Sea of Change
Regulatory reforms to 2012 and beyond

OTC derivatives reforms
Impact on cross-border business

June 2011

CLIFFORD
CHANCE

Contents

This paper is not intended to be comprehensive or to provide legal advice. For more information, speak to your usual Clifford Chance contact or one of the contacts listed below.

Executive summary

Executive summary

The OTC derivatives reforms threaten the ability of international banking groups to centralise the risk management of their cross-border derivatives business. The resulting more regionalised booking models are likely to reduce client choice and competition, increase clients' risk management costs, distort market behaviour and create new risks to financial stability.

International banking groups currently use a number of different structures to book cross-border OTC derivatives transactions, providing important benefits to the firm and its clients/counterparties: good risk management and capital efficiency, compliance with licensing laws, maximising netting, meeting client/ counterparty preferences and compliance with tax rules. These structures also improve the overall efficiency and resilience of the financial system.

Significant change in regulation

The OTC derivatives reforms involve a significant change in regulation, covering both the regulation of legal entities (entity regulation) and the process for entering into and performing individual OTC derivative transactions (transactional regulation).

However, OTC derivative reforms that are consistent and coherent within a single jurisdiction can have adverse market impact when they apply to cross-border transactions, even where the different jurisdictions involved have (apparently) similar rules.

Consequences

The reforms risk creating:

- Incompatible/conflicting regulatory obligations;
- Unacceptable regulatory impact on clients/counterparties;
- Excessively burdensome duplicative regulation;
- Self-defeating regulatory duplication;
- Regulatory distortion of competition.

This is likely to:

- Reduce banks' ability to centralise their risk management in single entities;
- Increase the costs to clients/counterparties;
- Reduce client choice and competition;
- Distort market behaviour and create new risks to financial stability.

Concerns

Particular concerns arise as a result of:

- The possibility that two parties to a transaction are required to trade in different venues, clear on different CCPs or report to different trade repositories.
- Requirements for non-US entities to register as swaps dealers and become subject to full US entity and transactional rules, in addition to the rules applicable in the entity's home state, including applying the US transactional rules to business with non-US counterparties.
- The uncertain treatment in both the US and the EU of foreign branches.
- The absence of (or limits) on exemptions for intra-group transactions which restrict the ability to move risk by back-to-back transactions within a group of companies.
- The imposition of unacceptable requirements on third country clients/counterparties, when they can deal with other comparable suppliers without similar requirements.

These issues can be addressed by convergence/alignment of rules, limited exemptions for cross-border business and (mutual) recognition arrangements, while still achieving the objectives of the reforms. Examples of possible solutions are set out below.

Overview of bank booking structures

Overview of bank booking structures

International banking groups use a number of different booking structures to transact cross-border OTC derivatives business with clients and market counterparties and to manage their risks for particular asset classes.

These structures provide important benefits to banking groups and their clients/counterparties:

Objective	How achieved
Enhance the group's risk management and capital and liquidity efficiency	Centralising risk management for particular asset classes in a single entity operating through single location
Ensure compliance with licensing and other local laws	Using entities with necessary licenses/authorisations in a particular jurisdiction to interact/transact business with clients/counterparties in that jurisdiction
Maximise the benefits of netting for the group and for its clients/counterparties	Using a single group company to transact different kinds of business with a single client/counterparty under a single master agreement
Meet client/counterparty preferences to transact business with group companies with particular credit or other characteristics	Using group companies with those characteristics (e.g. credit rating, local bank status) to transact business with the client/counterparty
Comply with tax requirements	For example, ensuring that entities performing functions in relation to a transaction receive appropriate remuneration (to comply with transfer pricing requirements)

The use of these structures to centralise risk management also improves the overall efficiency and resilience of the financial system.

Overview of bank booking structures

To reconcile these potentially conflicting objectives, cross-border booking structures typically involve a number of group companies performing different roles, in particular:

Role	Function
Arranging	Interacting with a client or market counterparty in marketing, structuring and arranging an OTC derivative transaction
Booking	Entering into the OTC derivative contract as the counterparty to the client or market counterparty
Risk managing	Centralising the risk management for a particular class of risks and hedging those risks in the market

For example:

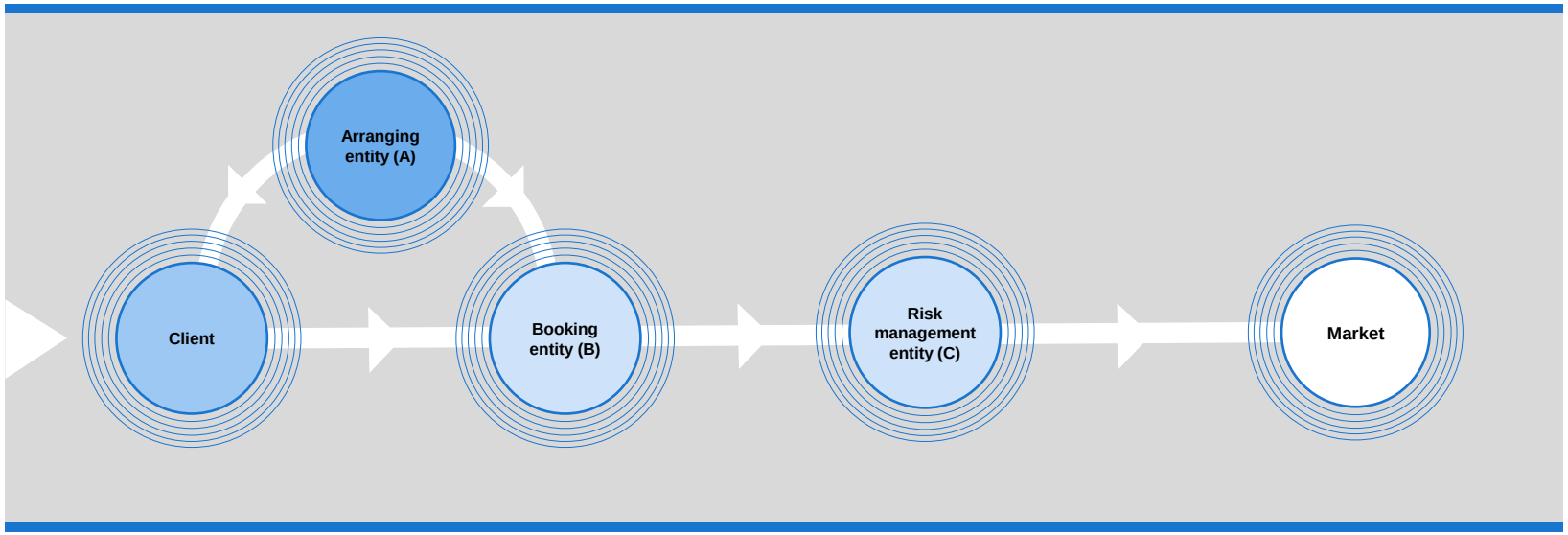
- The entity performing the risk management role may not have the necessary local licences/authorisations to perform the booking role by acting as counterparty to clients in particular jurisdictions.
- The entity with the client relationships and the necessary staff to market, structure and arrange the transaction may not have the credit rating required by a client/counterparty to perform the booking role by acting as the counterparty on the transaction.
- The entity performing the booking role may not be permitted to transact business with clients/counterparties in a particular jurisdiction unless the transaction is arranged by an entity which has the necessary licences/authorisations in that jurisdiction.

In cross-border booking structures:

- Each role may be performed by a separate group company (figure 1 below) or one or more group companies may combine different roles (figure 2 below).
- Intra-group back-to-back transactions or portfolio risk transfers are used to transfer market risk from booking entities to risk management entities.
- The group companies involved will often be located in different jurisdictions.
- Group companies (in particular, banks) may perform these roles acting through their head office or acting through local branches in other countries.
- Booking entities will commonly act as counterparties to clients/market counterparties in many jurisdictions (not just in the country or region in which they are located).

Overview of bank booking structures

Figure 1 – Stylised example of multi-entity cross-border booking structure



Entities A, B and C are all companies within the same group.

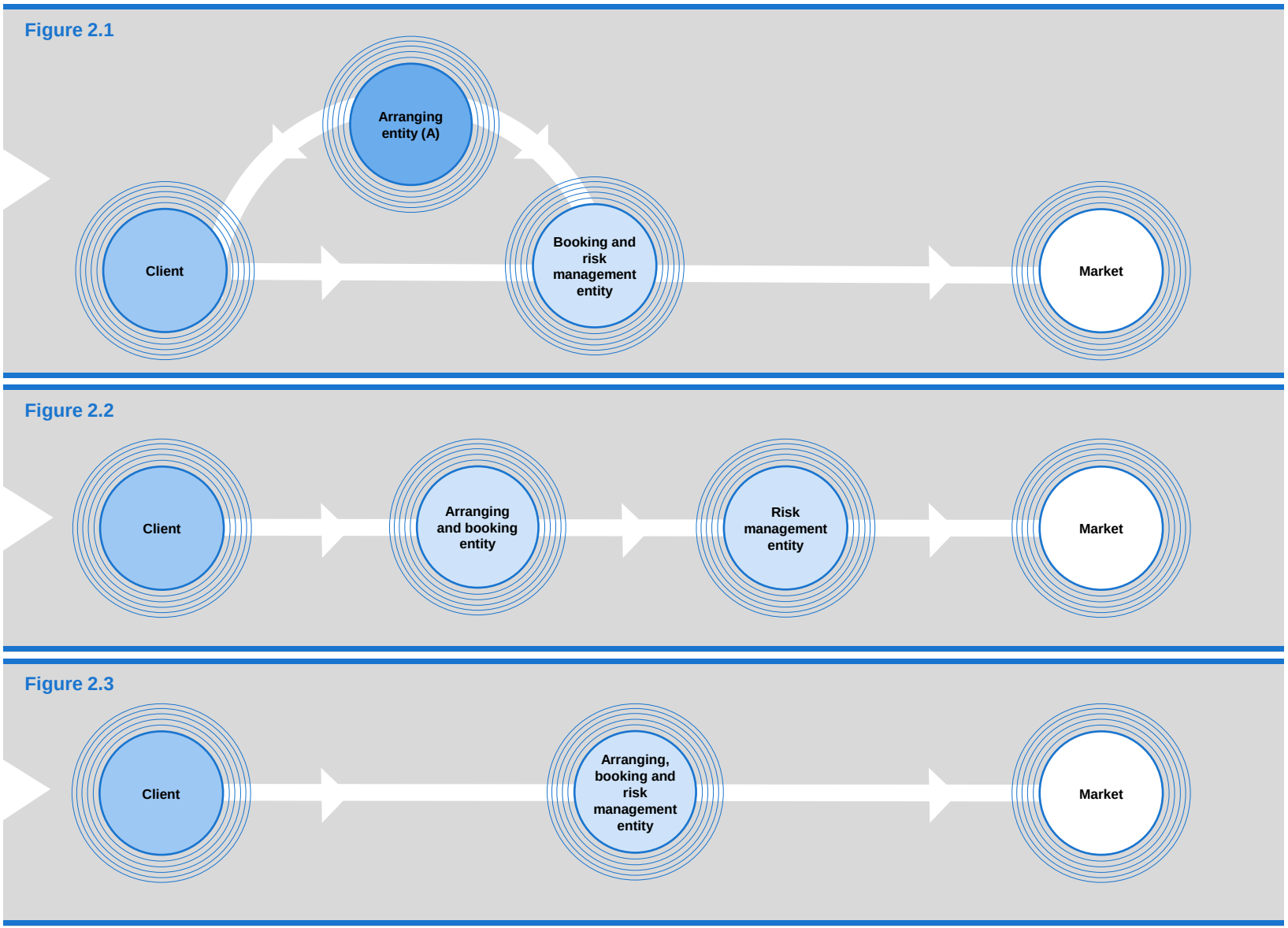
- Arranging entity (A) markets, structures and arranges for the client to enter an OTC derivative transaction with booking entity (B).
- Client enters into OTC derivative contract with B as its counterparty.
- B enters into a back-to-back transaction with risk management entity (C) which transfers the market risks from the transaction with the client to C.
- C hedges its risks from its transactions with B (plus its risks from transactions with other group companies and transactions entered into by it directly with external clients and counterparties) by entering into transactions in the market.

Other group companies may be involved in other roles. For example, if C needs to access equity, bond or futures markets to hedge its positions it may do so through other group companies which have access to those markets (e.g. as exchange member).

The group companies will be subject to the consolidated supervision applicable to the group as a whole and will also often be individually regulated by national regulators (e.g. in the EU under MiFID or in the US as banks or as swap dealers under the Dodd-Frank Act reforms).

Overview of bank booking structures

Figure 2 – Other stylised examples of cross-border booking structures



OTC derivatives reforms in outline

OTC derivatives reforms in outline

The OTC derivatives reforms currently being implemented involve new/modified forms of:

- Entity regulation, i.e. regulation of the whole entity that falls within the scope of the regime
- Transactional regulation, i.e. regulation of the process for entering into and performing individual OTC derivative transactions

Entity regulation	
US Volcker rule	Restrictions on any entity in a banking group engaging in proprietary trading and investment in/sponsorship of private funds
US "push out" rule	Restrictions on banks and branches conducting certain kinds of derivatives business (the UK Independent Banking Commission proposes a comparable, more stringent prohibition for UK retail banks)
Registration/regulation requirements	Requirements for entities to be registered/authorised by national regulators and associated supervisory and inspection regimes
Prudential requirements	Requirements for entities to meet minimum or risk-based capital, leverage or liquidity requirements based on their overall business (either individually or on a consolidated basis) and increased capital requirements for individual transactions

OTC derivatives reforms in outline

Transactional regulation	
Platform trading obligation	Obligation to execute certain OTC transactions using a trading platform, such as a swap execution facility or organised trading facility
Clearing obligation	Requirement to clear eligible OTC transactions using an authorised or recognised central counterparty (CCP), either by becoming a clearing member or as a client of a clearing member
Margin obligations	Requirement to obtain qualifying margin/collateral from counterparties on uncleared trades (and, in some circumstances, to segregate that margin/collateral with third party custodians)
Other risk management obligations	Requirements to mark-to-market daily, use electronic confirmation services, etc.
Business conduct rules	Obligation to provide information to clients/counterparties or to assess the suitability/appropriateness of advice or services and to get appropriate representations from clients
Documentation requirements	Obligation to ensure that documentation contains specified terms/information or is executed in specified ways
Pre-trade transparency requirements	Obligation to publish quotes or execute transactions at particular prices (e.g. relative to market price)
Post-trade transparency requirements	Obligation to publish prices/terms of executed trades, possibly using a specified reporting facility
Trade repository (TR) reporting requirements	Obligation to report details of transactions (and modifications or other events during the life of a transaction) to a registered/recognised TR
Regulatory transaction reporting requirements	Obligation to report details of transactions (and possibly other events) to a regulator (responsibility may fall on TR)

Impact of reforms on cross-border transactions

Impact of reforms on cross-border transactions

OTC derivative reforms that are consistent and coherent within a single jurisdiction can have adverse market impact when they apply to cross-border transactions.

Incompatible/conflicting regulatory obligations	The two parties to a transaction are subject to rules in different jurisdictions that prevent them from trading with each other A party to a transaction is subject to rules in two or more jurisdictions that it cannot comply with at the same time
Unacceptable regulatory impact on clients/ counterparties	By entering into transactions with an entity in another jurisdiction, the entity's clients/counterparties are exposed to requirements under the laws of that jurisdiction which are unacceptable to them (even if they could comply with them) A party to a transaction is subject to rules in one jurisdiction that require it to obtain information from or require conduct from its clients/counterparties in other jurisdictions that is unacceptable to them (even if they could comply with the requirements)
Excessively burdensome duplicative regulation	An entity is subject to regulatory requirements in multiple jurisdictions. It is possible to comply with all requirements (on a highest common denominator basis) but the cumulative effect is excessively burdensome
Self-defeating regulatory duplication	In some cases, requirements for duplicative compliance may undermine the regulatory objectives sought to be attained (e.g. where double reporting adversely affects the quality of data available to regulators or the market)
Regulatory distortion of competition	Market participants competing for business from clients/counterparties in a particular jurisdiction are subject to rules that materially and adversely affect their ability to compete with other market participants not subject to similar rules

A particular regulatory requirement may have more than one of these impacts.

These impacts are likely to be exacerbated as jurisdictions other than the EU and the US move to implement the G20 reforms, because this will multiply the number of jurisdictions whose rules may apply to banking groups that serve clients globally.

Impact of reforms on cross-border transactions

Unless these issues are appropriately addressed, the consequences of these requirements are likely to include:

- A reduction in the ability of banking groups to centralise booking and risk management of OTC derivatives in single entities, resulting in the use of more regionalised booking and risk management structures, increasing firms' costs and potentially making it more difficult to engage in effective risk management;
- An increase in the costs to clients/counterparties of taking advantage of the risk management benefits of OTC derivatives;
- A reduction of cross-border business, reducing client/counterparty choice and reducing competition and leading to the inefficient allocation of collateral, liquidity, and capital resources;
- Distortions of competition, as market participants select their counterparties for trading on the basis of regulatory rather than business factors;
- New risks to financial stability, because less integrated firm risk management and more fragmented markets make supervisory oversight more difficult.

Impact of reforms on cross-border transactions

These adverse impacts may arise even if the rules in the different jurisdictions involved appear to be the same or similar. Similarities in rules may be superficial. For example:

- Apparently similar **requirements in two jurisdictions to clear a class of transactions in a CCP may prevent two parties trading with each other** unless both jurisdictions allow use of the same CCP to comply with the requirement (and it is possible for a firm from another jurisdiction to become a clearing member in the CCP or for clearing members in the jurisdiction of the CCP to offer their services to a party located in another jurisdiction).
- Apparently similar requirements in two jurisdictions to report transactions to a trade repository may result in **duplicative reporting** of transactions unless both jurisdictions allow use of the same trade repository to comply with the requirement.
- Apparently similar requirements may have different impacts because of the **different scope** of the legislation, e.g. there may be differences between the scope of application of the US and EU legislation as regards foreign exchange transactions.
- Apparently similar requirements may have different impacts because of **more granular differences**. For example, even if the eventual margin requirements for uncleared transactions in the EU and the US appear to be similar, they are likely to have different outcomes because of differences between the structure of the two regulatory systems and the definitions used to define the application of the rules (e.g. the definition of a financial entity or the definition of what constitutes permissible collateral in different markets).
- Apparently similar requirements may have different impacts because there are **differences in the technical means required** to comply with them (e.g. differing reporting systems, data definitions and reporting formats, requiring different IT infrastructure, complicating internal management reporting and aggregation of risk positions
- There are additional costs and burdens for firms that are subject to **supervision and inspection by multiple regulators** even if they were applying an identical supervisory framework (e.g. dealing with requests for information, supervisory inspections, etc.).
- Even when rules are similar, **differences in implementation** by regulators can still cause distortions unless regulators coordinate their actions (e.g. where regulators take differing approaches to the approval of risk management designs for CCPs or margin models for uncleared trades). Even slight differences in wording can exacerbate issues arising from differences in interpretation in different jurisdictions.

Impact of reforms on cross-border transactions

Where entities are subject to dual regulation, it is more likely that they will be subject to incompatible/conflicting or excessively burdensome duplicative regulation:

Foreign branches of domestic entities	Foreign branches of a legal person (typically a bank) that carry on OTC derivatives business through the branch may be subject to regulation in both their home state and in the jurisdiction in which the branch is located. Examples: A US bank (registered as a swaps dealer in the US) maintains a branch in the EU and enters into OTC derivatives transactions through that branch with persons outside the US. The branch might be subject to regulation in the US as a swap dealer (as part of the same legal entity) and regulation in the EU as a financial counterparty (because it has an establishment in the EU – which might also result in EU regulation applying to the bank's activities in the US). An EU bank (a financial counterparty under the EU Regulation) maintains a branch in a third country and enters into OTC derivatives transactions through that branch with persons outside the EU. The branch may be subject to regulation in the EU as a financial counterparty (as part of the same legal entity) and regulation in that third country. (The US "push out" rule may prevent an EU bank conducting swaps business through its branch in the US).
Foreign entities conducting cross-border business with domestic clients/counterparties	Foreign entities may become directly subject to domestic regulation as a result of conducting cross-border business with domestic clients/counterparties even though they are already subject to corresponding regulation in their home state. Examples: An EU bank (regulated as a financial counterparty under the EU Regulation) that conducts cross-border OTC derivatives business with US clients and counterparties may be required to register as a swaps dealer in the US, even if it restricts its business in the US to business with US swaps dealers. The entity requirements and possibly even some of the transactional regulatory requirements may extend to activities of the EU bank not involving the US. Under the European Commission's consultation proposals, a US swap dealer that conducts cross-border business with EU clients would only be permitted to do so if the US regime is judged 'equivalent' and if the US bank complies with all the EU conduct of business rules applicable to EU firms, even if it is only dealing with EU banks and investment firms.
Foreign investment funds managed by domestic fund manager	Foreign investment funds may become directly subject to domestic regulation as a result of using a domestic fund manager even if the fund is subject to corresponding regulation in their home state. Example: An EU alternative investment fund manager (AIFM) manages a non-EU alternative investment fund (AIF). The AIF must comply with the obligations under the EU Regulation as a financial counterparty even if it is already subject to regulation elsewhere (and even if the counterparty to its transaction is located outside the EU).

Impact of reforms on cross-border transactions

There are broadly three main strategies that can be followed to reduce the impact of overlapping, duplicative regulation on cross-border business while still achieving the regulatory objectives of OTC derivatives reform:

Convergence/alignment of rules	Reducing differences between national rules (while recognising the limits of this approach in reducing unnecessary burdens)
Exemption	Exempting cross-border activity from the full application of domestic rules (or modifying those rules as they apply to cross-border activity), where applying those rules would impose disproportionate burdens or where regulatory objectives can be achieved by other means
Recognition	Making exemptions/modification of rules conditional upon the application of comparable rules/requirements in another jurisdiction

In addition, effective regulatory co-ordination (using colleges of supervisors) can reduce the impact of overlapping entity regulation.

Examples of possible solutions to particular issues are given in the next section.

Possible solutions for cross-border business

Possible solutions for cross-border business

Incompatible/conflicting regulatory obligations

Rule	Issue	Possible solution	Comment
Clearing obligation	If a US swap dealer transacts business in a clearing eligible OTC derivative with an EU financial counterparty, each may be required to clear the transaction but in different CCPs EU-US dual regulated entities may not be able to trade at all in clearing eligible OTC derivatives if EU and US rules require clearing in different CCPs	Recognition by EU/US of each other's CCPs Provide exemption for entities subject to dual EU-US regulation from clearing obligation in one jurisdiction Allow a party subject to a clearing obligation to clear the transaction through a firm which is not a clearing member of a CCP but which maintains an omnibus client account with a clearing member	Barriers will remain if swap dealer/ financial counterparty cannot become a clearing member of the relevant CCP or if local clearing members of the CCP cannot offer their services directly to market participants in other jurisdictions (e.g. because of licensing/ authorisation requirements in those jurisdictions)
Platform trading obligation	EU and US counterparties may not be able to trade with each other in platform trading eligible OTC derivatives if EU platforms not recognised in US and vice versa EU-US dual regulated entities may not be able to trade at all in platform trading eligible OTC derivatives if EU and US rules require trading on different platforms	Recognition by EU/US of each other's trading platforms Provide exemption for entities subject to dual EU-US regulation from platform trading obligation in one jurisdiction (where obligation met in other jurisdiction)	Barriers will remain if foreign platform operators are subject to local broker-dealer/ investment firm licensing/ authorisation requirements if they offer platform services to local market participants
Reporting to TRs/ regulators	Obligations to report information to TRs/regulators may conflict with privacy/ confidentiality requirements	Legislation should provide protection from claims for firms that comply with domestic or foreign reporting obligations	

Possible solutions for cross-border business

Unacceptable regulatory impact on clients/counterparties

Rule	Issue	Possible solution	Comment
US swap dealer registration requirement	Non-US swap dealers that transact business with US counterparties must register as swap dealers in the US and become directly subject to US entity and transactional regulation	Limit extent of entity and transaction regulation to activities with US clients/counterparties Provide other relief for non-US swap dealers whose transactions with US counterparties are arranged by a US regulated entity	Non-US entities that could be regarded as swap dealers may be unwilling to deal with US swap dealers if this exposes them to US regulation Similar issues may arise with respect to the registration obligations on major swap participants
Clearing and margining obligations	EU financial counterparties and US swap dealers are required to impose clearing/margining obligations on foreign counterparties (with limited exemptions)	Align scope and content of EU-US rules so far as practicable Allow regulators to exempt cross-border transactions from clearing and/or margining where limited systemic relevance	Likely to deter clients/counterparties dealing cross-border with EU/US dealers, so long as other alternatives exist
Clearing and margining obligations - sovereigns	US swap dealers may be required to impose margin requirements on foreign sovereign and sovereign wealth fund counterparties (whereas obligations of EU financial counterparties may be more limited)	Align scope and content of EU-US rules so far as practicable	Likely to deter non-US sovereign counterparties dealing with US dealers

Possible solutions for cross-border business

Unacceptable regulatory impact on clients/counterparties (continued)

Rule	Issue	Possible solution	Comment
Clearing and margining obligations: end-user exemptions	Exemptions from obligations will only be available to foreign counterparties if they meet EU or US standards (and can provide information to establish this, e.g. to demonstrate that they are below the proposed EU clearing threshold)	Modify rules to allow exemptions to be based on corresponding foreign criteria	Compliance with conditions for EU/US end-user exemptions may be unacceptable to foreign counterparties
Application of regulation to clients of fund managers	Foreign clients of EU/US fund managers concerned that they will be exposed to EU/US regulation because EU/US based fund manager enters into transactions on behalf of client	Make clear that regulation depends on identity of contractual counterparty not agent Provide exemption for non-EU AIFs, at least where subject to comparable regulation	Fund managers act as agent not as the counterparty but may be covered by the relevant rules
Prohibition on non-EU CCPs providing services in the EU	The proposed EU regulation would prohibit non-EU CCPs (for OTC or exchange traded derivatives as well as securities) providing services to EU clearing members or their clients unless the non-EU CCP has applied for and achieved recognition: will bar EU investors from accessing many cleared markets in third countries	Allow EU investors to continue to access third country cleared markets, at least for exchange traded derivatives and securities	Some non-EU CCPs may not be willing to apply for recognition (and recognition may be denied if CCP cannot comply with particular EU requirements)

Possible solutions for cross-border business

Excessively burdensome duplicative regulation

Rule	Issue	Possible solution	Comment
US swap dealer registration requirement	Extraterritorial application of registration requirements exports US entity and transactional regulation to non-US dealers	See proposals above to reduce the impact of dual regulation. Also limit extent of entity and transaction regulation to activities with US clients/counterparties	EU proposals to extend authorisation rules to third country investment firm may be even more restrictive than US proposals
Treatment of foreign branches	Branches may be subject to dual regulation	Limit home state regulation at least where branch located in jurisdiction with equivalent rules and is dealing with counterparties outside the home state	Also ensure that host state regulation is limited to activities conducted in branch (and ensures national treatment)
Intra-group transactions	Imposing clearing, margining, registration and other regulatory obligations on intra-group transactions moving risks between booking and risk management entities imposes excessive costs	Provide exemption for intra-group transactions from clearing, margining, execution, post-trade transparency and dealer registration requirements	Exemption must not be restricted to intra-EU/US transactions Consider relief from reporting requirements for intra-group transactions to avoid duplicative reporting

Possible solutions for cross-border business

Self-defeating regulatory duplication

Rule	Issue	Possible solution	Comment
Reporting to trade repositories (TRs)	There are obstacles to EU TRs being registered in the US (EU regulators would need to give indemnity to access information) and US TRs being recognised in the EU (requirement for EU-US treaty on mutual access to information). Therefore, may be requirements for EU-US dual regulated entities to report to two TRs and for transactions between US and EU entities to be reported separately to two TRs	Remove impediments to recognition/registration of non-domestic TRs and allow TRs to provide data to regulators cross-border (regulators should have appropriate information sharing agreements to support such reporting) Provide exemption for entities subject to dual EU-US regulation from reporting requirements in one jurisdiction (where obligation met in other jurisdiction)	Regulation should facilitate the functioning of centralised global TRs Reporting of same trade to two or more TRs may undermine objectives of TR reporting as it may impede consolidation of data
Post-trade transparency requirements	Where EU counterparty trades with a US counterparty, both parties may be required to publish details of the trade by different mechanisms EU-US dual regulated entities may be required to publish all their trades twice by different mechanisms	EU and US to adjust rules to facilitate single publication of trades Provide exemption for entities subject to dual EU-US regulation from reporting requirements in one jurisdiction (where obligation met in other jurisdiction) and exemption for intra-group transactions	Duplicative publication of trades may create misleading impressions of trading volumes

.

Possible solutions for cross-border business

Regulatory distortion of competition

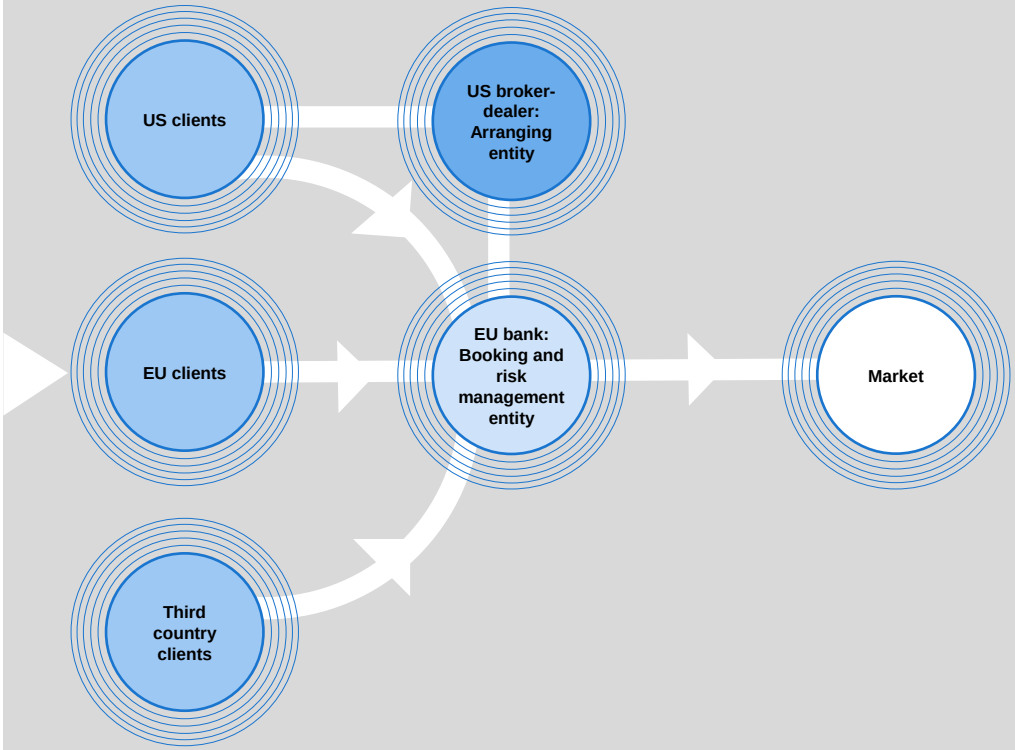
Rule	Issue	Possible solution	Comment
Proposed US margin rules	Proposed rules apply US margin rules to non-US transactions by EU entities registered in the US as swap dealers if they are subsidiaries of US banking group; requires margin custodian to be in same jurisdiction as swap dealer	Apply same rules to entities in the EU regardless of whether owned by a US banking group; allow flexibility in location of custodian	
Third country business	EU/US dealers are potentially disadvantaged in third country markets, as a result of having to apply EU/US rules	Align scope and content of EU-US rules so far as practicable Allow regulators to exempt cross-border transactions from clearing and/or margining where limited systemic relevance	Even where other jurisdictions introduce comparable rules, there may be significant timing differences that affect dealers' business

Likely impact on cross-border booking structures

Likely impact on cross-border booking structures

The reforms threaten the ability of international banking groups to continue to use cross-border booking structures to centralise risk management. Instead, firms may have to move to more regionalised booking models, as discussed in the examples below.

Figure 3.1



An EU bank (acting through its EU head office) acts as the booking/risk management entity for OTC derivatives contracts with EU, US and third country clients/counterparties, but transactions with US clients/counterparties are arranged by a US broker-dealer affiliate.

The bank will be particularly affected by the following issues:

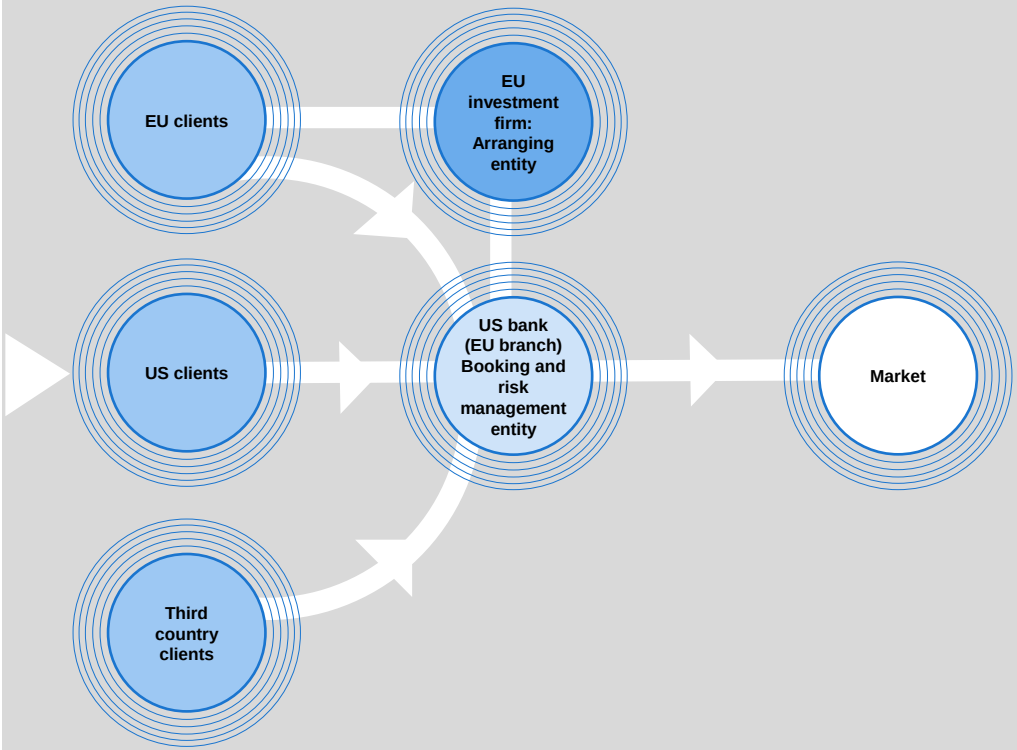
- The requirement to register as a swap dealer in the US and the application of US entity and transactional regulation to it could be a major obstacle to the EU bank continuing to service clients in the US.
- The EU bank may not be able to trade with US clients anyway in cleared transactions, if the US and EU do not recognise the same CCPs.
- When servicing clients in third countries, the EU bank may be at a disadvantage as compared with other possible counterparties, as the client may be required to comply with EU rules on clearing and margin when comparable suppliers may not be similarly affected.

The bank may respond by setting up a separate US entity to act as booking and risk management entity for business with US clients/counterparties and another similar entity outside the EU and the US to service business with third country clients/counterparties.

Likely impact on cross-border booking structures

However, splitting booking and risk management for a single asset class across multiple entities in different regions is likely to be significantly less efficient and more costly than the current model...

Figure 3.2



A US bank (acting through its EU branch office) acts as booking/risk management entity for OTC derivatives contracts with EU, US and third country clients/counterparties, but transactions with EU clients/counterparties are arranged by an EU investment firm affiliate.

The bank will be particularly affected by the following issues:

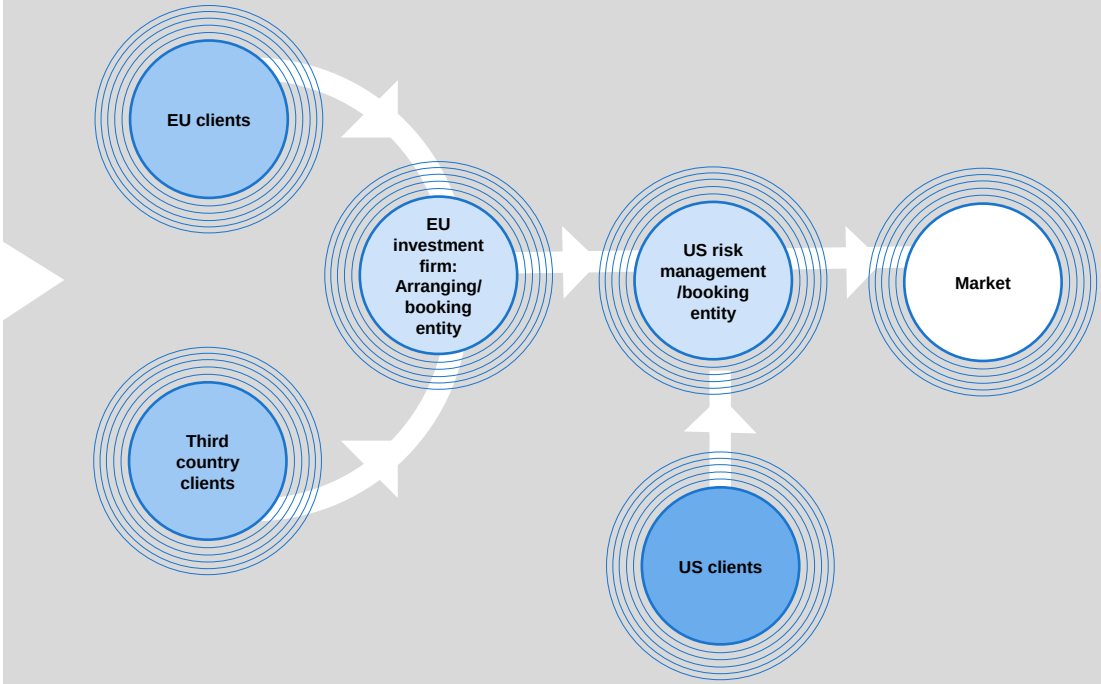
- Assuming that the US bank is a swap dealer in the US, it is unclear the extent to which the rules applicable to such entities will apply to its transactions with clients entered into through its EU branch. If they do, this will result in dual regulation.
- An EU branch of a US bank may be subject to EU rules (on the basis that it is established in the EU). To the extent that it is, this may put the bank at a disadvantage in third country markets.

The bank may respond by moving its business with US clients/counterparties to its US head office and setting up separate booking/risk management entities in the EU and outside the EU to service business with EU and third country clients/counterparties respectively.

Likely impact on cross-border booking structures

...and more regionalised booking models are likely to have the adverse consequences for clients/ counterparties, markets and financial stability discussed in more detail above.

Figure 3.3



An EU investment firm acts as arranger/booking entity for OTC derivatives transactions with EU and third country clients/counterparties, but transfers risk by back-to-back transactions to a US affiliate which acts as risk management entity for that asset class (and as an arranger/booking entity for business with US clients/counterparties).

The firm will be particularly affected by the following issues:

- Because of its dealings with the US booking entity, the EU investment firm may be required to register as a swaps dealer in the US.
- However, this may lead to conflicting or excessively costly clearing or margining obligations, unless there are effective exemptions for intra-group transactions
- Registration as a dealer in the US may affect the terms on which the investment firm can deal with EU and third country clients, in particular as the firm would then be subject to dual regulation.
- When servicing clients in third countries, the EU investment firm may be at a disadvantage as compared with other possible counterparties, as the client may be required to comply with EU rules on clearing and margin when comparable suppliers may not be similarly affected.

The group may respond by risk managing business with EU clients/ counterparties in its EU investment firm and setting up a separate booking/risk management entity outside the EU/US to service business with third country clients/counterparties.

Contacts

Chris Bates
Partner

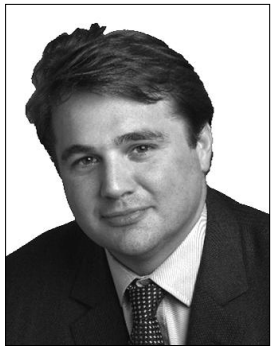
T: +44 (0)20 7006 1041
M: +44 7785700236
E: chris.bates@cliffordchance.com

Marc Benzler
Partner

T: +49 697199 3304
M: +49 1709222892
E: marc.benzler@cliffordchance.com

Caroline Dawson
Lawyer

T: +44 207006 4355
M: +44 7949443527
E: caroline.dawson@cliffordchance.com



Paget Dare Bryan
Partner

T: +852 2826 2459
M: +852 98801181
E: paget.darebryan@cliffordchance.com

David Felsenthal
Partner

T: +1 212878 3452
M: +1 6463292676
E: david.felsenthal@cliffordchance.com

Simon Gleeson
Partner

T: +44 207006 4979
M: +44 7977423944
E: simon.gleeson@cliffordchance.com

Caroline Meinertz
Senior Associate

T: +44 207006 4253
M: +44 7717693723
E: caroline.meinertz@cliffordchance.com

Habib Motani
Partner

T: +44 207006 1718
M: +44 7785700107
E: habib.motani@cliffordchance.com

Lena Ng
Counsel

T: +65 6410 2215
M: +65 81260729
E: lena.ng@cliffordchance.com

Gareth Old
Partner

T: +1 212878 8539
M: +1 646 436 9277
E: gareth.old@cliffordchance.com

Jeremy Walter
Partner

T: +44 207006 8892
M: +44 7717693702
E: jeremy.walter@cliffordchance.com

David Yeres
Senior Counsel

T: +1 212878 8075
M: +1 6464724298
E: david.yeres@cliffordchance.com

Worldwide contact information

33* offices in 23 countries

Abu Dhabi
Clifford Chance
13th and 14th Floors
Al Niyadi Building
Airport Road
Sector W-14/02
PO Box 26492
Abu Dhabi
United Arab Emirates
Tel +971 (0)2 419 2500
Fax +971 (0)2 419 2600

Amsterdam
Clifford Chance
Droogbak 1A
1013 GE Amsterdam
PO Box 251
1000 AG Amsterdam
Tel +31 20 7119 000
Fax +31 20 7119 999

Bangkok
Clifford Chance
Sindhorn Building Tower 3
21st Floor
130-132 Wireless Road
Pathumwan
Bangkok 10330
Thailand
Tel +66 2 401 8800
Fax +66 2 401 8801

Barcelona
Clifford Chance
Av. Diagonal 682
08034 Barcelona
Spain
Tel +34 93 344 22 00
Fax +34 93 344 22 22

Beijing
Clifford Chance
33/F, China World Office 1
No. 1 Jianguomenwai Dajie
Chaoyang District
Beijing 100004
People's Republic Of China
Tel +86 10 6535 2288
Fax +86 10 6505 9028

Brussels
Clifford Chance
Avenue Louise 65 Box 2
1050 Brussels
Belgium
Tel +32 2 533 5911
Fax +32 2 533 5959

Bucharest
Clifford Chance Badea
Excelsior Center
28-30 Academiei Street
12th Floor, Sector 1
Bucharest, 010016
Romania
Tel +40 21 66 66 100
Fax +40 21 66 66 111

Doha
Clifford Chance Middle East LLP
Suite B
30th floor
Tornado Tower
Al Funduq Street
West Bay
P.O. Box 32110
Doha, Qatar
Tel +974 4491 7040
Fax +974 4491 7050

Dubai
Clifford Chance
3rd Floor
The Exchange Building
Dubai International Financial Centre
P.O. Box 9380
Dubai, United Arab Emirates
Tel +971 4 362 0444
Fax +971 4 362 0445

Düsseldorf
Clifford Chance
Königsallee 59
40215 Düsseldorf
Germany
Tel +49 211 43 55-0
Fax +49 211 43 55-5600

Frankfurt
Clifford Chance
Mainzer Landstraße 46
60325 Frankfurt am Main
Germany
Tel +49 69 71 99-01
Fax +49 69 71 99-4000

Hong Kong
Clifford Chance
28th Floor
Jardine House
One Connaught Place
Hong Kong
Tel +852 2825 8888
Fax +852 2825 8800

Istanbul
Clifford Chance
Kanyon Ofis Binasi Kat. 10
Büyükdere Cad. No. 185
34394 Levent, Istanbul
Turkey
TEL +90 212 339 0001
FAX +90 212 339 0098

Kyiv
Clifford Chance
75 Zhylyanska Street
01032 Kyiv, Ukraine
Tel +38 (044) 390 5885
Fax +38 (044) 390 5886

London
Clifford Chance
10 Upper Bank Street
London
E14 5JJ
Tel +44 20 7006 1000
Fax +44 20 7006 5555

Luxembourg
Clifford Chance
2-4 place de Paris
B.P. 1147
L-1011 Luxembourg
Grand-Duché de Luxembourg
Tel +352 48 50 50 1
Fax +352 48 13 85

Madrid
Clifford Chance
Paseo de la Castellana 110
28046 Madrid
Spain
Tel +34 91 590 75 00
Fax +34 91 590 75 75

Milan
Clifford Chance
Piazzetta M.Bossi, 3
20121 Milan
Italy
Tel +39 02 806 341
Fax +39 02 806 34200

Moscow
Clifford Chance
Ul. Gasheka 6
125047 Moscow
Russian Federation
Tel +7 495 258 5050
Fax +7 495 258 5051

Munich
Clifford Chance
Theresienstraße 4-6
80333 Munich
Germany
Tel +49 89 216 32-0
Fax +49 89 216 32-8600

New York
Clifford Chance
31 West 52nd Street
New York, NY 10019-6131, USA
Tel +1 212 878 8000
Fax +1 212 878 8375

Paris
Clifford Chance
9 Place Vendôme
CS 50018
75038 Paris Cedex 01
France
Tel +33 1 44 05 52 52
Fax +33 1 44 05 52 00

Perth
Clifford Chance
Level 12, London House
216 St Georges Terrace
Perth, Western Australia 6000
Tel +618 9262 5555
Fax +618 9262 5522

Prague
Clifford Chance
Jungmannova Plaza
Jungmannova 24
110 00 Prague 1
Czech Republic
Tel +420 222 555 222
Fax +420 222 555 000

Rome
Clifford Chance
Via Di Villa Sacchetti, 11
00197 Rome
Italy
Tel +39 06 422 911
Fax +39 06 422 91200

São Paulo
Clifford Chance
Rua Funchal 418 15th Floor
04551-060 São Paulo SP
Brazil
Tel +55 11 3019 6000
Fax +55 11 3019 6001

Shanghai
Clifford Chance
40th Floor
Bund Centre
222 Yan An East Road
Shanghai 200002
China
Tel +86 21 2320 7288
Fax +86 21 2320 7256

Singapore
Clifford Chance
One George Street
19th Floor
Singapore 049145
Tel +65 6410 2200
Fax +65 6410 2288

Sydney
Clifford Chance
Plaza Building, Australia Square
Level 13, 95 Pitt Street
Sydney NSW 2000
Tel +612 8922 8000
Fax +612 8922 8088

Tokyo
Clifford Chance
Akasaka Tameike Tower, 7th Floor
17-7 Akasaka 2-Chome
Minato-ku, Tokyo 107-0052
Tel +(81 3) 5561 6600
Fax +(81 3) 5561 6699

Warsaw
Clifford Chance
Norway House
ul.Lwowska 19
00-660 Warsaw
Poland
Tel +48 22 627 11 77
Fax +48 22 627 14 66

Washington, D.C.
Clifford Chance
2001 K Street NW
Washington, DC 20006 - 1001, USA
Tel +1 202 912 5000
Fax +1 202 912 6000

Riyadh
(Co-operation agreement)
Al-Jadaan & Partners Law Firm
P.O.Box 3515, Riyadh 11481
Fifth Floor, North Tower
Al-Umam Commercial Centre
Salah-AlDin Al-Ayyubi Street
Al-Malaz, Riyadh
Kingdom of Saudi Arabia
Tel +966 1 478 0220
Fax +966 1 476 9332

*Clifford Chance also has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh