

International Regulatory Update

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IN THIS WEEK'S NEWS

- CRD 4: Danish EU Council Presidency publishes compromise proposals
- European Commission consults on integrated European market for card, internet and mobile payments
- ECB publishes working paper on counterparty risk, incentives and margins
- Reinforced economic union: MEPs call for roadmap towards Eurobonds
- FSB discusses financial regulation work plan for 2012
- IMF publishes working paper on next generation system-wide liquidity stress testing
- Basel III: Group of Central Bank Governors and Heads of Supervision endorse liquidity standard and strategy for assessing implementation
- HM Treasury consults on contractual schemes for collective investment
- European Commission highlights concerns over certain Hungarian laws
- AFM provides guidance on new requirement to use standardised warning for exempt securities offerings
- Swiss National Bank tightens control over its corporate governance and personal-account transactions involving financial instruments
- BSP issues memorandum on implementation of Basel III minimum capital requirements
- CFTC publishes proposed rule implementing Volcker Rule
- CFTC approves final rules on registration of swap dealers and major swap participants and business conduct standards
- CFTC approves final rule on cleared swap collateral
- Upcoming Clifford Chance Event: Financial & Economic Crime – recent developments and transatlantic enforcement trends. [Follow this link to the events section](#)
- Recent Clifford Chance Briefings: The Eurozone Crisis and Derivatives; and more. [Follow this link to the briefings section.](#)

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SHORT SELLING UPDATE

- CONSOB extends restrictive measures on net short positions, reporting requirements and ban on naked short selling; FAQs updated

CRD 4: Danish EU Council Presidency publishes compromise proposals

The Danish EU Council Presidency has published compromise texts for the proposed fourth package of amendments to the Capital Requirements Directive (CRD 4), comprising a directive governing access to deposit-taking activities and the prudential supervision of credit institutions and investment firms and a regulation on prudential requirements for credit institutions and investment firms.

[Proposed directive – Presidency compromise](#)
[Proposed regulation – Presidency compromise](#)

European Commission consults on integrated European market for card, internet and mobile payments

The European Commission has published a [Green Paper](#) which assesses the current state of the card, internet and mobile payments market in Europe and identifies the gaps between the current situation and the Commission's vision of a fully integrated payments market, as well as the barriers which have created these gaps.

The main issues identified in the paper concern: (1) market access and entry for existing and new service providers; (2) payment security and data protection; (3) transparent and efficient pricing of payment services; (4) technical standardisation; and (5) inter-operability between service providers.

Consultation responses are due by 11 April 2012. The Commission intends to announce the next steps to be taken before the summer.

[FAQs](#)

ECB publishes working paper on counterparty risk, incentives and margins

The ECB has published a [working paper](#) on counterparty risk, incentives and margins. The paper analyses optimal contracts in the context of hedging using derivatives, and argues that contracts designed to engineer risk-sharing generate incentives for risk-taking.

The ECB has indicated that the views expressed in the working paper are those of the authors and do not necessarily reflect those of the ECB.

Reinforced economic union: MEPs call for roadmap towards Eurobonds

As the EU working group drafting the international agreement on a reinforced economic union reconvened on 6 January 2012, European Parliament representatives stressed in their amendments that all decisions must be based on normal EU procedure in order to ensure democratic accountability. They also called for a roadmap with a view to introducing eurobonds.

The European Parliament representatives' proposed changes to the draft agreement call on Member States to establish a national debt reduction fund and to adopt a roadmap toward creating the conditions that will allow them to issue part of their sovereign debt in common, with joint and several liabilities. The MEPs argue that a sustainable framework is needed for the possible introduction of stability bonds, with the aim of enhancing economic governance and economic growth in the euro area.

[Press release](#)

FSB discusses financial regulation work plan for 2012

The Financial Stability Board (FSB) has held a meeting to discuss the current state of the global financial system and its work plan for 2012 to strengthen global financial regulation.

In particular, the FSB discussed the work ahead to further develop and implement the framework for systemically important financial institutions, including extending it to domestic systemically important banks, and global systemically important insurance companies and other types of financial institution. The FSB also approved workplans to implement the 'Key Attributes of Effective Resolution Regimes', including the preparation of resolvability assessments, recovery and resolution plans, and cross-border cooperation agreements between home and host authorities for each global systemically important financial institution by the end of 2012 and the development of an assessment methodology for the Key Attributes. The first of a series of peer reviews of the implementation of the Key Attributes will be launched in the second half of 2012.

Amongst other things, the FSB set up an OTC Derivatives Coordination Group, comprising the chairs of relevant standard-setting bodies, to ensure close coordination of the different international workstreams. The FSB also

discussed its work on the development of a legal entity identifier. The FSB has set up an expert group from the official sector, to be supported by a private-sector advisory panel, to deliver proposals on the implementation of a global LEI system for review by the FSB by April 2012 and delivery to the G20 at the June 2012 summit.

[Press release](#)

IMF publishes working paper on next generation system-wide liquidity stress testing

The International Monetary Fund (IMF) has published a [working paper](#) which presents a framework to run system-wide, balance sheet data-based liquidity stress tests. The liquidity framework includes three elements: (1) a module to simulate the impact of bank run scenarios; (2) a module to assess risks arising from maturity transformation and rollover risks, implemented either in a simplified manner or as a fully-fledged cash flow-based approach; and (3) a framework to link liquidity and solvency risks.

The framework also allows the simulation of how banks cope with upcoming regulatory changes such as Basel III, and accommodates differences in data availability.

The IMF has emphasised that the views expressed in this working paper are those of the authors and do not necessarily represent those of the IMF or IMF policy.

Basel III: Group of Central Bank Governors and Heads of Supervision endorse liquidity standard and strategy for assessing implementation

The Group of Central Bank Governors and Heads of Supervision, the oversight body of the Basel Committee on Banking Supervision, has [endorsed](#) the Basel Committee's proposals on the liquidity coverage ratio (LCR) and its broader strategy for assessing implementation of the Basel regulatory framework.

The Committee intends to monitor the status of members' adoption of the Basel rules on an ongoing basis, and to review the compliance of members' domestic rules or regulations with the international minimum standards in order to identify differences that could raise prudential or level playing field concerns. The Committee also intends to review the measurement of risk-weighted assets to ensure consistency in practice across banks and jurisdictions. Against this background, each Basel Committee member country has committed to undergo a detailed peer review of its implementation of all components of the Basel regulatory framework. In addition to Basel III, the Committee will assess implementation of Basel II and Basel II.5. The

Group of Central Bank Governors and Heads of Supervision has also endorsed the Committee's agreement to publish the results of these assessments, and agreed that the initial peer reviews should assess implementation in the EU, Japan and the United States. These reviews are scheduled to commence in the first quarter of 2012.

With respect to the LCR, the Group of Central Bank Governors and Heads of Supervision has reiterated the principle that a bank is expected to have a stable funding structure and a stock of high-quality liquid assets that should be available to meet its liquidity needs in times of stress. The Basel Committee has been asked to further elaborate on this principle by clarifying the LCR rules text to state explicitly that liquid assets accumulated in normal times are intended to be used in times of stress. It also intends to provide additional guidance on the circumstances that would justify the use of the pool of liquid assets. In addition, the Basel Committee intends to examine how central banks interact with banks during periods of stress, with a view to ensuring that the workings of the LCR do not hinder or conflict with central bank policies. The Group of Central Bank Governors and Heads of Supervision has also reaffirmed its commitment to introduce the LCR as a minimum standard in 2015, and directed the Committee to finalise and publish its recommendations on specific concerns regarding the pool of high-quality liquid assets as well as some adjustments to the calibration of net cash outflows by the end of 2012.

HM Treasury consults on contractual schemes for collective investment

HM Treasury has published a [consultation paper](#) on the proposed introduction of a tax-transparent fund vehicle in the UK. The proposed tax-transparent fund vehicle is intended primarily to facilitate the setting up of pooled 'master funds' under the revised UCITS IV Directive. As the Financial Services and Markets Act 2000 does not provide for the authorisation of tax-transparent collective investment schemes, it is currently not possible to have a tax-transparent UCITS master fund domiciled in the UK. The measures outlined in the consultation paper would allow for the authorisation of UK domiciled schemes established by contract and governed by the terms of a deed between the operator of the scheme and the investing participants.

The Treasury is seeking views and evidence on the costs and benefits of the new fund vehicle, likely take up by industry and the tax and legal arrangements needed for it to be deployed effectively. The consultation paper explains

the background to the government's proposals, the structure of the vehicles, and the required regulatory and tax legislation, and sets out the expected benefits of introducing the contractual schemes.

Consultation responses are due by 19 March 2012.

European Commission highlights concerns over certain Hungarian laws

The European Commission has issued a [statement](#) highlighting its concerns about the compatibility of certain new Hungarian laws with EU law.

The Commission's concerns relate to a number of issues, including: (1) the independence of the national central bank; (2) the independence of the national data protection authority; and (3) measures concerning the judiciary and in particular mandatory early retirement of judges and prosecutors at the age of 62 instead of 70.

The Commission has reserved the right to take any steps that it deems appropriate, including the use of infringement procedures. The Commission has been finalising its legal analysis, to allow decisions to be taken at the next meeting of the College of Commissioners on 17 January 2012.

AFM provides guidance on new requirement to use standardised warning for exempt securities offerings

The Netherlands Authority for the Financial Markets (AFM) has published [guidance](#) on the new requirement to use a standardised warning for exempt securities offerings in the Netherlands. As of the beginning of 2012, offerings of securities in the Netherlands on the basis of an exemption from the prospectus requirements in the EU Prospectus Directive are required to include a standardised warning, which has been nicknamed the 'Wild West Sign', in their offering materials. Although the measure is intended to protect Dutch retail investors, the cross-border wholesale market will also be affected. The new law does not distinguish between cross-border offerings and domestic offerings. Only offering materials that are exclusively distributed to qualified investors (which may include term sheets) do not require the inclusion of the warning.

The AFM's guidance in relation to offerings under debt issuance programmes confirms that, in principle, the warning does not need to be inserted in a base prospectus. Instead, the warning can be included as a wrapper or leaflet to the final terms. The guidance further states that, in the case of other prospectuses, e.g. stand-alone prospectuses, issuers should either insert a 'qualified investor only' selling

restriction in the prospectus, or insert the warning on the front page of the prospectus.

Swiss National Bank tightens control over its corporate governance and personal-account transactions involving financial instruments

The Swiss National Bank (SNB) has [announced](#) that its Bank Council has taken decisions to address corporate governance issues.

Members of the enlarged governing board of the SNB, with the support of external specialists, will undertake a comprehensive revision of the regulations and directives on personal-account transactions involving financial instruments.

In addition, all bank transactions effected by members of the enlarged governing board between 1 January 2009 and 31 December 2011 will be reviewed by external auditors. Finally, until such time as the regulations and directives have been revised, members of the enlarged governing board as well as staff members with access to privileged information must first obtain approval from the SNB's Chief Compliance Officer for foreign exchange transactions which exceed CHF 20,000. The Audit Committee of the Bank Council will be informed of such instances periodically.

BSP issues memorandum on implementation of Basel III minimum capital requirements

Following the recent announcement of its plans to implement Basel III, the Bangko Sentral ng Pilipinas (BSP) has issued a [memorandum](#) to all universal and commercial banks (including their subsidiary banks and quasi-banks) advising them that the Monetary Board has approved the implementation of the Basel III minimum capital requirements with effect from 1 January 2014.

CFTC publishes proposed rule implementing Volcker Rule

The CFTC has published proposed rule implementing section 619 (the Volcker Rule) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The CFTC's proposal to implement section 619 is substantively similar to the joint rule proposal issued by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the US Treasury, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission in October 2011. The CFTC's proposal also includes several additional questions asking whether certain provisions of the October

2011 joint rule proposal are applicable to CFTC-regulated banking entities.

The proposed rule will be open for public comment for 60 days following its publication in the Federal Register.

[Fact sheet](#)

CFTC approves final rules on registration of swap dealers and major swap participants and business conduct standards

The CFTC has adopted final regulations that establish the process for the registration of swap dealers and major swap participants. These final regulations implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Concurrent with the adoption of these final regulations, the CFTC is, by Notice and Order, delegating to the National Futures Association the authority to perform the full range of registration functions with respect to swap dealers and major swap participants.

The CFTC has also approved final business conduct standards rules for swap dealers and major swap participants dealing with counterparties.

The Dodd-Frank Act adds section 4s(h) to the Commodity Exchange Act, which requires the CFTC to adopt business conduct standards rules for swap dealers and major swap participants governing their dealings with counterparties generally, and additional requirements when they deal with 'special entities'.

The CFTC's final rules apply to swap dealers and (except where indicated) major swap participants and prohibit certain abusive practices, require disclosures of material information to counterparties and require swap dealers and major swap participants to undertake certain due diligence relating to their dealings with counterparties. Certain rules do not apply to transactions initiated on a swap execution facility or designated contract market when the swap dealer or major swap participant does not know the identity of the counterparty prior to execution.

[Fact sheet – final regulations regarding registration of swap dealers and major swap participants](#)

[Q&A – final registration process regulations for swaps entities](#)

[Fact sheet – final rules regarding business conduct standards for swap dealers and major swap participants dealing with counterparties](#)

[Q&A – final rules regarding business conduct standards for swap dealers and major swap participants dealing with counterparties](#)

CFTC approves final rule on cleared swap collateral

The CFTC has adopted rules concerning the protection of the cleared swaps and associated collateral belonging to cleared swaps customers of futures commission merchants, and other matters.

Section 724(a) of the Dodd-Frank Act amends the Commodity Exchange Act by inserting a new section 4d(f), which requires, amongst other things, the segregation of cleared swaps pertaining to customers, as well as associated collateral. The rules and the Legally Segregated Operationally Commingled Model (LSOC Model, also known as the Complete Legal Segregation Model) adopted by the CFTC concern, in large part, enhancing protection for, and facilitating the portability of, the cleared swaps and associated collateral of futures commission merchants cleared swaps customers.

[Fact sheet](#)

[Q&As](#)

SHORT SELLING UPDATE

CONSOB extends restrictive measures on net short positions, reporting requirements and ban on naked short selling; FAQs updated

CONSOB has issued resolution No. 18060, which provides for:

- an extension until 24 February 2012 of the restrictive measures on net short positions introduced on 12 August 2011 by means of resolution No. 17902;
- an indefinite extension of the reporting obligations on net short positions introduced on 10 July 2011 by means of resolution No. 17862; and
- an indefinite extension of the prohibition of naked short selling of shares in all companies listed on Italian regulated markets introduced on 11 November 2011 by means of resolution No. 17993.

CONSOB has indicated that this regime will remain in force until a future change or revocation, which may occur at any time depending on market conditions and, to the extent possible, in agreement with the other European authorities which have adopted similar measures.

In addition CONSOB has updated its FAQs on the restrictive measures. Amongst other things, the FAQs now provide the following clarifications:

- in the case of a guarantee signed by an investor on a share capital increase by a securities issuer, such

guarantee itself does not entail a long position of the investor on the securities of the issuer; and

- the exercise of a call option by an investor in the case of a physically settled transaction implies that the long position of the investor is represented by the securities it will receive at the settlement of the transaction.

[FAQs on restrictive measures \(available only in Italian\)](#)

[Resolution No. 18060 \(Italian\)](#)

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

[Resolution No. 17992 \(Italian\)](#)

[Resolution No. 17993 \(Italian\)](#)

[Resolution No. 17992 \(English\)](#)

[Resolution No. 17993 \(English\)](#)

UPCOMING CLIFFORD CHANCE EVENT

Financial & Economic Crime – recent developments and transatlantic enforcement trends

Clifford Chance cordially invites you to attend a seminar on recent developments and transatlantic enforcement trends in financial and economic crime, which will take place at Clifford Chance's offices in 10 Upper Bank Street, London from 6pm to 8pm on 8 February 2012.

Our guest speaker, together with Clifford Chance partners from our Regulatory Enforcement and White Collar Crime group from both sides of the Atlantic, will speak about developments in enforcement, with a particular focus on anti-bribery & corruption, anti-money laundering, economic sanctions and terrorist financing.

The seminar will feature Tracey McDermott, Acting Director, Enforcement and Financial Crime Division, FSA as a guest speaker, along with Clifford Chance partners from New York and London. This is a particular opportunity to hear from David Raskin, who recently joined our New York office from the United States Attorney's Office for the Southern District of New York. It is also an opportunity to meet Christopher J. Morvillo and Edward C. O'Callaghan, who joined as litigation partners in our New York office along with David.

Topics to be covered include:

- individual and corporate criminal liability;
- voluntary disclosures and whistle blowing;
- criminal versus civil proceedings and penalties;
- dawn raids;
- evolving systems and controls expectations; and

- settlements and Deferred Prosecution Agreements (DPAs).

These are highly topical subjects, given recent judicial pronouncements in the US and UK, initiatives announced by agencies on both sides of the Atlantic and the increasingly tough stance being taken by regulators on issues of financial economic crime.

The event will be followed by drinks and canapés. To register, please click on the link below or contact Tessa Cooksley at tessa.cooksley@cliffordchance.com.

[Registration page](#)

RECENT CLIFFORD CHANCE BRIEFINGS

The Eurozone Crisis and Derivatives

The Eurozone crisis continues to dominate the global economic landscape, raising questions among market participants as to the implications for market standard derivatives documentation should a Eurozone member leave the currency union, albeit this remains an unlikely event. This briefing addresses that issue in the context of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) and the 2002 ISDA Master Agreement.

http://www.cliffordchance.com/publicationviews/publications/2012/01/the_eurozone_crisisandderivatives.html

Solvency II Update

This briefing provides an update on the developments in relation to the implementation of the Solvency II Level 1 Directive since our last Solvency II client briefing in July 2011. The update also includes a discussion of the key outstanding issues and expected next stages in the implementation process.

http://www.cliffordchance.com/publicationviews/publications/2012/01/solvency_ii_update.html

Luxembourg Legal Update – January 2012

This 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/2012/01/luxembourg_legalupdate-january20120.html

New Dutch private placement rules for funds

The Dutch rules for private placements of investment funds changed on 1 January 2012 primarily as a result of cases of

fraudulent behaviour by fund managers. The increase of minimum investment amounts and the mandatory inclusion of health warnings aim to enhance investor protection.

This briefing discusses the changes.

Please contact Mhairi Appleton by email at mhairi.appleton@cliffordchance.com for a copy of this briefing.

Spain introduces new restructuring framework

Recent experience in Spain has shown that the majority of insolvencies end in liquidation rather than a successful restructuring of the business. The need, therefore, for a more efficient procedure which preserves value rather than destroys it, has been long awaited. At first blush, the recent amendments to Spanish insolvency legislation make notable improvements to the existing insolvency process, but upon closer inspection, their effect may be more limited than hoped.

This briefing highlights the key changes introduced by the amendments the main provisions of which became effective on 1 January 2012.

http://www.cliffordchance.com/publicationviews/publications/2012/01/spain_introducesnewrestructuringframework.html

Latest Update on China's Renminbi Qualified Foreign Institutional Investor Scheme

Shortly after China launched the Renminbi Qualified Foreign Institutional Investor (RMB QFII) Scheme in

December 2011, the State Administration of Foreign Exchange and the People's Bank of China issued their own circulars to elaborate on the implementation of the scheme. On the practical front, the Hong Kong Securities and Futures Commission has approved five RMB QFII funds which will be launched shortly.

In light of these new developments, Clifford Chance has updated its December 2011 briefing on the RMB QFII scheme to include a discussion of the provisions of these two circulars and their impact on the operation of the scheme.

http://www.cliffordchance.com/publicationviews/publications/2012/01/latest_update_onchinasrenminbiqualfie0.html

US Extraterritorial Iran Sanctions Imposed on Companies Based in China, Singapore, and the UAE

On 12 January, the US Department of State imposed sanctions on Zhuhai Zhenrong Company of China, Kuo Oil (S) Pte. Ltd. of Singapore, and FAL Oil Company Limited of the UAE under the Iran Sanctions Act, as amended by the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA). The Department of State has now imposed CISADA sanctions on a total of twelve firms.

This briefing discusses the sanctions.

http://www.cliffordchance.com/publicationviews/publications/2012/01/us_extraterritorialiransanctionsimposedo.html

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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