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Briefing note

International Regulatory Update

27 – 31 January 2014

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Bank structural reform: EU Commission proposes ringfencing regulation following Liikanen report

The EU Commission has adopted a proposed regulation on structural measures to improve the resilience of EU credit institutions. The proposed regulation would give banking supervisors the power to require certain complex banks to ringfence certain trading activities from their deposit taking business if the pursuit of such activities compromises financial stability.

In addition, the Commission has adopted an accompanying proposal for a regulation on reporting and transparency of securities financing transactions. The proposal is intended to prevent banks from attempting to circumvent the ringfencing rules by shifting activities to the shadow banking sector and provides measures to enhance regulators' and investors' understanding of securities transactions.

EU-US trade agreement: EU Commission sets out negotiating position on financial services

The EU Commission has published a non-paper clarifying its objectives for financial services in the negotiations for a Transatlantic Trade and Investment Partnership (TTIP).

In particular, the EU proposes to establish within the TTIP framework a transparent, accountable and rule-based process which would commit the two parties to work together towards strengthening financial stability. Regulatory cooperation would be based on a number of principles:

- joint work to ensure timely and consistent implementation of internationally agreed standards for regulation and supervision;
- mutual consultations in advance of any new financial measures that may significantly affect the provision of financial services between the EU and the US and to avoid introducing rules unduly affecting the jurisdiction of the other party;
- joint examination of the existing rules to examine whether they create unnecessary barriers to trade; and
- a commitment to assessing whether the other jurisdiction's rules are equivalent in outcomes.

These general principles would be backed up by specific arrangements for the governance of EU-US regulatory cooperation, guidelines on equivalence assessments and commitments to exchange necessary and appropriate data between regulators. The core element of the EU proposal is the commitment to outcome-based assessments of whether the other party's regulatory and supervisory framework is equivalent.

Mortgage credit: EU Council adopts proposed directive

The EU Council has adopted a directive on credit agreements for consumers relating to residential immovable property referred to as the Mortgage Credit Directive (MCD).

The directive is intended to create an efficient and competitive single market for mortgage credit in the EU. It sets out principles for marketing and advertising, and obligations for pre-contractual information, as well as requirements for information concerning credit intermediaries and for information on the borrowing rate. The directive includes provisions requiring the creditor to assess the creditworthiness of the consumer, as well as imposing disclosure obligations on the part of the consumer. It also includes regulatory and supervisory principles with regard to credit intermediaries, as well as provisions to enable adequate regulation and supervision of non-credit institutions.

The text adopted by the Council includes all amendments voted by the EU Parliament, following an agreement reached between the two institutions in first reading. Member States will have two years to transpose the directive into their national laws, regulations and administrative provisions.

CRR/CRD 4: EBA publishes final draft technical standards on own funds requirements for investment firms

The European Banking Authority (EBA) has published its final draft Regulatory Technical Standards (RTS) on own funds requirements for investment firms based on fixed overheads under Article 97(4) of the Capital Requirements

Regulation (CRR). The RTS harmonise the calculation of capital requirements for those investment firms that have limited authorisation to provide investment services, as well as the conditions under which competent authorities can make adjustments to such requirements.

For the calculation of the fixed overheads, the final draft RTS use the 'subtractive' approach, whereby variable cost items are deducted from the total expenses as calculated according to the applicable accounting framework. They also introduce a special treatment of tied agents, on the basis that a tied agent exposes an investment firm to the same risk it is exposed to when it carries out business on its own.

The final draft RTS also introduce thresholds above which competent authorities can make adjustments to the capital requirements as well as minimum thresholds below which firms are exempted from the adjustments in capital requirements.

The final draft standards have been sent to the EU Commission for their adoption as regulations that will be directly applicable throughout the EU.

EBA issues recommendation on use of legal entity identifier for supervisory purposes

The EBA has published a recommendation on the use of unique identification codes for supervisory purposes for every credit and financial institution in the EU.

In 2013, the EBA finalised Implementing Technical Standards (ITS) on supervisory reporting, which are intended to ensure uniform reporting requirements across all EU Member States in a number of areas such as own funds, financial information, large exposures, liquidity ratios, leverage ratios and asset encumbrance. As of July 2014, competent authorities will have to submit the data included in these ITS from a sample of institutions in their respective jurisdictions. In this process, the EBA recommends that all competent authorities use a single supranational identifier for each credit and financial institution.

The EBA's recommendation supports the adoption of a Global Legal Entity Identification system (GLEIS) proposed by the Financial Stability Board (FSB) and endorsed by the G20, which aims at delivering unique identification of parties to financial transactions across the world. As the GLEIS is not yet fully operational, the EBA considers that the use of a pre Legal Entity Identifier (pre-LEI) by competent authorities is the best short-term solution and will enhance supervisory convergence and contribute to ensuring high quality, reliability and comparability of data.

Competent authorities must notify the EBA as to whether they comply or intend to comply by 29 March 2014.

EBA announces key features of 2014 EU-wide stress test

The EBA has announced the key components of the forthcoming 2014 EU-wide stress test. The objective of the EU-wide stress tests is to help supervisors assess the resilience of financial institutions in the European Union to adverse market developments. The exercise aims at ensuring consistency and comparability of the outcomes across all banks based on a common methodology, scenarios and accompanied by a consistent disclosure exercise.

Banks will be required to stress a common set of risks including: credit risk, market risk, sovereign risk, securitisation and cost of funding. Both trading and banking book assets will be subject to stress, including off-balance sheet exposures. The EBA has indicated that competent authorities may include additional risks and country-specific sensitivities beyond this common set but that the published results should allow an understanding of the impact of the common set of risks in isolation.

In terms of capital thresholds, 8% Common Equity Tier 1 (CET1) will be the capital hurdle rate set for the baseline scenario and 5.5% CET1 for the adverse scenario. The relevant competent authority may set higher hurdle rates and formally commit to take specific actions on the basis of those higher requirements.

The methodology and scenario are expected to be published in April and banks' individual results to be released at the end of October 2014.

EMIR: ESMA delivers second set of advice on equivalence of Japanese regulatory regime

The European Securities and Market Authority (ESMA) has published a supplement to its September 2013 technical advice to the EU Commission on the equivalence of the regulatory regime for central counterparties (CCPs) of Japan with the European Markets Infrastructure Regulation (EMIR). The supplement sets out ESMA's advice in respect of the equivalence between the Japanese regulatory regime for commodity CCPs and the regulatory regime for CCPs under EMIR.

French-German Economic and Financial Council sets out financial regulation priorities

The 46th French-German Economic and Financial Council has held a discussion on the economic situation in the EU and the euro zone, including current financial stability developments, and exchanged views on the economic strategies being implemented in France and Germany.

Amongst other things, the Council highlighted the need for an EU-wide initiative to separate speculative activities from other banking activities, while preserving the existing European universal banking model. France and Germany have both enacted national bills that aim at separating speculative activities from other banking activities, following the findings and recommendations by the High-Level expert group chaired by Governor Liikanen. They are intended to be part of a wider effort towards a uniform European approach to structural separation, applicable without derogation throughout the single market and preserving the ability of European banks to finance the economy with room for supervisory judgment to choose whether or not to ring-fence some trading activities.

The Council also agreed that priority should be given to reaching a final agreement on the single resolution mechanism before the end of the current legislative cycle. France and Germany will work actively to ensure swift progress both on the finalisation of the intergovernmental agreement and on the discussions with the EU Parliament on the SRM regulation on the basis of the general approach reached by the EU Council in December 2013. As a complement, the French-German Economic and Financial Council agreed on the aim of finding a final political agreement on the instrument of direct recapitalisation by the European Stability Mechanism (ESM) at the Eurogroup meeting on 10 March 2014.

Within the next months, France and Germany will also make joint proposals to reach a compromise on a common scheme of taxation for financial transactions with all the other Member States taking part in the enhanced cooperation. According to the Council, the target is to ensure a fair contribution of financial markets to tax revenues, improving financial stability and harmonising national legislation while preserving monetary policy mechanisms and funding to the economy.

ISDA highlights adverse liquidity effects of EU uncovered sovereign CDS ban

The International Swaps and Derivatives Association (ISDA) has published a report highlighting the adverse liquidity effects of the EU uncovered sovereign credit default swaps (CDS) ban.

On 1 November 2012, the provisions of the EU short selling regulation, which bans uncovered short-selling of sovereign (single name) CDS came into effect. Market participants who wish to establish a permitted sovereign CDS position must now hold offsetting risk, such as the underlying sovereign bond. ISDA notes that this change raised concerns about the impact on portfolio hedging, the potential for a reduction in sovereign CDS liquidity and the implications of a reduction in the European Central Bank's (ECB's) bond-buying programme.

In its report, ISDA examines the liquidity impact of the regulation one year after implementation. The key findings include that:

- as a result of the ban on EU uncovered sovereign CDS, liquidity of the iTraxx® SovX Western Europe Index has become severely limited, and liquidity has also declined across constituents and other EU-regulated single name sovereign CDS;
- investors who utilize EU sovereign CDS (both indices and single names) for EU credit hedging and portfolio diversification must now rely on a proxy such as the iTraxx® Europe Senior Financials Index for this purpose – ISDA's analysis indicates that initially this proxy index adequately reflected the correlation between financials and sovereigns, but this relationship breaks down substantially in the post-implementation period, making this substitute a blunt tool for risk management; and
- the ban on uncovered sovereign CDS could result in further market stress when combined with multiple factors such as ECB tapering, bank failure and a lack of liquidity.

IOSCO publishes final report on protection of client assets

The International Organization of Securities Commissions (IOSCO) has published its final report on 'Recommendations Regarding the Protection of Client Assets'. The report provides guidance to regulators on how to enhance their supervision of intermediaries holding client assets by clarifying the roles of the intermediary and the regulator in protecting those assets.

The report follows a consultation launched in February 2013. A feedback statement and the consultation responses are included in the final report.

FCA consults on proposed amendments to listing rules in relation to sponsor competence

The Financial Conduct Authority (FCA) has published a consultation paper (CP14/2) setting out proposed new rules intended to ensure sponsors – typically investment banks and corporate finance specialists who assist issuers by advising them on their listing obligations – have the right skills, knowledge and expertise.

The proposals include:

- requiring sponsors to have relevant experience within the last three years;
- setting out minimum requirements on skills, knowledge and expertise for staff; and
- accepting applications from sponsors who wish to specialise in a particular sector, helping to encourage new entrants and greater competition.

The FCA is also seeking views on the use of 'joint sponsors' – where issuers appoint multiple sponsors to advise on a transaction – and technical changes to existing rules on circulars.

Comments are due by 30 April 2014. The FCA expects to finalise the rules on sponsors in Q4 2014.

Retail Distribution Review: FCA issues policy statement on referrals to discretionary investment managers and adviser complaints reporting

The FCA has published a policy statement (PS14/1) setting out final rules on the first two of the proposals it consulted on in its July 2013 consultation paper CP13/4 on some aspects of how to apply rules from the Retail Distribution Review (RDR). The FCA has not published final rules on the third proposal in CP13/4, as these changes need to coincide with an update to text in Gabriel, which is scheduled for June 2014.

The final rules set out in PS14/1:

- ban new referral payments by a discretionary investment manager to an adviser when the adviser recommends that a client places additional money with the same discretionary investment manager from whom they receive payments following a pre-RDR referral; and
- ban referral payments where an adviser firm does not provide personal recommendations to particular clients, but provides other services to them.

The third proposal – scheduled for June 2014 – is a minor amendment to the rules requiring complaints against individual advisers to be reported to the FCA. The rules banning new referral payments come into force on 31 December 2014. The FCA currently intends the amendment on complaints reporting to come into force in June 2014.

CONSOB and Bank of Italy implement ESMA's guidelines on remuneration policies and practices

The Commissione Nazionale per le Società e la Borsa (CONSOB) and the Bank of Italy have published a joint communication intended to give full implementation to the European Securities and Market Authority's (ESMA's) June 2013 guidelines on remuneration policies and practices. Amongst others, the guidelines apply to Italian investment firms (SIM), non-EU investment firms, branches of EU investment firms, and – in so far as the provision of investment services is concerned – financial intermediaries, Italian banks, branches of EU banks, non-EU banks, and asset managers (SGR).

The guidelines came into force on 29 January 2014.

Dutch government launches consultation on General Pension Fund

The Dutch government has launched a consultation on a legislative proposal on the introduction of the General Pension Fund (algemeen pensioenfonds, or APF). The APF will be a new type of Dutch pension provider under the Pension Act, in addition to company- and industry-wide pension funds, insurance companies and premium pension institutions.

The aim of the introduction of the APF is to enable existing (non-mandatory) pension funds to achieve economies of scale in terms of administration costs and investments. The main differences from the existing types of pension funds are that:

- ringfencing is allowed;
- the APF may be established by anyone, provided that a license from the Dutch Central Bank is obtained;
- the APF should have a management board consisting of two or more independent professionals and a supervisory board, or a one tier board with at least two independent executives and three independent non-executives; and
- for each ringfenced 'collectivity circle' (i.e. one or more pension schemes operated by one or more employers) a participant representative body must be installed.

Comments are due by 25 February 2014. The government intends for the law introducing the APF to enter into force by 1 January 2015.

SFC consults on proposed amendments to Code on Real Estate Investment Trusts

The Securities and Futures Commission (SFC) has published a consultation paper on proposals to amend its Code on Real Estate Investment Trusts (REIT Code) to introduce flexibility in the investment scope of real estate investment trusts (REITs).

The proposals were formulated during 2013, following the SFC's meetings with various industry participants and the Committee on REITs. Taking into account the comments received and developments in comparable overseas jurisdictions, the SFC considers that it is an appropriate time to amend the REIT Code.

In essence, the proposals seek to introduce flexibility for REITs to:

- invest in properties under development or engage in property development activities; and
- invest in financial instruments, including listed securities, unlisted debt securities, government and other public securities, and local or overseas property funds.

The SFC has indicated that the proposals are subject to relevant restrictions such that a REIT will maintain its profile as primarily a recurrent rental income generating vehicle, and also to ensure transparency of its activities. Details of these restrictions, including maximum thresholds on the investment, disclosure and reporting requirements, are set out in the consultation paper.

Comments are due by 26 February 2014.

SFC issues circular to licensed corporations on internet trading

The SFC has issued a circular to licensed corporations on internet trading. The circular is intended to advise licensed corporations on reducing internet hacking risks. The SFC urges licensed corporations to review and, where appropriate, enhance their information technology (IT) security controls and other preventive and detective measures to reduce internet hacking risks and the potential damage arising from an internet attack.

Based on the findings of a recently conducted review of internet trading systems of selected licensed corporations, the SFC reminds licensed corporations of Chapter 18 and Schedule 7 of the Code of Conduct for Persons Licensed by or Registered with the SFC on electronic trading that came into effect on 1 January 2014, under which a licensed corporation should, amongst other things, effectively manage and adequately supervise the design, development, deployment and operation of its electronic trading system and ensure the system's integrity, including security.

Licensed corporations are advised to ensure that other relevant preventive and detective measures are in place to reduce damage in the face of an internet attack. Also a licensed corporation should closely monitor the operation of its internet trading system and enhance the control system to stop deviated orders being sent to an exchange for execution in order to help preserve both clients' interests and market integrity.

SFC issues circular on regulatory compliance regarding cross-border business activities

The SFC has issued a circular to licensed corporations reminding them to:

- maintain effective policies, procedures and controls to monitor and ensure regulatory compliance in relation to their cross-border business activities; and
- adhere to the legal and regulatory requirements of Hong Kong and any other relevant jurisdiction when opening accounts regardless of location.

FSA publishes finalised version of the amended Ordinance for the Enforcement of the Banking Act of Japan

The Financial Services Agency (FSA) has published a finalised version of the amended Ordinance for the Enforcement of the Banking Act of Japan.

Under the amended Banking Act 2013, a Japanese branch of a foreign bank is under an obligation to hold assets in Japan which fall within 'certain categories' and where the aggregate amount of those assets is above a 'certain amount'. The amended Ordinance defines:

- 'certain categories' as, amongst others things, deposits with the Bank of Japan, cash, Japanese government bonds and certain loans to borrowers who are residents of Japan; and
- 'certain amount' as JPY 2 billion.

Under the existing Banking Act, the FSA has the authority to order all banks (including a Japanese branch of a foreign bank) to hold certain categories of assets in Japan (e.g. cash, Japanese government bonds and loans to borrowers who are residents of Japan). The amended Ordinance broadens those categories by adding deposits with the Bank of Japan.

The amended Ordinance will take effect on 1 April 2014.

FSA proposes relaxation of the Money Lending Business regulations

The FSA has published a draft amendment to the ordinances under the Money Lending Business Act to relax the regulations requiring a licence for loans made between group companies and loans made by a joint venture partner to its joint venture company.

Under the Money Lending Business Act, a lender may be required to obtain a licence to engage in Money Lending Business unless the lender is a bank or certain other financial institution. Currently, although the licence requirement does not apply to loans made between a parent and its subsidiary (in which the parent holds more than 50% of the voting rights), it may apply to loans made between (i) a parent and its subsidiary (in which the parent holds no more than 50% of the voting rights) and (ii) a company and its sister company.

One of the intentions of the FSA in its proposed amendment is to exempt loans between companies which belong to the same group (i.e. a company and its consolidated subsidiaries). As a result, the type of loans described in (i) and (ii) above are likely to be exempted after the implementation of the proposed amendment. The proposed amendment may be useful in particular to Japanese companies (and non-Japanese companies which have group companies in Japan) by enabling them to adopt more efficient cash management systems.

The FSA also proposes to exempt loans made by a joint venture partner to its joint venture company, if the partner holds 20% or more of the voting rights of the company and all of the other joint venture partners consent to the loan.

Comments are due by 26 February 2014. The FSA intends to implement the new regulations on 1 April 2014.

FSA publishes new insider dealing regulations

The FSA has published a finalised version of an amendment to the Cabinet Order setting out details of the new insider dealing regulations.

The new Cabinet Order sets out the details of the amendments to be made to the Financial Instruments and Exchange Act (FIEA), which was passed by the National Diet on 12 June 2013. The new FIEA, together with the new Cabinet Order, provides the framework of the new insider dealing regulations.

Amongst other things, the provisions in the new FIEA and the new Cabinet Order include the following:

- an insider will be prohibited from conveying inside information and from recommending transactions for the purpose of enabling a recipient of such inside information to obtain benefits or avoid losses;
- violating the prohibitions outlined in the first bullet point will give rise to criminal and administrative penalties for the provider if the recipient entered into transactions in breach of the new insider dealing regulations;
- in the event of a violation (or an alleged violation) of the prohibitions outlined in the first bullet point, the financial regulators would be empowered to conduct investigations; and
- an investment corporation listed on a stock exchange (including a Japanese Real Estate Investment Trust) will be subjected to the new insider dealing regulations.

The new insider regulations set out in the new FIEA and the new Cabinet Order will take effect on 1 April 2014.

MAS announces opening of licence applications for offshore Renminbi investment in Chinese securities markets

The Monetary Authority of Singapore (MAS) has announced that eligible financial institutions can submit applications for the Renminbi (RMB) Qualified Foreign Institutional Investor (RQFII) licence that will enable these institutions to offer RMB investment products and invest offshore RMB into China's securities markets. The MAS has indicated that applications are to be made to the China Securities Regulatory Commission (CSRC) via approved custodian banks. All Singapore-incorporated financial institutions that are approved by the MAS to conduct fund management activities may apply for the licence.

Singapore was allocated an aggregate quota of RMB 50 billion under China's RQFII programme. The MAS expects the scheme to spur the development of a broader range of RMB products and services to meet investment needs.

The MAS has also published a set of frequently asked questions (FAQs) setting out details relating to the application process.

Basel III: APRA publishes note on operation of committed liquidity facility

The Australian Prudential Regulation Authority (APRA) has published a note to all authorised deposit-taking institutions (ADIs) subject to the liquidity coverage ratio (LCR) providing further detail on the operation of the committed liquidity facility (CLF).

In December 2010, the Basel Committee on Banking Supervision released a series of measures designed to strengthen liquidity buffers and promote a more resilient global banking system. This included the requirement that banking institutions hold sufficient high-quality liquid assets (HQLA) to withstand a severe liquidity stress.

APRA has been consulting on the implementation of the main elements of the Basel III liquidity reforms in Australia and published a final Prudential Standard APS 210 Liquidity on 20 December 2013.

The Reserve Bank of Australia (RBA) will allow ADIs subject to the LCR requirement to establish a secured CLF sufficient in size to cover any shortfall between the ADI's holdings of HQLA and the requirement to hold such assets under APS 210 Liquidity.

In 2013, APRA undertook a trial exercise to determine the appropriate size of the CLF for each ADI subject to the LCR requirement. A total of 35 ADIs took part and as part of the exercise, ADIs were asked to nominate a specific dollar amount of notional CLF sufficient to allow them to comply with a notional LCR requirement for the calendar year 2014. The main observations relating to CLF and LCR requirements are summarised in the note, together with observations on other matters such as related-party transactions, liquidity transfer pricing and the remuneration of key persons with liquidity management responsibilities.

APRA will ask ADIs to submit formal applications by 30 May 2014 in order to determine the size of an ADI's CLF that will apply for the 2015 calendar year.

CFTC staff announces trade execution mandate for certain fixed-to-floating interest rate swaps

The Commodity Futures Trading Commission (CFTC) Division of Market Oversight has certified an 'available to trade' determination by Javelin SEF and announced a trade execution mandate for fixed-to-floating interest rate swap contracts that are denominated in either USD or EUR and meet specified criteria regarding floating rate index, trade start type, optionality, currency, notional amount and tenor. These swap contracts will become subject to the trade execution requirement under section 2(h)(8) of the Commodity Exchange Act on 15 February 2014. All transactions involving swaps that are subject to the trade execution requirement must be executed through a designated contract market or swap execution facility.

RECENT CLIFFORD CHANCE BRIEFINGS

Margin Bonds – Maximizing the Minority

Private equity firms are increasingly tapping into the global high yield market to finance their investments and investors have now been able to access high yield 'margin bond' financing to acquire minority interests and fund joint venture investments. Such investments have historically been financed through margin loans or direct equity contributions, but now margin bonds may provide an innovative financing solution for investors seeking external finance for a minority acquisition in either a publicly listed or private company, as well as other types of investment.

This briefing discusses margin bonds.

http://www.cliffordchance.com/publicationviews/publications/2014/01/margin_bonds_maximizingtheminority.html

Impact of LIBOR reform on contractual continuity

Contracts with an estimated notional value of more than $300 trillion use LIBOR as their benchmark – for this reason Warren Buffet described LIBOR as the base rate for the whole world. With regulators across the world shining a light on LIBOR's viability, this briefing considers what changes to LIBOR might mean for English law governed contracts that use LIBOR as a benchmark.

http://www.cliffordchance.com/publicationviews/publications/2014/01/impact_of_libor_reformoncontractualcontinuity.html

RMBS in the UK – Recent developments in an evolving and resilient market

2013 saw modest activity in the UK residential mortgage backed securitisation (RMBS) space, but an absence of prime issuance created an opportunity for non-conforming and more bespoke trades.

This briefing considers the prospects for 2014, in light of structural challenges and ongoing regulatory change.

http://www.cliffordchance.com/publicationviews/publications/2014/01/rmbs_in_the_uk_recentdevelopmentsina.html

Legal developments in 2014 relevant to Dutch group finance companies

This briefing provides a summary of legal developments in the Netherlands for 2014 and beyond which are relevant to Dutch group finance companies used by domestic or international conglomerates.

The developments relate to changes in the conditions to remain eligible for the exemption from bank license requirements, the preparation of financial statements and auditor rotation requirements. These are mainly driven by anti-abuse measures and/or the implementation of EU legislation. The status and timing will be indicated per development.

http://www.cliffordchance.com/publicationviews/publications/2014/01/legal_developmentsin2014relevanttodutc.html

US Supreme Court Limits US Courts' Jurisdictional Reach Over Foreign Corporations with US Subsidiaries

On 14 January 2014, the US Supreme Court held that the Due Process Clause of the US Constitution bars a US court from exercising personal jurisdiction over a foreign corporation for the actions of a foreign subsidiary that took place outside the United States, even where that corporation also has a US subsidiary. In 'Daimler AG v. Bauman', workers at a plant operated by Mercedes Benz Argentina, a subsidiary of Daimler AG, sued Daimler in a federal district court in California for Mercedes Benz Argentina's alleged role in publicizing its employees union status thus making them targets of the Argentine military and police forces. The Supreme Court rejected the lower appellate court's decision that the California district court had personal jurisdiction over Daimler because a US-based subsidiary of Daimler provided 'important' services to Daimler in California. The Court's decision makes clear that mere corporate presence in a state by means of a corporate affiliate cannot support jurisdiction over multinational corporations for claims involving a separate foreign affiliate.

This briefing discusses the ruling.

http://www.cliffordchance.com/publicationviews/publications/2014/01/u_s_supreme_courtlimitsuscourts.html

Senior Manager Liability for Derivatives Misconduct – The Buck Stops Where?

The buck, so to speak, does not necessarily stop with the individual who personally violates the US Commodity Exchange Act (CEA), which regulates a wide array of commodities and financial derivatives trading, including swaps (in addition to traditional futures contracts and physical commodities trading) in US markets or otherwise engaged in by or with any US person. Rather, as illustrated by a recent court ruling permitting regulatory charges to go forward against the former CEO of MF Global, Jon Corzine, liability can extend to senior managers, even if they are not regulatory supervisors and have not culpably participated in any misconduct.

This briefing discusses the ruling.

http://www.cliffordchance.com/publicationviews/publications/2014/01/senior_manager_liabilityforderivative.html