

# International Regulatory Update

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### European Commission consults on common rules for central securities depositories and securities settlement

The European Commission has launched a [consultation](#) on establishing a common regulatory framework for Central Securities Depositories (CSDs) and on the harmonisation of key aspects of securities settlement in the European Union. Together with the Commission's proposal for a Regulation on OTC derivatives, central counterparties and trade repositories, which was published on 15 September 2010, and the ongoing review of MiFID, this initiative will form a framework in which systemically important securities infrastructures (trading venues, central counterparties, trade repositories and central securities depositories) are subject to common rules on a European level.

Consultation responses are due by 1 March 2011. The Commission will present a formal legislative proposal in June 2011.

### Basel III: Final elements of reforms to raise quality of regulatory capital

The Basel Committee on Banking Supervision has issued minimum requirements that aim to ensure that all classes of capital instruments fully absorb losses at the point of non-viability before taxpayers are exposed to loss.

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In order for an instrument issued by a bank to be included in Additional (i.e. non-common) Tier 1 or in Tier 2 capital, it must meet or exceed minimum requirements set out in the [Annex attached to Committee's press release](#). These requirements are in addition to the criteria detailed in the Basel III capital rules that were published in December 2010.

Instruments issued on or after 1 January 2013 must meet the criteria to be included in regulatory capital. Instruments issued prior to 1 January 2013 that do not meet the criteria, but that meet all of the entry criteria for Additional Tier 1 or Tier 2 capital set out in '[Basel III: A global regulatory framework for more resilient banks and banking systems](#)', will be considered as an 'instrument that no longer qualifies as Additional Tier 1 or Tier 2' and will be phased out from 1 January 2013 according to paragraph 94(g).

### **ESAs select Chairpersons and announce new round of stress tests**

The European Supervisory Authorities (ESAs) have selected the members of their Management Boards and chosen their first Chairpersons, who will each serve for a term of five years:

- Andrea Enria, currently the head of the Supervisory Regulations and Policies Department at the Bank of Italy, has been selected as the Chairperson of the European Banking Authority (EBA);
- Steven Maijoor, currently a Director at the Netherlands Authority for the Financial Markets (AFM), has been selected as the Chairperson of the European Securities and Markets Authority (ESMA); and
- Gabriel Bernardino, currently the Director General of the Directorate for Development and Institutional Relations at the Instituto de Seguros de Portugal, has been selected as the Chairperson of the European Insurance and Occupational Pensions Authority (EIOPA).

Before taking up their duties, the selected Chairpersons will be heard by the EU Parliament, which has up to one month to object to their selection.

At its inaugural meeting on 12 January 2011, the EBA's Board of Supervisors also agreed on a strategic work plan for an EU-wide stress test to take place in the first half of 2011 and to publish results in mid-2011.

In addition, EIOPA has announced that it is preparing to launch the second Europe-wide stress test for the insurance sector, which will be conducted in cooperation with the European Systemic Risk Board (ESRB) and the respective national supervisory authorities, including the Swiss FINMA, and is expected to be launched at the beginning of the second quarter of 2011.

[EBA Press release](#)

[ESMA Press release](#)

[EIOPA Press release – Selection of Chairperson](#)

[EIOPA Press release – Stress Test](#)

### **European Parliament paper on Consumer Rights Directive and financial services published**

The European Parliament has published a [paper](#), dated 20 November 2011, on the relationship between the proposed Consumer Rights Directive and financial services. The paper covers the application of the proposed directive to financial services, as well as its interaction with other EU legislation on financial services.

Amongst other things, the paper notes that the scope of application of the proposed directive to financial services is not entirely clear when it comes to investment services and to information obligations in off-premises contracts. The paper further argues that the interaction between the proposed Consumer Rights Directive and other EU legislation on financial services is not optimal in the area of off-premises contracts, noting that some overlaps would occur, as well as some regulatory gaps. For example, overlaps between the rules on off-premises contracts and specific legislation on financial services may occur with the information obligations of the Payment Services Directive.

The paper argues that the regulation of issues concerning off-premises contracts and unfair contract terms that relate to financial services contracts should occur in the general framework of the proposed directive.

### **Hungarian EU Presidency work programme published**

On 1 January 2010, Hungary took over the EU's six-month rotating EU Council Presidency. The Hungarian Presidency has now published its [work programme](#), which sets out the EU Council's agenda in the first half of 2011.

Amongst other things, these priorities include: (1) finalising work on the permanent crisis resolution mechanism for the euro area; (2) supporting the new supervisory structure for the financial system (the European Systemic Risk Board and the European Supervisory Authorities) by updating the relevant pieces of legislation (Omnibus II); (3) agreeing on a common approach in the Council on the proposed Regulation on OTC derivatives; (4) improving crisis management framework prevention and resolution instruments, in particular those intended to deal with systematically important and failing institutions and cross-border problems; and (5) the taxation of the financial sector.

### **George Osborne makes statement on remuneration and bonuses**

Chancellor of the Exchequer George Osborne has made a [statement](#) in the House of Commons highlighting the government's initiatives on banking regulation. Amongst other things, Mr. Osborne described the government's work on anti-avoidance measures and, in particular, its approach to remuneration and bonuses. He noted that the FSA's revised Remuneration Code, which came into force on 1 January 2011: (1) limits the amount of bonus payable in upfront cash; (2) includes a requirement that 50% of bonuses are paid in shares or other non-cash instruments; and (3) covers payments and bonuses at 2,500 firms, while the old code only applied to the largest banks, building societies and broker dealers.

Mr. Osborne added that the government is currently in discussions with banks to reach a settlement where banks pay smaller bonuses than they would otherwise have done and are more transparent about those that they do pay.

### **Independent Commission on Banking reviews evidence received on reform options**

At its sixth meeting on 10 January 2011, the Independent Commission on Banking reviewed the evidence received in response to its [September 2010 Issues Paper](#), and agreed to publish a summary of this evidence alongside the non-confidential submissions received. The issues paper described the Commission's initial approach to considering financial stability, competition and the other issues to which it must have regard under its terms of reference, and outlined a number of options for reform of the UK banking sector. The Commission also met with Paul Volcker and discussed the questions in the issues paper.

#### [Press release](#)

### **Special administration regime for investment firms: legislation introduced into UK Parliament**

As part of its review of resolution arrangements for failing investment banks, the government has introduced the [Investment Bank Special Administration Regulations 2011](#) and the [Investment Bank \(Amendment of Definition\) Order 2011](#) into Parliament. The government has also published a [summary of responses](#) to its [September 2010 consultation document](#) 'Special administration regime for investment firms'.

The government intends to introduce insolvency rules to accompany the Investment Bank Special Administration Regulations 2011 in 2011. In addition, the FSA is considering regulatory proposals for ensuring that firms prepare for their own managed wind-down (Recovery and Resolution Plan policy).

The FSA will consult by the start of April 2011 on its proposals in this area.

### **ESCA publishes draft decisions on investment funds and regulating investment management activity**

The UAE Securities and Commodities Authority (ESCA) has published for consultation: (1) a [draft decision on investment funds](#) (the 'Investment Funds Regulation'); and (2) a [draft decision on regulating investment management activity](#) (the 'Investment Management Activity Regulation').

The Investment Funds Regulation applies to all matters relating to local investment funds and to the promotion of foreign funds in the UAE. For the purposes of the Investment Funds Regulation, a local investment fund is an investment fund established in the UAE and licensed by ESCA. Funds established in any of the UAE free zones such as the Dubai International Financial Centre (DIFC) are considered to be foreign funds. The Investment Funds Regulation prohibits an entity from establishing a local investment fund without first obtaining a licence from ESCA. Furthermore, ESCA's prior approval is required prior to any investment fund being promoted within the UAE.

The Investment Management Activity Regulation prohibits a person from undertaking investment management activity for securities in the UAE without first obtaining a licence from ESCA. Investment management comprises management of securities portfolios for others or the management of investment funds in accordance with defined objectives and policy.

## **ASIC standardises reporting of short positions**

The Australian Securities and Investments Commission (ASIC) has issued a [Class Order \(CO 10/1037\)](#) intended to clarify and standardise reporting of short positions in the Australian securities market. Since 1 June 2010, short-sellers have been required to report to ASIC their short position in a listed security or other listed product. ASIC aggregates this data and publishes to the market the total of the reported short positions in these products. Following consultation with industry groups from August 2010, ASIC's Class Order clarifies that short-sellers will no longer be able to net-off long and short positions where those positions are held in different capacities.

The class order will commence on 17 January 2011.

[Explanatory Statement](#)

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **European Regulatory Reform Progress Report – 13 January 2011**

This updated version of the report outlines the progress of the European regulatory reform agenda for the financial sector.

This report presents a very brief overview of the progress of the major regulatory initiatives, indicating the current status, next main steps and estimated implementation date for each measure. In addition, the report highlights significant new developments since the first edition of the report in November 2010 and outlines the major legislative proposals scheduled for the first half of the year. Although the focus is on EU-level reforms, the report includes some coverage of national reforms.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/european\\_regulatoryreformprogressreport1.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/european_regulatoryreformprogressreport1.html)

### **AIFM Directive and Private Equity**

This briefing considers the AIFM Directive primarily from the perspective of a private equity house (PEH), focusing on: (1) the key issues which may affect the deal teams at a PEH (covering asset stripping, remuneration policies, annual reporting and employee notification); and (2) the regulatory issues which may affect the operations of a PEH (covering the scope of application of the AIFMD, authorisation, more robust risk management, passports, capital requirements and depositaries).

[http://www.cliffordchance.com/publicationviews/publications/2011/01/aifm\\_directive\\_andprivateequity.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/aifm_directive_andprivateequity.html)

### **UK Bank levy – revised draft legislation published**

The UK Government has now published the draft legislation introducing the bank levy for inclusion in the Finance Bill 2011. The legislation is very similar to previously published drafts. The most significant new development is the setting of the rate. The main rate will be 0.075% from 1 January 2012 with an initial main rate of 0.05% applying for the first year. The levy will apply to the global consolidated balance sheets of UK banking groups and the balance sheets of standalone UK banks. In relation to foreign banks and banking groups operating in the UK, the levy will be assessed on their aggregated subsidiary and branch balance sheets.

This briefing paper sets out the main changes from the previously published versions of the legislation.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/uk\\_bank\\_levy\\_reviseddraftlegislationpublished.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/uk_bank_levy_reviseddraftlegislationpublished.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.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/contentious\\_commentaryareviewforlitigators.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/contentious_commentaryareviewforlitigators.html)

## **German Business Taxation – Annual Tax Act 2010**

The German Annual Tax Act 2010 of 8 December 2010 provides for a number of changes affecting the taxation of German companies and German permanent establishments of non-German companies. In particular, the changes relate to the transfer of business establishments abroad, tighter CFC-rules and changes regarding loss utilisation.

This briefing highlights some of these changes.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/client\\_briefing\\_taxgermanbusinesstaxation.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/client_briefing_taxgermanbusinesstaxation.html)

## **Clifford Chance Luxembourg Legal Update – January 2011**

This second edition of Luxembourg Legal Update offers a regular 360° 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, tax and investment management laws.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/luxembourg\\_legalupdate-january2011.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/luxembourg_legalupdate-january2011.html)

## **21 today; more Chapter 21 listings predicted in Hong Kong**

The Listing Rules of the Stock Exchange of Hong Kong (the Exchange) provide two avenues for the listing of funds on the main board of the Exchange, namely Chapter 20 and Chapter 21. On 6 January for the first time in over 6 years, a Chapter 21 fund was listed on the main board of the Exchange. Fund managers have been interested in Chapter 21 listings for some time now and with this recent successful listing, more such listings are likely to follow.

This briefing explores the background of funds listed pursuant to Chapter 21 of the Listing Rules of the Exchange.

[http://www.cliffordchance.com/publicationviews/publications/2011/01/21\\_today\\_more\\_chapter21listingspredicted.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/21_today_more_chapter21listingspredicted.html)

## **China tightens up credit asset transfers**

On 3 December 2010, the China Banking Regulatory Commission issued a notice that aims at regulating transfers of credit assets between banking financial institutions. The notice introduces stricter requirements on the transfer of credit assets between banking financial institutions.

This briefing highlights the key points of the notice, drawing comparison with previous regulatory requirements. The briefing also raises issues relating to the conditions of transfer of credit assets that remain to be clarified and reconciled with the existing regulations.

English version

[http://www.cliffordchance.com/publicationviews/publications/2011/01/china\\_tightens\\_upcreditassettransfers.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/china_tightens_upcreditassettransfers.html)

Chinese version

[http://www.cliffordchance.com/publicationviews/publications/2011/01/china\\_tightens\\_upcreditassettransferschinese.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/china_tightens_upcreditassettransferschinese.html)

## **Comments due 24 January 2011 on SEC's proposed rules specifying available exemptions from registration for non-US investment advisers under the Dodd-Frank Act**

On 19 November 2010, the SEC issued proposed rules relating to provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act that modify the US Investment Advisers Act of 1940, expanding the coverage of the Advisers Act regulatory regime to include many formerly-exempt investment advisers to private equity and hedge funds. The proposed rules were published in two SEC releases, Rules Implementing Amendments to the Investment Advisers Act of 1940, File No. S7-36-10 (the 'Implementing Release') and Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than USD 150 Million in Assets Under Management, and Foreign Private Advisers, File No. S7-37-10 (the 'Exemptions Release'), and in both cases are subject to a public comment period that expires on 24 January 2011.

This briefing reviews key aspects of the Exemptions Release dealing with the exemptions from registration under the Dodd-Frank Act most relevant to investment advisers who are organized and have their principal place of business outside the United States. The briefing also discusses the extent of the SEC's authority under the Dodd-Frank Act to regulate 'foreign-cubed' investment advisers

[http://www.cliffordchance.com/publicationviews/publications/2011/01/comments\\_due\\_january242011onsecspropose.html](http://www.cliffordchance.com/publicationviews/publications/2011/01/comments_due_january242011onsecspropose.html)

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