemption available only to offerings made prior to 2014.

[http://www.cliffordchance.com/publicationviews/publications/2012/06/taxation\\_of\\_eurobondsspecialofferbutfor.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/taxation_of_eurobondsspecialofferbutfor.html)

### **Better late than never... Hong Kong Government's proposal to abolish the headcount test**

In Hong Kong, takeovers by way of schemes of arrangement are subject to a number of voting thresholds.

Under the Hong Kong Takeovers Code, they need to be approved at a shareholders' meeting by at least 75% of the votes attaching to the shares owned by the independent shareholders that are cast either in person or by proxy at such meeting, with no more than 10% of all independent shares (i.e. not just of those voting) voting against the scheme. On top of that, Hong Kong company law requires that the scheme must be approved by a majority in number of the shareholders, which in turn represent 75% in value of the shareholders present and voting at the meeting. The 'majority in number' threshold (also known as the 'headcount test') came under spotlight when the Hong Kong Court of Appeal refused to sanction PCCW's privatisation scheme in May 2009, on the grounds that it found vote manipulation and share splitting practices were used to satisfy the 'headcount test'.

This briefing discusses the Hong Kong Government's proposal to abolish the 'headcount test'.

[http://www.cliffordchance.com/publicationviews/publications/2012/05/better\\_late\\_thanneverhongkonggovernment.html](http://www.cliffordchance.com/publicationviews/publications/2012/05/better_late_thanneverhongkonggovernment.html)

#### **SFC consultation conclusions on proposed amendments to Code of Conduct**

On 20 May 2012, the Securities and Futures Commission (SFC) published its consultation conclusions on proposals to amend the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission in relation to the establishment of the Financial Dispute Resolution Centre Ltd (FDRC) and the enhancement of the regulatory framework. This follows from its two-month consultation which ended on 9 January 2012.

This briefing discusses the SFC's response to the feedback received on the Code amendments in connection with the establishment of FDRC and the 'miscellaneous amendments' to the Code.

[http://www.cliffordchance.com/publicationviews/publications/2012/05/sfc\\_consultationconclusionsonpropose.html](http://www.cliffordchance.com/publicationviews/publications/2012/05/sfc_consultationconclusionsonpropose.html)

#### **Singapore's new Personal Data Protection Act and how it compares to other jurisdictions**

The Singapore Ministry of Information, Communications and the Arts has released the much-anticipated draft Personal Data Protection Bill. Parliament is expected to pass the draft Bill in the third quarter of 2012. The draft Bill when passed will be known as the Personal Data Protection Act (PDPA). The PDPA introduces an over-arching framework for the protection of personal data in Singapore.

This briefing discusses the draft Bill.

Please contact Mhairi Appleton by email at [mhairi.appleton@cliffordchance.com](mailto:mhairi.appleton@cliffordchance.com) for a copy of this briefing.

#### **Federal Reserve Board Acts on Basel III Implementation, Market Risk Capital Rule**

The US Federal Reserve Board has voted to publish proposed regulations to implement the 'Basel III' changes to the international regulatory capital framework, a set of comprehensive reforms issued by the Basel Committee on Banking Supervision in response to the global financial crisis. The Federal Reserve Board has also voted to publish final rules on market risk capital. These long-awaited actions by the US banking regulators – which include three notices of proposed rulemaking in which the Fed finally describes how it proposes to implement Basel III – will have profound impact on the financial services industry.

In 700 pages of dense, technical detail, the Fed lays out the most far-reaching changes in capital requirements to be made in more than two decades and seeks public comment for at least the next 90 days. For banking organizations with a high proportion of trading assets and liabilities, the final market risk capital rule prescribes methods for calculating the market risk capital requirement for foreign exchange and commodities positions and certain trading assets and liabilities.

This briefing discusses each of the Fed's actions.

[http://www.cliffordchance.com/publicationviews/publications/2012/06/federal\\_reserve\\_boardactsonbaseliii.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/federal_reserve_boardactsonbaseliii.html)

#### **CFTC and SEC adopt final entity definition rules for swap dealers, major swap participants and eligible contract participants**

In a key step in the implementation of OTC derivative regulations in the US, the CFTC and SEC adopted final rules, as required under the Dodd-Frank Wall Street Reform and Consumer Protection Act, adding further details to and guidance on the definitions of: (1) swap dealer; (2) security-based swap dealer; (3) major swap participant; (4) major security-based swap participant; and (5) eligible contract participant.

While the CFTC and the SEC generally declined to create categorical exclusions from the entity definitions, they did establish de minimis thresholds for determination of swap dealer and security-based swap dealer status and



established thresholds for the tests determining major swap participant and major security-based swap participant status.

This briefing focuses on each of the three main entity definitions adopted by the Commissions, as well as the

exclusions and safe harbours described in the final rules and interpretive guidance that was included in the adopting release.

[http://www.cliffordchance.com/publicationviews/publications/2012/05/cftc\\_and\\_sec\\_adopfinalentitydefintionrule.html](http://www.cliffordchance.com/publicationviews/publications/2012/05/cftc_and_sec_adopfinalentitydefintionrule.html)

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