

International Regulatory Update

6 – 10 August 2012

IN THIS WEEK'S NEWS

- Wheatley Review of LIBOR: initial discussion paper published
- French financial transaction tax: Ministry of Economy and Finance publishes instruction
- Scope of Belgian Anti-Money Laundering Law extended to payment institutions
- Polish act on clearing novation for transactions cleared through central counterparties enters into force
- Spanish order on remuneration policy of credit entities receiving public financial support published
- FINMA consults on new audit circulars
- NAFMII publishes guidelines on asset backed notes issued by non-financial institutions on inter-bank bond market
- MAS announces enhanced regulatory regime for fund management companies
- MAS publishes second response to feedback on proposed regulation of OTC derivatives and launches further consultation on amending Securities and Futures Act
- DFSA publishes guide to listing in Dubai International Financial Centre
- US Federal Reserve Board extends comment period for capital reform rules
- US Bureau of Consumer Financial Protection issues final rule on remittance transfers
- Recent Clifford Chance briefings: Recent Developments in Assets Securitisation in the PRC; and more. [Follow this link to the briefings section.](#)

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.

If you would like to continue to receive International Regulatory Update or would like to request a subscription for a colleague, please [click here](#).

To request a subscription to our Alerter: Finance Industry service, please email [Online Services](#).

If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Thomas Pax](#) +1 202 912 5168

[Steven Gatti](#) +1 202 912 5095

[Martin Rogers](#) +852 2826 2437

[Mark Shipman](#) + 852 2826 8992

International Regulatory Update Editor

[Julia Milosh](#) +44 (0)20 7006 4171

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP, 10 Upper Bank Street,
London, E14 5JJ, UK

www.cliffordchance.com

Wheatley Review of LIBOR: initial discussion paper published

Martin Wheatley, Chief Executive designate of the Financial Conduct Authority and head of the independent review commissioned by the UK government into LIBOR, has launched a [discussion paper](#) which sets out initial analysis on the role that LIBOR plays in financial markets, the flaws in the current structure of setting LIBOR, its governance and oversight, and a range of options for reform, including the issue of transition.

Comments are due by 7 September 2012. Any necessary legislative changes will be considered for inclusion in the Financial Services Bill or the Banking Reform Bill.

In addition, Mr. Wheatley has given a [speech](#) discussing the aspects of the review. He indicated that the FSA also will be seeking to engage with a wide range of international regulators, such as IOSCO and its members, key European institutions, the CFTC, the SEC and the US Treasury, who are considering similar issues for other benchmarks within their markets.

French financial transaction tax: Ministry of Economy and Finance publishes instruction

The Ministry of Economy and Finance has published an [instruction](#) on the French financial transaction tax, setting out aspects of the transaction tax, which is composed of three parts: (1) a tax on acquisitions of listed shares issued by large French companies; (2) a tax on high frequency trading; and (3) a tax on certain credit default swaps (CDS) on sovereign debt.

The tax, which was introduced by the Amending Finance Bill for 2012 dated 14 March 2012 (Loi de finances rectificative pour 2012), applies as of 1 August 2012.

Scope of Belgian Anti-Money Laundering Law extended to payment institutions

A [royal decree dated 2 June 2012](#), which extends the scope of the Belgian Law of 11 January 1993 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, has been published in the Belgian State Gazette. The scope of the Anti-Money Laundering Law has been amended to apply to the following institutions: (1) Belgian payment institutions (in the sense of the Belgian Law of 21 December 2009 on payment institutions); (2) Belgian branches of payment institutions, located both inside or outside the EEA; and (3) payment institutions located in the

EEA that use a person residing in Belgium to represent the company.

These institutions will be obliged to perform the KYC checks and comply with the reporting obligations. This is in line with the amendments made by Directive 2007/64/EC of 13 November 2007 on payment services in the internal market to the AML Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Polish act on clearing novation for transactions cleared through central counterparties enters into force

The [Act amending the Act on Trading in Financial Instruments](#), which introduces to the Polish legal system the concept of clearing novation used in transactions cleared through a central counterparty (CCP), has entered into force. In Poland, the role of a central counterparty will be assigned to KDPW_CCP.

The introduction of clearing novation is connected to the EU regulation on OTC derivatives and market infrastructures, which requires the use of CCPs to clear certain OTC transactions.

Spanish order on remuneration policy of credit entities receiving public financial support published

[Order 1762/2012](#) of the Ministry of Economy and Competitiveness, of 3 August 2012, has been published in the Official State Gazette. In accordance with Article 5 of Royal Decree Law 2/2012, the Order develops the remuneration policy for directors and executives of credit institutions receiving public financial support.

The Royal Decree sets out several restrictions to the fixed and variable remuneration received by directors and executives of credit institutions relying on public financial support from the Fund for Orderly Bank Restructuring (FROB).

The Order specifies these remuneration restrictions, distinguishing between credit institutions which have received financial support from the FROB and those in which the FROB holds a majority stake. The Order also establishes a special regime in the case of consolidation of different institutions. In addition, the Order forbids the inclusion of termination indemnification provisions exceeding an amount set out in Royal Decree-Law 3/2012 in any type of employment agreement of directors or executives included in the scope of application of the Order.

The Order enters into force on 9 August 2012.

FINMA consults on new audit circulars

The Swiss Financial Market Supervisory Authority (FINMA) has [launched](#) a consultation on two new audit circulars, entitled 'Auditing' and 'Audit firms and lead auditors', which aim to make audit firms more forward-looking and focused on the risk situation of supervised institutions in regulatory audits. The key changes to be facilitated by the Circulars include, amongst other things:

- audit firms will be required to draw up a forward-looking risk analysis for institutions subject to prudential supervision;
- a modular structure will be adopted for regulatory audits, so that the audits will be conducted in a more targeted and risk-oriented manner; and
- national and international auditing standards will no longer be applied to regulatory audits, as experience has shown that these standards are not suited to the specific requirements of regulatory audits.

The consultation period ends on 18 September 2012. The Circulars will enter into force on 1 January 2013 and will replace FINMA Circular 2008/41 ('Audit matters') and the circulars issued by FINMA's predecessor authorities.

NAFMII publishes guidelines on asset backed notes issued by non-financial institutions on inter-bank bond market

The National Association of Financial Institutional Investors (NAFMII) in China has issued the ['Guidelines on Asset Backed Notes issued by Non-Financial Institutions on the Inter-bank Bond Market'](#), which are intended, amongst other things, to expand the funding channel for non-financial institution originators.

The debt financing instruments issued by non-financial institutions on the inter-bank bond market under the guidelines are backed by the cash flow generated by the underlying assets. The guidelines indicate that the underlying assets supporting the debt instruments should be property or property rights owned by the non-financial institution originators that can generate predictable cash flow. The assets should also be free from mortgage or pledge or other restrictions. Non-financial institution originators can issue asset backed notes through either public offering or non-public placement upon registration with NAFMII.

In addition, non-financial institution originators must set out an investor protection mechanism in the offering documents. Moreover, non-financial institution originators must disclose

specific information about the transaction when issuing the asset backed notes. Finally, non-financial institution originators must engage two rating agencies to evaluate the credit of the asset backed notes. The guidelines encourage an investor-pays rating model.

The guidelines took effect on 3 August 2012.

MAS announces enhanced regulatory regime for fund management companies

The Monetary Authority of Singapore (MAS) has [announced](#) that the implementation of the enhanced regulatory regime for fund management companies will take effect from 7 August 2012. The new category of Registered Fund Management Companies (RFMC) will replace the current Exempt Fund Manager (EFM) regime. RFMCs may serve up to 30 qualified investors and manage up to SGD 250 million in assets under management. Existing EFMs will have six months to apply for a licence or to register with the MAS under the new RFMC regime. All other fund management companies will have to apply for a licence.

Under the new regime, all fund management companies will have to meet enhanced business conduct and capital requirements. These include rules requiring independent custody and valuation of investor assets, as well as requirements for fund management companies to undergo independent annual audits by external auditors and having an adequate risk management framework commensurate with the type and size of investments managed.

MAS publishes second response to feedback on proposed regulation of OTC derivatives and launches further consultation on amending Securities and Futures Act

On 13 February 2012, the MAS issued a consultation paper on its proposed regulatory review of the OTC derivatives market in Singapore. In light of the broad ranging proposals raised in the February consultation paper, the MAS is publishing its response to the feedback received and proposed legislative amendments in phases. The first response to feedback and proposed legislative amendments was issued on 23 May 2012 (please see the link to our related June 2012 client briefing below), which addressed the proposals to extend the current regulatory regime for clearing facilities to OTC derivatives and to introduce a new regulatory regime for trade repositories.

The MAS has now published its [second response](#), which sets out its views on feedback received in relation to:

(1) the scope of clearing obligations for products, contracts and entities; (2) the scope of reporting obligations for products, contracts and entities including the type of information to be reported and timeliness of reporting; (3) locational requirements for clearing and reporting and whether clearing or reporting through a domestic CCP or trade repository, respectively, is required; and (4) backloading of outstanding contracts.

The MAS has also published its '[Consultation Paper II on Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives](#)', which introduces new provisions relating to the mandatory central clearing and reporting of OTC derivatives transactions.

The MAS is also seeking comments on a revised definition of derivative contracts, taking into account feedback received from the first set of legislative amendments to the Securities and Futures Act.

Comments are due by 31 August 2012.

[Related Clifford Chance client briefing \(June 2012\)](#)

DFSA publishes guide to listing in Dubai International Financial Centre

The Dubai Financial Services Authority (DFSA) has published a [guide to listing](#) in the Dubai International Financial Centre (DIFC), aimed in particular at Chief Executive Officers and Chief Financial Officers of companies intending to list in the DIFC. The guide provides information about the DIFC listing regime, the types of securities by which companies can raise finance, and general issues to consider when a company contemplates listing in the DIFC. The guide also explains some of the continuing obligations that arise once the initial public offering has occurred.

US Federal Reserve Board extends comment period for capital reform rules

The Board of Governors of the Federal Reserve System (FRB) has [extended the comment period](#) on three notices of proposed rulemaking that would revise and replace current capital rules until 22 October 2012. The proposals by the FRB, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency would implement the Basel III regulatory capital reforms and certain aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Originally, comments were due by 7 September 2012.

US Bureau of Consumer Financial Protection issues final rule on remittance transfers

The Bureau of Consumer Financial Protection (BCFP) has issued a [final rule](#) amending Regulation E, which implements the Electronic Fund Transfer Act, and the official interpretation to the regulation, which interprets the requirements of Regulation E. The final rule modifies an earlier final rule which was published in February 2012 implementing section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding remittance transfers. The new final rule adopts a safe harbor with respect to the phrase 'normal course of business' in the definition of 'remittance transfer provider', which determines whether a person is covered by the rule. The new final rule also revises several aspects of the February 2012 final rule regarding remittance transfers that are scheduled before the date of transfer, including preauthorized remittance transfers.

The new final rule will become effective as of 7 February 2013.

RECENT CLIFFORD CHANCE BRIEFINGS

UK Employment Update

The August-September 2012 edition of the Clifford Chance UK Employment Update considers a number of Court of Appeal cases that explore: a sick worker's entitlement to holiday pay, whether an employee has a right of legal representation at a disciplinary hearing and the extent of an employee's obligation to report their own misconduct. This edition also examines how the new fee structure will apply in the Employment Tribunal and a new guide to redundancy during pregnancy and maternity leave.

http://www.cliffordchance.com/publicationviews/publications/2012/08/uk_employment_update-augustseptember2012.html

Recent developments in assets securitisation in the PRC

Chinese domestic securitisation, after a few years of rapid growth from 2005 onwards under a variety of pilot schemes, was brought to a halt after the onset of the global financial crisis. Recent measures promulgated in May 2012 which promote the re-start of credit asset securitisation are the result of the Chinese authorities' careful consideration of prevalent international market practice. The re-launch of the Chinese domestic securitisation has the stated aims of

encouraging a broader range of asset classes and investor participations.

Clifford Chance considers the re-launch of the Chinese securitisation market to be an important and inevitable development. We believe the measures are consistent with the internationalisation of the Renminbi and the continued opening of the domestic capital markets to foreign investments. We believe there is potential for Chinese securitisation market to be open to foreign investors in the form of either inbound foreign participation or outbound issuance. This briefing examines the existing securitisation regimes in China, the recent regulatory and market developments, and issues potential investors may need to consider.

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

US reporting requirements for responsible investment in Myanmar

US sanctions against Myanmar have been eased, but with new opportunities come new obligations. All US persons making significant new investments in Myanmar will be

required to report annually on a range of responsible investment criteria, including steps taken to mitigate risks relating to corruption, land acquisitions, human rights and security.

This briefing discusses the new requirements.

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

Can the gaming enterprise of a Native American tribe be a 'debtor' under the US Bankruptcy Code?

On 2 July 2012, the Santa Ysabel Resort and Casino, owned and operated by the Iipay Nation of Santa Ysabel on its reservation land in Santa Ysabel, California, filed for protection under Chapter 11 of the US Bankruptcy Code. This case highlights unresolved issues relating to the ability of federally recognized Indian tribes to seek protection under the Code.

This briefing discusses the case.

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

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ
© Clifford Chance LLP 2012

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.