

International Regulatory Update

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FSB seeks views on jurisdiction for establishment of Global Legal Entity Identifier Foundation and central operating unit of LEI system

The Financial Stability Board (FSB) is [seeking views](#) regarding the appropriate jurisdiction for the establishment of the Global LEI Foundation and Central Operating Unit of the global legal entity identifier (LEI) system. The aim of the LEI system is to uniquely identify counterparties to financial transactions and to provide reference data on them (such as the name, address, and basic ownership information).

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

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The FSB has invited legal experts to set out options for suitable legal structures and possible jurisdictions, providing where appropriate an explanation of the respective pros and cons of each option, and the extent to which the applicable legal and regulatory framework is supportive of the public interest objectives of the LEI system and facilitates its effective operation. Legal experts are invited to provide views on a pro-bono basis by 10 September 2012.

FSB launches peer review on resolution regimes

The Financial Stability Board (FSB) has launched a peer review on resolution regimes. The review will evaluate FSB member jurisdictions' existing resolution regimes across different financial sectors, as well as any planned changes to those regimes, using the FSB's '[Key Attributes of Effective Resolution Regimes for Financial Institutions](#)' as a benchmark. As part of the review, the FSB has invited feedback from financial institutions, industry associations and other stakeholders on material inconsistencies or gaps (compared to the Key Attributes) of national resolution regimes in different FSB member jurisdictions.

Feedback is due by 28 September 2012.

[Questionnaire](#)

Short Selling Regulation: FSA outlines approach to UK transposition

The FSA has published a special edition of its [Market Watch newsletter](#) in which it provides advance notice of its approach to the transposition of the EU Short Selling Regulation in the UK.

The Short Selling Regulation comes into effect on 1 November 2012 and it will have direct effect in UK law. Although there is no general need for implementing measures in domestic legislation and FSA rules to apply its provisions, there are various issues associated with the implementation of the Regulation which are left to the discretion of Member States or where Member States need to put in place operational procedures to ensure that market participants can comply with their obligations under the Regulation.

In particular, the newsletter discusses:

- the removal of the domestic short position disclosure regime;
- the penalties policy requirement;
- the FSA's approach to using temporary suspension powers;

- public disclosures of significant short positions;
- notifications to the FSA of short positions in shares and sovereign debt; and
- the market maker and authorised primary dealer exemption process.

FSA publishes view on crowdfunding

The FSA has published an [information page on 'crowdfunding'](#) on its website. Crowdfunding involves a large group of people contributing money to support a business, individual or campaign, and the FSA has noted that there is increasing interest in crowdfunding as a new way for businesses and individuals to raise funds and for people to invest money.

The FSA has stated that most crowdfunding should be targeted at sophisticated investors who know how to value a startup business, and who understand the risks involved and that investors could lose all of their money. The FSA has indicated that it wants it to be clear that investors in a crowdfund have little or no protection if the business or project fails, and that they will probably lose all their investment if it does. The FSA has also expressed concern that some firms involved in crowdfunding may be handling client money without the FSA's permission or authorisation, and therefore may not have adequate protection in place for investors.

AMF publishes guides on collective investment schemes for employees and private equity collective investment schemes

The Autorité des marchés financiers/Financial Markets Authority (AMF) has published two guides on collective investment schemes.

[Position n° 2012-10](#) covers collective investment schemes reserved to employees, notably employee investment funds (fonds communs de placement d'entreprise) (FCPEs).

[Position n° 2012-11](#) covers private equity investment funds reserved to qualified investors. It defines contractual private equity funds (fonds communs de placement à risques contractuels) (FCPR contractuels) and clarifies their investment scope. It also sets out the liquidation procedure for private equity funds, including specifications on the different timeframes for the liquidation of FCPRs reserved to qualified investors on the one hand, and innovation funds (fonds communs de placement dans l'innovation) (FCPIs) and local investment funds (fonds d'investissement de proximité) (FIPs) available to retail investors, on the other.

The guides have been issued as part of the current reorganisation of the AMF's doctrine, which is intended to improve its usability and update legal references following recent reforms resulting from the implementation of the UCITS IV Directive into the French Monetary and Financial Code.

CSSF issues regulation on risk management and conflict of interests requirements for Luxembourg specialised investment funds

The Commission de surveillance du secteur financier (CSSF) has issued [Regulation N°12-01](#), containing implementing measures on article 42bis of the Luxembourg law of 13 February 2007 in relation to the risk management and conflict of interests requirements applicable to Luxembourg specialised investment funds (SIFs).

As regards risk management, the regulation specifies, amongst other things, that SIFs must establish and maintain a risk management function that is hierarchically and functionally independent from the operating units. The CSSF may grant derogations from this requirement, taking into account the nature, size and complexity of the activities as well as the structure of the relevant SIF.

As regards conflicts of interests, the regulation provides, as minimum criteria to be taken into consideration, a list of conflicting circumstances, specifying that a SIF must, as soon as it identifies the types of conflicts of interests, take into consideration the SIF's interests, the interests of the clients and the obligations of the SIF towards its unitholders.

The regulation will come into force on the first day of the month following its publication in the Luxembourg official journal, which is expected shortly. SIFs existing at the time of the entry into force of the regulation will have until 31 December 2012 to comply with its provisions.

Amendment to Slovak Act on Special Levy of Selected Financial Institutions

An [amendment](#) to Slovak Act No. 384/2011 Coll., on the Special Levy of Selected Financial Institutions will become effective in the Slovak Republic as of 1 September 2012. The amendment introduces a new mechanism for calculation of the levy, with the amount of liabilities of banks and branches of foreign banks operating in Slovakia no longer being reduced by the amount of deposits protected by laws of any EU/EEA member state. Levy proceeds may also be used to fund the Slovak deposit protection scheme. The amendment expressly prohibits banks and branches of

foreign banks from increasing banking fees and charges in connection with the levy.

An important change brought about by the amendment consists of a gradual decrease in the levy amount payable over time until the total sum of collected funds exceeds EUR 750m and, at the same time, amounts to at least 1.45% of the total assets in the Slovak banking sector. To aid governmental development programmes and to strengthen the position of institutions supporting foreign trade, an extraordinary levy amounting to an additional 0.1% of the levy basis is payable on 25 October 2012.

Basel III: Japan's FSA publishes finalised guidelines and additional Q&As on implementation

The Financial Services Agency of Japan has published the final version of its guidelines on the supervision of banks and financial instruments business operators, and additional Q&As providing guidance on the administrative notice in relation to Basel III which was finalised on 30 March 2012.

The administrative notice provides for rules to implement Basel III in Japan. Currently, the administrative notice does not contain a capital conservation buffer, countercyclical buffer and leverage ratio, as stipulated in the Basel III rules text. Instead, the guidelines state that financial institutions should start to fully 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 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.

The new guidelines will apply from 31 March 2013. The new guidelines will not apply to purely domestic banks.

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

[Press release regarding financial instruments business operators \(Japanese\)](#)

CFTC swap product definitions effective as of 12 October 2012

The final rules approved by the CFTC and the SEC in July 2012 to further define the terms 'swap', 'security-based swap', 'security-based swap agreement', 'mixed swaps', and governing books and records with respect to 'security-based swap agreements' have been published in the Federal Register, thereby fixing the effective date for the rules and for the other Dodd-Frank related rules whose

effectiveness is tied to the effective date of the Product Definitions.

The effective date of the product definitions will be October 12, 2012.

[Excerpt from Federal Register](#)

ISDA announces launch of Dodd-Frank Protocol and Automated Information Gathering Technology

ISDA has issued a [press release](#) announcing the launch of its August 2012 Dodd-Frank Protocol, which is designed to allow swap market participants to amend multiple ISDA Master Agreements simultaneously for the purpose of facilitating compliance with Dodd-Frank regulatory requirements, such as External Business Conduct Rules and others as they are finalized. The Protocol consists of a series of amendments to existing documentation, as well as standardized questionnaires that must be completed by counterparties to satisfy new regulations. These questionnaires must be delivered to each relevant counterparty for the amendments and compliance to be effective.

In order to facilitate these bilateral delivery requirements, ISDA and Markit have launched ISDA Amend, a Markit-built technology that automates the information-gathering process and provides sharing of submitted data and documents to participating counterparties.

The Protocol is open both to ISDA members and non-members. The text of the Protocol, guidance on the mechanics of the Protocol, answers to frequently asked questions and details on adherents, are available on ISDA's website.

[Protocol management section of ISDA website](#)
[ISDA-Markit Dodd-Frank Implementation](#)

RECENT CLIFFORD CHANCE BRIEFINGS

Tough on money laundering...and on the EU: UK authorities chart their course on AML policy

The trend of tough enforcement by UK anti-money laundering (AML) authorities has continued in recent weeks. The FSA has taken further action and the OFT has imposed its first significant fine for breaches of the Money Laundering Regulations 2007 (MLR). The UK's

commitment to tough deterrence has also been underlined by HM Treasury's review of MLR, which has resulted in the retention of criminal sanctions for breaches and the bolstering of accompanying regulatory powers. At the same time, the UK response to EU proposals shows that it is resistant to delegating responsibility for developing policy to EU institutions.

This briefing discusses these developments.

http://www.cliffordchance.com/publicationviews/publications/2012/08/tough_on_money_launderingandontheeu.html

The Bribery Act 2010 – One year on

Thank you to those who attended our 'Bribery Act 2010 – One year on' breakfast seminar on 5 July 2012. For your convenience we have collated the event materials and also produced a full write up of the seminar. To view a copy of the seminar materials and write up, please contact Mhairi Appleton by email at mhairi.appleton@cliffordchance.com.

Exempt fund managers — how the enhanced regulatory regime impacts you

The Monetary Authority of Singapore (MAS) announced on 6 August 2012 that the implementation of the enhanced regulatory regime for fund management companies (FMCs) would take effect from 7 August 2012. This marks the end of a series of public consultations undertaken by the MAS since April 2010, the developments of which have been closely watched by the fund management industry.

Clifford Chance has prepared a briefing which focuses on the impact of the enhanced regulatory regime for existing exempt FMCs which intend to continue their fund management business in Singapore, operating under the enhanced regulatory regime (this accordingly assumes that such exempt FMCs do not manage retail monies nor carry out any other regulated activities).

The briefing includes a table summarising the key criteria and ongoing requirements for registered FMCs and accredited/institutional licensed FMCs under the Securities and Futures Act. We will issue separate briefings on the impact of the enhanced regulatory regime for existing licensed boutique and retail FMCs (i.e. holders of capital markets services licence for fund management).

http://www.cliffordchance.com/publicationviews/publications/2012/08/exempt_fund_managersshowtheenhance.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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