

International Regulatory Update

IN THIS WEEK'S NEWS

- AMF updates FAQs on short selling ban
- CNMV updates FAQs on short selling ban
- CONSOB updates FAQs on net short positions ban
- MFA warns policymakers and market authorities of harmful effects of short selling restrictions
- OECD reports on bank competition and financial stability
- Treasury Committee launches inquiry into Financial Conduct Authority's accountability
- FSMA consults on new rules on commercialisation of structured products to retail investors
- ASIC issues disclosure benchmarks for OTC contracts for difference
- RBI issues draft guidelines on internal rating based approach for calculating credit risk capital charge
- FRB issues interim final rule establishing regulations for savings and loan holding companies
- Recent Clifford Chance briefings: Impact of the US sovereign credit rating downgrade on ABS with US exposure and on cross-border ABS; FSA prohibition on custody liens over client assets; and more. [Follow this link to the briefings section.](#)

AMF updates FAQs on short selling ban

The Autorité des marchés financiers/Financial Markets Authority (AMF) has published two updates to its set of frequently asked questions in relation to the ban on creating a net short position or increasing any existing net short position, including intraday, in the equity shares or securities giving access to the capital of certain credit institutions and insurance companies. The ban was introduced on 11 August 2011 and will remain in effect for a period of 15 days (this may be extended pursuant to the conditions provided in Article L. 421-16 II of the Monetary and Financial Code).

On 12 August, the FAQs were updated to clarify the scope of the exemption given to market makers and liquidity providers. In addition, on 18 August, the FAQs were updated to clarify:

- the conditions for handling net short positions taken through expiring derivatives – the FAQs indicate that investors holding a net short position in relation to one of the securities concerned through expiring derivatives are allowed to roll forward their position, even if such a rolling results in the creation of a net short position with a further expiry date, provided that the net short position so created does not exceed the one held previously; and
- the exception relating to market making or liquidity provision.

.....
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](#) +44 (0)20 7006 1139

[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
.....

[FAQs \(French\)](#)

[FAQs \(English\)](#)

[Press release relating to adjustment](#)

CNMV updates FAQs on short selling ban

The Comisión Nacional del Mercado de Valores (National Securities Market Commission) (CNMV) has published an [updated set of frequently asked questions](#) in relation to its temporary measure on net short positions.

The CNMV has added FAQ number 8, which specifies that an investor may roll-over a short position in futures, taken before the temporary short position ban agreed by the CNMV, provided that the roll-over of future contracts does not create a new net short position or increase a previous one. It has also added FAQ number 9, which indicates that an investor may compensate a long position in convertible bonds with a short position in the underlying shares, provided that the investor's delta adjusted net exposure would not be negative.

CONSOB updates FAQs on net short positions ban

The Commissione Nazionale per le Società e la Borsa (CONSOB) has published an updated set of frequently asked questions (FAQs) on the net short positions ban that was introduced in CONSOB resolution No. 17902 on 12 August 2011.

Amongst other things, the updated FAQs address:

- the use of index derivatives strictly for hedging purposes, where the underlying index comprises banned components (cf. question 3);
- the treatment of orders not yet executed at the date the resolution came into force (cf. question 5);
- the treatment of net short positions that fall below the reporting threshold introduced by CONSOB resolution No. 17862 (cf. question 8); and
- clarifications on the scope of the ban affecting trades executed in foreign trading venues (cf. question 9).

[Resolution 17902 \(Italian\)](#)

[Resolution 17682 \(Italian\)](#)

[FAQs on resolution 17902 \(Italian – updated as of 18 August](#)

[Resolution 17902 \(English\)](#)

[Resolution 17682 \(English\)](#)

[FAQs on resolution 17902 \(English – updated as of 18 August 2011\)](#)

MFA warns policymakers and market authorities of harmful effects of short selling restrictions

The Managed Funds Association (MFA) has submitted [letters](#) to EU policymakers and market authorities on the decision by certain market authorities to restrict short selling. The MFA urges the recipients to consider past experience when market authorities have implemented short sale restrictions and to refrain from or reconsider their decision to implement a short selling restriction, arguing that such bans have proven to be more harmful than beneficial to markets.

In particular, the MFA argues that:

- short selling restrictions are counterproductive, further deteriorate investor confidence and increase volatility;
- short selling restrictions impair the ability of investors to manage risk, leading many to sell additional securities to balance their portfolios;
- short selling restrictions freeze the ability of financial institutions to raise capital through convertible bond and convertible preferred security issuances by preventing investors to purchase the convertible products and hedge the risk with offsetting short sales; and
- the absence of a consultation period undermines investor confidence and creates market uncertainty with respect to interpretive guidance and compliance efforts.

OECD reports on bank competition and financial stability

The OECD has published a report which [report](#) examines the interplay between banking competition and financial stability, taking into account the experiences of the recent global crisis and the policy response to date. In particular, the report considers competition in retail banking and financial stability, competition in derivative markets and financial stability, and bank competition and government guarantees.

Treasury Committee launches inquiry into Financial Conduct Authority's accountability

The Treasury Committee has [launched](#) an inquiry into the accountability of the new Financial Conduct Authority (FCA). The government has proposed that, by the end of 2012, the FCA will take over responsibility for conduct of business regulation from the FSA. Amongst other things, the Committee's inquiry will scrutinise the remit and powers of the FCA to facilitate competition and choice in financial services.

FSMA consults on new rules on commercialisation of structured products to retail investors

The Financial Services and Markets Authority (FSMA) has launched a consultation on new rules on the commercialisation of structured products to retail investors. The consultation is the second step of a process FSMA launched on 20 June 2011, when it published its moratorium on the retail distribution of structured investment products that are deemed 'needlessly complex'. The moratorium is to be adhered to on a voluntary basis by distributors of financial products. By doing so, distributors undertake not to distribute any new structured products that, on the basis of criteria defined by FSMA, are deemed 'needlessly complex'. The moratorium came into effect on 1 August 2011 and the institutions which have adhered to it so far are listed on FSMA's website. As of 1 September 2011, financial intermediaries such as brokers and agents will also be able to adhere to the moratorium.

In its consultation, FSMA invites all interested parties to communicate their views on what the forthcoming FSMA regulation on structured products (which will constitute the third step of the process) should look like. Amongst other things, FSMA is seeking views on the criteria used in the moratorium to determine whether or not a product should be considered 'needlessly complex' and on whether the forthcoming regulation should refer to the complexity of the structured products only or should also take into account the risk associated with such products. FSMA has also invited views on whether the regulation should apply to other products that are not structured but are nonetheless considered complex and/or risky.

Comments are due by 15 October 2011.

[Consultation paper \(French\)](#)

[Consultation paper \(Dutch\)](#)

ASIC issues disclosure benchmarks for OTC contracts for difference

The Australian Securities and Investments Commission (ASIC) has published a regulatory guide ([RG 227](#)) setting out seven new disclosure benchmarks for OTC contracts for difference, which are intended to improve disclosure and help investors better understand the risks and benefits of these products. The guidance also covers margin foreign exchange contracts.

As of 31 March 2012, issuers will have to address each of the following benchmarks in their product disclosure statements on an 'if not, why not' basis: (1) client qualification; (2) opening collateral; (3) counterparty risk – hedging; (4) counterparty risk – financial resources; (5) client money; (6) suspended or halted underlying assets; and (7) margin calls. In addition, RG 227 outlines the standards ASIC expects issuers to meet when advertising OTC contracts for difference to retail investors.

ASIC has also published a report ([REP 246](#)) setting out its responses to the comments on its November 2010 consultation paper (CP 146) on the benchmark-based disclosure model for OTC contracts for difference.

RBI issues draft guidelines on internal rating based approach for calculating credit risk capital charge

The Reserve Bank of India (RBI) has issued [draft guidelines](#) on the internal rating based approach for calculating the credit risk capital charge. In July 2009, the RBI announced a timeline for the implementation of advanced approaches for the computation of regulatory capital under the Basel II framework in India. Banks can apply for migration to the internal rating based approach for calculating credit risk from 1 April 2012 onwards.

Comments are due by 9 September 2011.

FRB issues interim final rule establishing regulations for savings and loan holding companies

The Board of Governors of the Federal Reserve System (FRB) has [issued](#) an interim final rule establishing regulations for savings and loan holding companies (SLHCs). On 21 July 2011, supervisory and rulemaking authority for SLHCs and their non-depository subsidiaries transferred from the Office of Thrift Supervision (OTS) to the FRB under the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the FRB issued a notice outlining the regulations previously issued by the OTS that the Federal Reserve will continue to enforce. The

interim final rule implements the transfer of those regulations from the OTS to the FRB. The FRB has also issued an Order delegating to staff and to the Reserve Banks the authority to take certain actions with respect to SLHCs.

Comments are due by 27 October 2011.

RECENT CLIFFORD CHANCE BRIEFINGS

Bans on short selling in Belgium, France, Italy and Spain

On 11 and 12 August 2011, existing prohibitions on short selling were significantly expanded in Belgium, and in France, Italy and Spain new bans on short selling were introduced.

This briefing provides details of the developments in each of these jurisdictions and the related statement issued by ESMA.

http://www.cliffordchance.com/publicationviews/publications/2011/08/bans_on_short_sellinginbelgiumfranceital.html

FSA prohibition on custody liens over client assets

On 1 March 2011, the FSA published a new rule in its Client Assets Sourcebook (CASS 6.3.5R), which requires a UK firm that holds securities on behalf of its underlying clients to ensure that any third party custodian with which the assets are deposited does not take a lien or right of sale over those assets, subject to certain exceptions. The rule applies irrespective of the location of the custodian.

The prohibition came into effect immediately on 1 March 2011 but the FSA has granted provisional relief, expiring on 1 October, in respect of custody agreements entered into before 1 March. However, custodians and their clients expressed concerns that the proposed exceptions to the prohibition were too narrow and would effectively prevent custodians from taking liens over all assets in an omnibus account (which is common practice). The FSA has therefore proposed to 'switch off' the new rule from 1 October 2011 until 31 March 2012 (inclusive) to allow time to modify the wording of the exceptions to address these concerns. The FSA published a consultation paper on its proposed modifications on 29 July. The deadline for responses regarding the modifications is 28 October and the deadline for responses on measures for interim relief is 29 August.

This briefing discusses the key issues.

http://www.cliffordchance.com/publicationviews/publications/2011/08/fsa_prohibition_ongcustodylienoverclien.html

UCITS notifications in the Netherlands as of July 2011

The UCITS IV Directive needed to be implemented by all EU Member States on 1 July 2011. The Netherlands implemented the Directive slightly later, on 22 July 2011. The Directive will have a number of practical consequences for the registration and maintenance of all incoming UCITS in the Netherlands.

This briefing relates to incoming UCITS only and is based on information which Clifford Chance received from the AFM (the Dutch Authority for the Financial Markets).

http://www.cliffordchance.com/publicationviews/publications/2011/08/ucits_notificationsinthenetherlandsasofjul.html

Major overhaul of the tax regime of interest, dividends and capital gains – single 20% rate enacted

The Italian Government has issued a decree law containing a set of extraordinary measures to stabilise public finances and respond to the heavy pressure in such direction by EU partners and the European Central Bank. Decree Law 138/2011 introduces significant changes to the tax regime of income from financial sources (such as interest, dividends and capital gains on shares and other securities) which affect mainly individual investors and non-resident investors not acting through an Italian permanent establishment. The new changes only marginally affect the tax regime of income and gains realised by Italian businesses or Italian permanent establishments of foreign businesses. Decree Law 138/2011 must be converted by the Parliament into law, with eventual amendments, within 60 days; if not converted, the decree would cease to produce any further effect.

This briefing outlines the relevant new provisions.

Please contact Barbara Kahn by email at barbara.kahn@cliffordchance.com or a copy of this briefing.

Polish Legislation Newsletter

The Polish Legislation Newsletter summarises selected recent changes to Polish law. The July 2011 edition contains information on, amongst other things: (1) an Act amending the Bankruptcy and Recovery Proceedings Law; (2) a governmental Bill on payment services; (3) a governmental Bill amending the Act on support granted to financial institutions by the State Treasury; (4) a governmental Bill amending the Banking Law; and (5) a governmental Bill amending the Act on trading in financial instruments and amending certain other Acts.

http://www.cliffordchance.com/publicationviews/publications/2010/08/polish_legislationnewsletterjuly2010.html

Impact of the US sovereign credit rating downgrade on ABS with US exposure and on cross-border ABS

On 5 August 2011, Standard & Poor's lowered its long-term sovereign credit rating on the United States of America to 'AA+' from 'AAA' and affirmed its 'A-1+' short-term rating. The outlook for the long-term rating is negative.

This briefing discusses the impact of the US downgrade on US and cross-border asset-backed and mortgage-backed securities.

http://www.cliffordchance.com/publicationviews/publications/2011/08/impact_of_the_u_ssovereigncreditratin.html

US imposes new economic sanctions against Syria

The White House has issued an Executive Order imposing new, and significantly broader, US economic sanctions against Syria. Until recently, US sanctions imposed an asset freeze only on certain designated individuals and entities in Syria, including a growing list of firms associated with cronies of the Syrian regime, referred to as Specially Designated Nationals or 'SDNs', as well as prohibiting the export of most US-origin goods to Syria.

This briefing discusses the latest sanctions.

http://www.cliffordchance.com/publicationviews/publications/2011/08/u_s_imposes_new_economicsanctionsagainstsyria.html

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](#).

This Client briefing 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.

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.

www.cliffordchance.com

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.

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ 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.