

International Regulatory Update

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SHORT SELLING UPDATE

AMF publishes further update to FAQs on short selling ban

The French Financial Markets Authority (AMF) has published an updated set of [FAQs](#) 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. In particular, the FAQs have been updated for the purpose of further specifying the exemptions that are applicable to market makers and liquidity providers.

FSMA amends Q&As on short selling rules

The Belgian Financial Services and Markets Authority (FSMA) has amended its [FAQs](#) on short selling rules and clarified some exemptions from the prohibition. In particular, the FSMA provides a definition of the market making/liquidity provision activity and clarifies that proprietary trading strategies are not exempted and that clients of market makers and

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liquidity providers are subject to the prohibition. The FSMA also specifies that market makers and liquidity providers should ensure to close any net short position that may result from the activity of market making/liquidity provision as soon as reasonably practicable.

OTHER NEWS

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.

FSA consults on transactions on Turquoise Derivatives and derivative markets where reference data is unavailable

The FSA has published for [consultation](#) proposed guidance on transaction reporting for transactions on Turquoise Derivatives and on derivative transactions conducted through clearing platforms of derivative markets where the reference data for these transactions is not made available to the FSA and ARMs.

With respect to Turquoise Derivatives, the FSA is proposing that firms may continue to report transactions executed in derivatives admitted to trading on Turquoise Derivatives as if they were derivatives admitted to trading on a regulated market, i.e. by populating the instrument identifier of the derivative and the trading venue with the MIC for Turquoise Derivatives. Firms may also elect to report as OTC derivatives.

With respect to derivative transactions conducted through clearing platforms of derivative markets where the reference data for these transactions is not made available to the FSA and ARMs, the FSA is proposing that firms use the ISIN for ISIN derivative markets or the Aii code for Aii derivative markets of the standardised derivative contracts (order book contracts). The FSA expects that this will allow these transaction reports to be accepted and the FSA to identify the instrument for these transactions.

Responses to the consultation regarding Turquoise Derivatives are due by 22 September 2011. Responses to the consultation regarding derivative transactions conducted through clearing platforms of derivative markets where the reference data for these transactions is not made available to the FSA and ARMs are due by 6 October 2011.

FSA Quarterly consultation No.30 published

The FSA has issued its '[Quarterly consultation No.30](#)' (CP11/18). Amongst other things, the consultation includes proposed changes to:

- rules to implement Omnibus 1 changes for financial conglomerates;
- the liquidity regime and guidance on liquidity reporting in the Supervision manual;
- the identity of settlement decision makers;
- the Disclosure and Transparency Rules
- the Remuneration Code – proposals to amend the transitional provisions on voiding and recovery.

Comments on Chapters 3 and 9 are due by 6 October 2011 and comments on Chapter 2 by 20 October 2011. Comments on all other chapters are due by 6 November 2011.

FPC Member Donald Kohn discusses enhancing financial stability and the role of transparency

Donald Kohn, Member of the Financial Policy Committee (FPC), Bank of England, has given a [speech](#) during which he discussed how greater transparency of both the financial system and policy makers can enhance financial stability.

With respect to financial institutions, Mr. Kohn stated that, in order for counterparties and investors to be able to make a reasonably accurate assessment of the financial health of an institution and how that health would be affected as economic and financial conditions change, institutions must provide timely, up to date, and comprehensive information, which fairly represents the condition of the firm. He noted that firms can also help relieve uncertainty about their balance sheets by publishing enough information to enable market participants to

apply their own informed judgment about the effect of changing circumstances. Moreover, the reporting conventions of firms should be more uniform, so that data can be compared.

Mr. Kohn also discussed the need for greater information about the instruments sold and bought by institutions. He indicated that the FPC is concerned about backsliding as confidence returns and with the re-emergence of complex instruments with chains of counterparty exposures that are not transparent or well understood.

With respect to markets and the increased use of central counterparties for clearing derivative trades, Mr. Kohn observed that these data warehouses present an opportunity to improve transparency in a number of dimensions. In particular, he anticipates that more complete reporting of price information should help in price discovery and enhance competition, and that release of information about aggregate trade volumes should help policymakers and market participants assess how participation in markets for risk is changing over time.

Donald Kohn concluded his speech by arguing that, in addition to greater transparency in the financial system, the effectiveness of policy will depend on how open the FPC is about its concerns recommendations, and deliberations.

FSMA consults on regulation of compliance officers

The Financial Services and Markets Authorities (FSMA) has opened a [consultation](#) with regard to its draft regulation in respect of compliance officers. The draft provides that compliance officers must be authorised by the FSMA and candidates will need to have passed a specific exam and show three years of relevant experience. Responses are due by 30 September 2011.

Belgian Law implementing CRD 2 and CRD 3 and increasing directors' liability published

A [law](#) dated 28 July 2011, published on 31 August 2011, implements CRD 2 and, with regard to remuneration policies, CRD 3. The law deals in particular with the establishment of colleges of supervisors, the concept of 'significant branch', the role or remuneration committees and the power of the regulator to impose caps on bonuses. The law obliges branches of EU institutions to report annually to the National Bank of Belgium on the liquidity of the branch and certain other matters. The law also provides – and this goes further than a mere implementation of the European directives – that the directors of a financial institution are jointly and severally liable to third parties for errors and omissions in the institution's financial reporting.

German Federal Constitutional Court judgment on complaints lodged against aid measures for Greece and euro rescue package

The Federal Constitutional Court (BVerfG) has rejected as unfounded three constitutional complaints which were directed against German and European legal instruments and other measures in connection with the aid to Greece and the euro rescue package. The Second Senate of the BVerfG has decided that the German Monetary Union Financial Stabilisation Act containing authorisation to provide financial aid to Greece and the German Act Concerning the Assumption of Guarantees in the Framework of a European Stabilisation Mechanism relating to the euro rescue package, do not violate German Basic Law and, in particular, that the right of the electorate to elect its representatives is not eroded.

[Press release \(English\)](#)

[Press release \(DE\)](#)

[Full reasoning \(DE\)](#)

BaFin consults on wording for fee provisions of fund rules for German UCITS and real estate funds

The Federal Financial Supervisory Authority (BaFin) has published a consultation paper on draft samples of the wording for fee provisions of fund rules for German UCITS and real estate funds. According to the German Act Implementing the UCITS IV Directive, all new provisions on fees in the fund rules have had to be approved by BaFin since 1 July 2011. BaFin is entitled to check whether the fee provisions impose unreasonable costs and fee structures on investors. To detail applicable standards and provide guidance, BaFin has developed two modules for fees: an all-in fee module and a performance fee module.

Responses are due by 16 September 2011.

[Consultation Announcement \(DE\)](#)

[Notes to Consultation 18/2011 \(DE\) – Costs for the design of the block model contract terms of policy-compliance funds](#)

[Notes to Consultation 18/2011 \(DE\) – Costs for the design of the block model contract conditions of real estate funds](#)

SGX consults on proposals to revise error trade policy

The Singapore Exchange (SGX) has issued a [consultation paper](#) on its proposals to revise the error trade policy on the securities market to promote greater trade certainty in trades executed and to reduce the incidences of trade cancellation.

The two proposed changes are: (1) the introduction of a non-cancellation range of 20 minimum bid sizes or 5% from a reference price determined by SGX, whichever is higher, on selected instruments trading on the SGX securities market to increase trade certainty in trades which would otherwise have been disputed and referred to the SGX; and (2) the introduction of price adjustment as an additional error trade dispute resolution method for instruments on which the non-cancellation range is introduced.

Responses are due by 27 September 2011.

SEC consults on use of derivatives by mutual funds and other investment companies

The SEC has issued a [concept release](#) and related fact sheet seeking public comment on the use of derivatives by mutual funds and other investment companies regulated under the Investment Company Act of 1940 (1940 Act). The release seeks information on how different types of funds use derivatives and asks questions related to: (1) restrictions on leverage; (2) fund portfolio diversification; (3) fund investments in certain securities-related issuers; (4) fund portfolio concentration; and (5) the valuation of fund assets.

Responses are due within 60 days from the date of publication in the Federal Register. The SEC will use the responses to determine whether additional regulatory initiatives or guidance is needed to protect investors and fulfill the purposes underlying the 1940 Act.

RECENT CLIFFORD CHANCE BRIEFINGS

Second ESMA Consultation Paper on the Alternative Investment Fund Managers Directive - Supervision and Third Country Entities

On 23 August 2011, ESMA released its second draft technical advice on possible implementing measures in respect of the AIFMD. It deals with implementing measures in respect of: (1) delegation of portfolio management and risk management functions to third country entities; (2) assessment of equivalence of third country depositary frameworks; and (3) supervisory co-operation and exchange of information in relation to marketing non-EU AIFs and EU AIFs managed by non-EU AIFMs. This second consultation paper follows a first consultation paper which was published on 13 July 2011 and covered a much wider range of topics.

This briefing includes a table setting out the highlights of the second consultation paper.

http://www.cliffordchance.com/publicationviews/publications/2011/09/second_esma_consultationpaperonthealternativ.html

Antitrust Review for July - August 2011

The July – August 2011 issue of Antitrust Review contains commentary on the main developments in national and international antitrust law and policy.

http://www.cliffordchance.com/publicationviews/publications/2011/09/antitrust_review_july-august2011.html

Contentious Commentary - a review for litigators

This newsletter provides a summary of recent developments in litigation. The newsletter is produced by lawyers in the litigation and dispute resolution practice at Clifford Chance.

http://www.cliffordchance.com/publicationviews/publications/2011/09/contentious_commentary-september2011.html

Important opportunities for the market of short-term bonds and securitisation notes in Italy

New tax legislation should open up great opportunities for Italian issuers to tap into the short term capital markets by removing the withholding tax discrimination currently existing vis-à-vis long term bonds.

This briefing outlines the new relevant provisions.

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

Sell out - new minimum float criteria

After a public consultation phase, CONSOB replaced its notification of 2002 by issuing notification no. DEM/11065125 of 21 July 2011, which updates the general criteria to exercise the powers granted to it by Legislative Decree No. 58 of 24 February 1998 (TUF) on amending the float relevant for the obligation to purchase pursuant to article 108, paragraph 2, of the TUF for shareholders holding more than 90% of the voting capital of a listed Italian company.

This briefing outlines the new relevant provisions.

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

Bill 6318 amending the Law of 13 February 2007 on Specialised Investment Funds

Bill N° 6318, which proposes amendments to the law of 13 February 2007 on specialised investment funds, was adopted by the Luxembourg Government Council on 1 July 2011 and laid before the Luxembourg Parliament on 12 August 2011.

This briefing provides a short overview of the main amendments to the law on specialised investment funds put forward by the Bill.

http://www.cliffordchance.com/publicationviews/publications/2011/09/clifford_chance_commentbill6318amendingt.html

Luxembourg Legal Update - September 2011

The Luxembourg Legal Update offers a regular 360 degree view on recent legal developments in Luxembourg. The newsletter provides a compact summary and guidance on the new legal issues which may impact your business, particularly in relation to banking, finance, capital markets, corporate, litigation, employment, funds & investment management and tax laws.

http://www.cliffordchance.com/publicationviews/publications/2010/09/luxembourg_legalupdate.html

Fukushima - Enactment of Nuclear Compensation Support Institution Law

In our briefings of April 2011 and June 2011 respectively entitled 'Fukushima - Potential Nuclear Liabilities' and 'Fukushima - Proposed Governmental Support for TEPCO for Nuclear Liabilities' we discussed various issues relating to the potential liability of Tokyo Electric Power Company (TEPCO) arising out of the earthquake and subsequent tsunami in the Tohoku region of Japan on 11 March 2011 and the draft bill that had been introduced into the Japanese Diet dealing with the funding of those liabilities.

On 3 August 2011, the Japanese Diet approved and enacted the Nuclear Compensation Support Institution Law. The Law aims to support TEPCO in its obligations to compensate for the damage caused by the release of radioactive materials due to the damage which Fukushima Daiichi Nuclear Power Plant sustained as a result of the Nuclear Accident.

This new briefing further discusses the contents of and other issues under the Law as finally enacted by the Diet, comparing it to the original draft bill of the Law first submitted to the Diet.

New Briefing (English)

http://www.cliffordchance.com/publicationviews/publications/2011/09/fukushima_enactmentofnuclearcompensatio0.html

New Briefing (Japanese)

http://www.cliffordchance.com/publicationviews/publications/2011/09/fukushima_enactmentofnuclearcompensatio.html

June 2011 Briefing

http://www.cliffordchance.com/publicationviews/publications/2011/06/fukushima_proposedgovernmentalsupportfo0.html

April 2011 Briefing

http://www.cliffordchance.com/publicationviews/publications/2011/04/fukushima_potentialnuclearliabilities.html

Tianjin overhauls and heightens regulation for RMB PE fund industry

The municipal government of Tianjin has issued a set of new regulations which will affect RMB private equity investments funds (RMB PE Funds) established in Tianjin by foreign and domestic managers.

This briefing provides some background to Tianjin's regulatory overhaul and highlights some of the key provisions of the new measures.

Chinese version

http://www.cliffordchance.com/publicationviews/publications/2011/09/tianjin_overhaulsandheightensregulationfo.html

English version

http://www.cliffordchance.com/publicationviews/publications/2011/09/tianjin_overhaulsandheightensregulationfo0.html

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