

International Regulatory Update

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CONSOB updates FAQs on restrictive measures on net short positions and reporting requirements

The Commissione Nazionale per le Società e la Borsa (CONSOB) has published an updated version of its frequently asked questions on [Resolution No. 17902](#) on restrictive measures on net short positions, as extended by [Resolution No. 17911](#). In addition, CONSOB has updated the FAQs on the reporting obligations introduced by [Resolution No. 17862](#).

Amongst other things, the FAQs provide additional clarification on the use of exchange-traded funds (ETFs) and financial instruments other than derivatives.

Japan's FSA announces implementation date for amended FIEL subordinate legislation on short selling connected to public offerings

The Financial Services Agency (FSA) has announced that the amended Order for Enforcement of the Financial Instruments and Exchange Law and

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the amended Ordinance on Financial Instruments Business, etc. will be implemented on 1 December 2011. The amendments provide that an investor who accrues a short selling position of shares of a company after the company has announced a public offering of those shares must not settle his stock borrowing position involved in the short selling position with shares acquired through the public offering. Securities companies are required to notify their clients of the above regulations in writing prior to their solicitation.

ECON Committee discusses draft report proposed mortgage directive

The European Parliament's ECON Committee has discussed the European Commission's March 2011 [proposal for a directive](#) on credit agreements relating to residential property, as well as a [draft report](#) on the proposal prepared by Antolín Sánchez Presedo MEP, which was published in July 2011.

According to the Parliament, the draft report places greater emphasis on the post-contractual life of a mortgage, particularly regarding more flexibility, rather than only the pre-contractual phase. For example, the report introduces standards regarding early repayment, the switching of lenders, and the right to convert a foreign currency mortgage into the national currency. In addition, the report considers ways to decrease market-share concentrations, calls for a reduction in the proportion of interest-only loans and seeks to require that income verification become more of a standard practice when lenders assess mortgage applications.

OTC derivatives and market infrastructures: Polish EU Presidency publishes compromise proposal

The Polish EU Council Presidency has published a [compromise text](#) for the proposed regulation on OTC derivatives and market infrastructures.

FSB provides update on shadow banking work

The Financial Stability Board (FSB) has issued an [update](#) on the work of its Shadow Banking Task Force and highlighting the following five areas where the Task Force believes more detailed work is warranted to help gauge the case for further regulatory action: (1) banks' interactions with shadow banking entities (indirect regulation) – in particular, examining consolidation rules for prudential purposes, limits on the size and nature of a bank's exposures to shadow banking entities, risk-based capital requirements for banks' exposures to shadow banking entities, and treatment of implicit support; (2) reform of money market funds; (3) other shadow banking entities; (4) securitisation, in particular with regard to retention requirements and transparency; and (5) activities related to securities lending/repos, including possible measures on margins and haircuts.

The FSB has decided to set up dedicated workstreams to focus on each of these areas. In some cases, the workstreams will be undertaken by the relevant international standard setting bodies, while in others work will be carried forward under the guidance of the FSB Task Force. The FSB has indicated that these workstreams will develop preliminary work plans shortly, and report on their progress as well as the proposed policy recommendations to the FSB by July 2012 (or end-2012 for securities lending/repos).

The FSB also intends to elaborate on its recommendations for strengthening the oversight and regulation of shadow banking in a report for the G20 in October 2011.

UCITS IV: FSA issues policy statement on UK transposition

The FSA has issued a [policy statement \(PS11/10\)](#) which reports on the main issues arising from the December 2010 HM Treasury/FSA [consultation paper](#) on the transposition of the revised UCITS IV Directive and publishes final rules. PS11/10 summarises the feedback received from the consultation on the matters that are the FSA's responsibility and sets out its responses, including where Handbook changes differ significantly from the version consulted on.

The Handbook Instrument implementing the FSA's rules and guidance came into effect on 1 July 2011, and firms have until 30 June 2012 to introduce the key investor information document for their UCITS funds.

Bank of England paper on tail risks and contract design from a financial stability perspective published

The Bank of England has published a [paper](#), co-authored by Paul Fisher, its Executive Director for Markets and a Member of the Monetary Policy Committee and Financial Policy Committee, which considers how the true value of a financial contract can differ from what it was intended to be because of a failure to take into account how the financial system as a whole operates. According to the paper, this happens especially during stress situations and therefore affects financial stability.

Amongst other things, the paper concludes that regulators, investors and analysts need to take account of true stress correlations. The paper argues that if they do not, the impact of tail events will not be captured properly. The paper also observes that tail events seem to happen far more often than people assume, and if the risks were properly acknowledged at the outset, many contracts would be avoided or risks re-structured so as to limit losses in the event of tail risks crystallising. In addition, the paper notes that there is a good case to be made for contingent capital securities, but that it is crucial, from a financial stability standpoint, that the trigger point for conversion of such securities should not be set at a level which would completely disrupt the market if it was ever met.

FRC reports on increasing transparency in corporate reporting

The Financial Reporting Council (FRC) has published the following two reports, which argue that companies should improve the way they report to investors on the key strategic risks facing their businesses:

- ['Boards and Risk – A Summary of Discussions with Companies, Investors and Advisers'](#); and
- ['Effective Company Stewardship – Next Steps'](#).

Following consultations with companies, investors, auditors and other interested parties, the FRC is proposing to ensure that company narrative reports focus primarily on strategic and major operational risks, rather than indiscriminate lists of risks that all companies face. The Turnbull Guidance will be updated, and the FRC will consider whether changes may also be needed to the UK Corporate Governance Code to reflect lessons from its work on risk and ensure the conclusions of the on-going Sharman Enquiry on going concern and liquidity risks are taken into account.

The FRC's proposals on risk are part of a range of measures intended to improve the quality of company reporting and increase the information provided by audit committees and auditors about the work that they have done and the judgements or decisions they have made.

BaFin consults on proposal for regulatory algorithm for determining capital requirements as stressed value-at-risk

The Federal Financial Supervisory Authority (BaFin) has launched a consultation on the proposal for a regulatory algorithm for determining capital requirements as a stressed value-at-risk. The consultation follows the announcement by the Basel Committee on Banking Supervision of a fundamental review of trading activities. Amongst other things, the review is intended to address shortcomings of the standardised measurement methods for market risk. BaFin's discussion paper presents the future design of a revised standardised approach for market risk.

BaFin has invited interested parties to take part in an informal exchange of thoughts on the discussion paper, which will take place on 30 September 2011.

[Consultation page \(DE\)](#)
[Covering letter \(EN\)](#)
[Discussion paper \(EN\)](#)

Danish government announces political agreement on banking sector consolidation initiatives

The Danish government has announced that it has reached an [agreement](#) with political parties Socialdemokraterne, Dansk Folkeparti, Socialistisk Folkeparti, Radikale Venstre og Liberal Alliance on a number of consolidation initiatives intended to strengthen confidence in the Danish banking sector.

In particular, the parties have agreed on the following initiatives: (1) strengthening the Danish compensation scheme to make it more attractive to take over banks in distress; (2) removing barriers to mergers between banks by offering a state guarantee with increased premiums; (3) financing through contributions to the Guarantee Fund for Depositors and Investors (and the winding-up department) to even out sector payments to the scheme, as well as establishing a possible consolidation fund; and (4) preparing future regulation on systemically important financial institutions in Denmark.

The Ministry of Economic and Business Affairs intends to launch these initiatives as soon as possible. In addition, the Ministry has entered into an agreement with the Danish Bankers' Association in which the Association and its members have expressed their willingness to participate in finding solutions that will enable sound banks to wholly or partly take over activities from distressed banks.

[Press release and link to related documents \(Danish\)](#)

RBI issues draft guidelines for licensing of new banks in private sector

The Reserve Bank of India (RBI) has issued [draft guidelines](#) for the licensing of new banks in the private sector. Amongst other things, the draft guidelines cover eligible promoters, corporate structure, minimum capital requirement, foreign shareholding limits and corporate governance for new banks.

Comments are due by 31 October 2011.

Japan's FSA consults on draft amended Cabinet Orders and Cabinet Office Ordinances relating to FIEL and other laws

The Financial Services Agency (FSA) has [published](#) for consultation drafts of the amended Cabinet Orders and Cabinet Office Ordinances in relation to the amended Financial Instruments and Exchange Law, Law on Investment Trust and Investment Corporation, and Law on Securitisation of Assets, which passed the Diet on 17 May 2011.

With respect to the Financial Instruments and Exchange Law, the amendments include, amongst other things, provisions voiding any sale of unlisted shares by unregistered brokers. With respect to the Law on Investment Trust and Investment Corporation and the Law on Securitisation of Assets, the amendments are intended to make securitisation schemes more flexible in terms of fund raising, investment and reporting.

Comments on the draft amended Cabinet Orders and Cabinet Office Ordinances are due by 30 September 2011. The FSA intends to implement the amendments on 24 November 2011.

ASIC consults on new advertising guidelines

The Australian Securities and Investments Commission (ASIC) has published a [consultation paper \(CP 167\)](#) and draft regulatory guide containing best practice guidance for the advertising of financial products and financial advice. The purpose of the draft guidance is to assist promoters and publishers in presenting advertisements that are accurate and balanced and that help consumers make decisions that are appropriate for them.

Comments on the consultation paper and draft regulatory guide are due by 25 October 2011.

CLIFFORD CHANCE EVENT

Perspectives Legal Development Series Autumn 2011

The next series of 'Perspectives' seminars will be held in London from September to November 2011, covering a number of developments of relevance to finance and capital markets professionals.

Amongst other topics, the series includes talks entitled: (1) Current trends in investment grade lending; (2) The bank trilemma – regulatory capital; (3) Commodity and trade financing – new tricks for an old dog?; (4) The Eurozone sovereign debt crisis – current issues and perspectives; (5) market regulation in transition; and (6) OTC derivatives regulation and clearing reforms – where are we now?

Each seminar will be held at Clifford Chance's Upper Bank Street offices on Tuesday evenings and will be repeated in the City at Saddlers' Hall the following day.

Registration queries should be directed to Beverly Otoki on +44 (0)20 8834 1087 or registration@cliffordchance.com.

RECENT CLIFFORD CHANCE BRIEFINGS

European Insolvency Procedures 2011 Edition

The 2011 edition of European Insolvency Procedures provides an update on the developments in each of the key European jurisdictions, including how the different corporate insolvency regimes operate in those jurisdictions. The briefing aims to assist clients to assess credit risks and potential impacts of formal insolvency procedures on realising security across Europe and contains a useful comparative table on issues such as the automatic stay, the ability to cram down creditors, and potential lender liability. The updated version includes coverage of the new developments in France, a summary of proposed reforms in Germany, and guidance on the new reforms that have taken place in Italy. In addition, for the first time, the guide has been extended to include Russia.

http://www.cliffordchance.com/publicationviews/publications/2011/08/european_insolvencyprocedures2011edition.html

Dancing the Congo – the last step (FG Hemisphere/Congo case update)

The Standing Committee of the National's People's Congress has, at the request of the Hong Kong Court of Final Appeal, given its interpretation in respect of Articles 13(1) and 19(1) of the Basic Law. As expected, the Standing Committee has confirmed its agreement with the Court of Final Appeal's provisional decision in *FG Hemisphere LLC v Democratic Republic of Congo*. It confirmed that the doctrine or principle of 'absolute sovereign immunity' applies in Hong Kong, as it does on the Mainland. The doctrine or principle of 'restrictive immunity', which applied in Hong Kong immediately prior to the Handover of Hong Kong to the PRC on 1 July 1997, no longer applies. The issue in the Congo case was whether a foreign state (here the Democratic Republic of Congo) could be sued before the Hong Kong courts to enforce two foreign ICC arbitral awards.

This briefing discusses the Standing Committee's interpretation.

http://www.cliffordchance.com/publicationviews/publications/2011/08/dancing_the_congo-thelaststepf.html

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