

# International Regulatory Update

23 – 27 July 2012

## IN THIS WEEK'S NEWS

- Investment funds: Commission consults on future framework
- Market abuse: Commission publishes amended proposals
- OTC derivatives and market infrastructures: regulation published in Official Journal
- EBA publishes guidelines to streamline data collection on remuneration practices
- ESMA publishes ETF guidelines and consults on repo arrangements
- Short selling and CDS: EU Commission publishes impact assessment on delegated act
- UK, France, Germany, Italy, Spain and US publish model intergovernmental agreement to improve tax compliance and implement FATCA
- Basel Committee issues final rule on regulatory treatment of valuation adjustments to derivative liabilities
- Basel Committee issues interim rules for capitalisation of bank exposures to central counterparties
- FSA publishes new rules on packaged bank accounts
- FSA issues policy statement on financial resources requirements for recognised bodies
- Regulated Covered Bond Regime: FSA consults on proposed guidance on role of asset pool monitor
- Remuneration Code: FSA consults on proposed change to guidance on proportionality
- Parliamentary Commission on Banking Standards issues call for evidence
- FSA consults on CASS firm classification, oversight, reporting and mandate rules
- FSA consults on new funding model for FSCS
- House of Lords EU Committee launches inquiry into reform of banking sector
- Kay Review sets out measures to reform UK equity markets
- CONSOB introduces naked short selling ban and issues FAQs

*Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.*

**If you would like to continue to receive International Regulatory Update or would like to request a subscription for a colleague, please [click here](#).**

**To request a subscription to our Alerter: Finance Industry service, please email [Online Services](#).**

If you would like to know more about the subjects covered in this publication or our services, please contact:

### International Regulatory Group Contacts

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Thomas Pax](#) +1 202 912 5168

[Steven Gatti](#) +1 202 912 5095

[Martin Rogers](#) +852 2826 2437

[Mark Shipman](#) + 852 2826 8992

### International Regulatory Update Editor

[Julia Milosh](#) +44 (0)20 7006 4171

To email one of the above, please use [firstname.lastname@cliffordchance.com](mailto:firstname.lastname@cliffordchance.com)

Clifford Chance LLP, 10 Upper Bank Street, London, E14 5JJ, UK

[www.cliffordchance.com](http://www.cliffordchance.com)

- Short selling: CNMV introduces temporary ban of short positions on stocks admitted to trading in a Spanish regulated market
- HKEx consults on trading halts proposal
- SFC consults on proposals to enhance regulatory framework for electronic trading
- SGX announces changes to default management framework of derivatives market
- CFTC approves rules establishing scheduled phase-in of compliance with new Dodd-Frank clearing requirements
- Recent Clifford Chance briefings: Corporate Update July 2012; and more. [Follow this link to the briefings section.](#)

#### **Investment funds: Commission consults on future framework**

The European Commission has launched a [consultation](#) on issues arising in the area of investment funds, focusing on:

- money market funds and how such funds should be regulated in future;
- the fund industry's involvement in securities lending and repurchase (repo) arrangements; and
- the fund industry's exposure to certain OTC derivatives that, in future, will be subject to central clearing and the fund industry's approach to investors' redemptions.

The consultation raises a series of issues and policy options aimed at maintaining investor confidence in money market funds. The consultation focuses on the role of money market funds in the management of liquidity for investors, their engagement in the securities lending and repo markets, and their systemic involvement in the overall financial marketplace. Issues such as the various methods for calculating the net asset value for money market funds are also addressed.

In addition, the consultation paper addresses a UCITS fund manager's employment of efficient portfolio management (EPM) techniques, including securities lending and repurchase transactions, as well as the management of collateral that is received or granted to secure these transactions.

Finally, the consultation paper considers how to create a European investment culture where retail investors take a longer-term and strategic view when placing their savings with the providers of fund products and have access to products suited to this.

Comments are due by 18 October 2012.

#### **Market abuse: Commission publishes amended proposals**

The European Commission has issued amendments to its proposals for a regulation on insider dealing and market manipulation and for a directive on criminal sanctions for market abuse, initially published in October 2011. The amendments are intended to prohibit and criminalise the manipulation of benchmarks.

In particular, the Commission has introduced the following changes to the proposal for a regulation:

- amendment to the scope of the proposed regulation to include benchmarks;
- amendment to the definitions to include a definition of benchmarks, based on an expanded version of the definition used in the proposal for a regulation on markets in financial instruments (MiFIR);
- amendment to the definition of the offence of market manipulation to capture manipulation of benchmarks themselves and attempts at such manipulation; and
- amendment to the recitals to justify the extension of the scope and the market manipulation offence to benchmarks.

The amended proposal for a directive on criminal sanctions for insider dealing and market manipulation introduces the following:

- amendment to the definitions to include a definition of benchmarks;
- amendment of the criminal offence of market manipulation to capture manipulation of benchmarks themselves; and
- amendment of the criminal offence of 'inciting, aiding and abetting and attempt' to include these behaviours in relation to the manipulation of benchmarks.

The Commission is not proposing to set the minimum types and levels of criminal sanctions at this stage, but wants to require each Member State to provide for criminal sanctions in its national laws to cover the manipulation of benchmarks.

[Proposed regulation \(amended\)](#)

[Proposed directive \(amended\)](#)

[FAQs](#)

### **OTC derivatives and market infrastructures: regulation published in Official Journal**

The [regulation](#) OTC derivatives and market infrastructures has been published in the Official Journal. The regulation will enter into force on 16 August 2012.

### **EBA publishes guidelines to streamline data collection on remuneration practices**

The EBA has published two sets of guidelines on the data collection exercise regarding high earners and on the remuneration benchmarking exercise. The objective of these guidelines is to streamline the data collection and increase the consistency and comparability of the information collected by national competent authorities.

National competent authorities are expected to implement the provisions set out in the guidelines within two months of their publication. The institutions should submit the relevant data to their national competent authority every year by the end of June. The latter should then submit this information to the EBA each year by the end of August. As a transitional arrangement, the first set of data should be submitted to the EBA by the end of December 2012 and should relate to remuneration for 2010 and 2011.

[Guidelines on the remuneration benchmarking exercise](#)  
[Guidelines on the data collection exercise regarding high earners](#)

### **ESMA publishes ETF guidelines and consults on repo arrangements**

ESMA has published its guidelines on exchange-traded funds (ETFs) and other UCITS issues. The guidelines will apply to national securities markets regulators and UCITS management companies, and set out the information that should be given to investors about index-tracking UCITS and UCITS ETFs, together with specific rules for UCITS when entering into OTC financial derivative transactions and efficient portfolio management (EPM) techniques. The guidelines also set out the criteria for financial indices in which UCITS may invest.

ESMA has also launched a consultation on the appropriate treatment of repo and reverse repo arrangements in the context of the guidelines on ETFs and other UCITS issues. In particular, ESMA is proposing a distinct regime for repo and reverse repo arrangements which, unlike securities lending arrangements, would allow a proportion of the assets of the UCITS to be non-recallable at any time at the initiative of the UCITS. The proposed guidelines include safeguards to ensure that the counterparty risk arising from

these arrangements is limited, and that UCITS entering into such arrangements can continue to execute redemption requests. Once adopted by ESMA, the guidelines on repo and reverse repo arrangements will be integrated into the guidelines on ETFs and other UCITS issues.

Comments on the consultation are due by 25 September 2012. The final guidelines will become effective two months after publication on the ESMA website of the translations into the official languages of the EU.

[Guidelines and consultation paper](#)

### **Short selling and CDS: Commission publishes impact assessment on delegated act**

The European Commission has published an [impact assessment](#) on a [delegated act](#) it adopted on 5 July 2012 detailing rules on the ban on uncovered sovereign credit default swaps (CDS) and short sales of shares and sovereign debt under the regulation on short selling and CDS. Amongst other things, the delegated act specifies the cases in which sovereign CDS are considered covered, and therefore not banned in accordance with the short selling regulation.

The delegated act is part of a package of four implementing measures adopted by the Commission to specify technical aspects of the short selling regulation.

[Impact assessment – executive summary](#)

### **UK, France, Germany, Italy, Spain and US publish model intergovernmental agreement to improve tax compliance and implement FATCA**

The governments of the United Kingdom, France, Germany, Italy, Spain and the United States have issued a [joint statement](#) announcing the publication of the '[Model Intergovernmental Agreement to Improve Tax Compliance and to Implement FATCA](#)'. The model agreement establishes a framework for reporting by financial institutions of certain financial account information to their respective tax authorities, followed by automatic exchange of such information under existing bilateral tax treaties or tax information exchange agreements. It is intended to address the legal issues that had been raised in connection with the Foreign Account Tax Compliance Act (FATCA), simplify its implementation for financial institutions, and provide for reciprocal information exchange.

The six governments will work towards concluding bilateral agreements based on this model. HM Treasury has indicated that financial institutions and other interested

parties in the UK will then be consulted on the implementation of the agreement and draft legislation will be published later in 2012.

#### **Basel Committee issues final rule on regulatory treatment of valuation adjustments to derivative liabilities**

The Basel Committee on Banking Supervision has issued a [press release](#) on the regulatory treatment of valuation adjustments to derivative liabilities. Having considered the responses to its [December 2011 consultation paper](#) on this issue, the Committee has confirmed its intention to proceed with the baseline proposal and has agreed that valuation adjustments to derivative liabilities arising from the bank's own credit risk should be fully derecognised from the calculation of common equity at each reporting date. While recognising that this rule might go beyond the principle in paragraph 75 for non-derivative liabilities, the Committee believes that valuation adjustments to derivative liabilities raise a wide range of prudential concerns, and therefore that conservatism should drive the policy framework in this area. In addition, the Committee believes that it is currently not feasible to implement alternative approaches in a consistent and sufficiently robust manner.

#### **Basel Committee issues interim rules for capitalisation of bank exposures to central counterparties**

The Basel Committee on Banking Supervision has issued [interim rules](#) for the capitalisation of bank exposures to central counterparties (CCPs). The Committee's framework for capitalising exposures to CCPs builds on the new CPSS/IOSCO Principles for Financial Market Infrastructures, which are designed to enhance the robustness of the essential infrastructure – including CCPs – supporting global financial markets. Where a CCP is supervised in a manner consistent with these principles, exposures to such CCPs will receive a preferential capital treatment. In particular, trade exposures will receive a nominal risk-weight of 2%.

In addition, the interim rules published by the Committee allow banks to choose from one of two approaches for determining the capital required for exposures to default funds:

- a risk sensitive approach on which the Committee has consulted twice over the past years; or
- a simplified method under which default fund exposures will be subject to a 1250% risk weight subject to an overall cap based on the volume of a bank's trade exposures.

The rules also include provisions on indirect clearing that allow clients to benefit from the preferential treatment for central clearing.

The interim rules allow for full implementation of Basel III, while still recognising that additional work is needed to develop an improved capital framework. Further work in this area is planned for 2013.

#### **FSA publishes new rules on packaged bank accounts**

The FSA has published a [consultation paper \(CP12/17\)](#) which provides feedback on the responses it received to its October 2011 [consultation paper \(CP11/20\)](#) on proposals regarding packaged bank accounts and new ICOBS rules for the sale of non-investment insurance contracts. CP12/17 also sets out the final rules requiring banks and building societies to check whether customers are eligible to claim on insurance cover before selling them a packaged bank account.

The FSA is also consulting on further issues including a proposal that annual eligibility statements should be sent to customers as a separate mailing to give them added prominence, and that banks and building societies should proactively tell customers who have triggered the age limit for claiming on the travel insurance element, or warn them if they will do so before the next statement is due.

Another area the FSA intends to monitor is the promotion of packaged accounts where monthly costs are advertised alongside yearly benefits.

Comments are due by 29 October 2012.

#### **FSA issues policy statement on financial resources requirements for recognised bodies**

The FSA has published a [policy statement \(PS12/13\)](#) summarising the responses received and policy conclusions reached in relation to its October 2011 [consultation paper \(CP11/19\)](#) on proposed changes to the guidance it provides in relation to the financial resources it considers investment exchanges and clearing houses should hold to mitigate operational and other risks. PS12/13 also presents the FSA's final guidance in this area.

#### **Regulated Covered Bond Regime: FSA consults on proposed guidance on role of asset pool monitor**

The FSA has published [proposed guidance](#) on the role of the asset pool monitor under the Regulated Covered Bond (RCB) Regulations. The proposed guidance covers the scope of the asset pool monitor's inspection and report. The FSA believes that the guidance will bring more

consistency to existing audit reports which, it states, currently vary a lot across RCB issuers as well as allow cross-comparisons across RCB programmes.

Comments are due by 14 September 2012.

#### **Remuneration Code: FSA consults on proposed change to guidance on proportionality**

The FSA has published for consultation an updated version of its '[General guidance on proportionality: The Remuneration Code \(SYSC 19a\) & Pillar 3 disclosures on remuneration \(BIPRU 11\)](#)'. The FSA is proposing to amend the guidance to further clarify how firms may comply with the Code and disclosure rules in a manner that takes account of their size, internal organisation and the nature, scope and complexity of their activities. In particular, the FSA has indicated that the proposed new framework would replace the current four-tier structure (based on capital resources) with three new 'levels' (based on total assets).

Comments are due by 6 September 2012.

#### **Parliamentary Commission on Banking Standards issues call for evidence**

The Parliamentary Commission on Banking Standards has issued an [initial call for evidence](#) which invites views on, amongst other things:

- to what extent professional standards in UK banking are absent or defective;
- what the consequences of this have been for consumers, both retail and wholesale, and the economy as a whole, and for public trust in, and expectations of, the banking sector;
- what caused any problems identified in banking standards;
- what can and should be done to address any weaknesses identified; and
- whether the changes already proposed by the government, regulators and the industry are sufficient.

The Commission's terms of reference are to consider and report on the professional standards and culture of the UK banking sector, as well as lessons to be learned about corporate governance, transparency and conflicts of interest, and their implications for regulation and for government policy, and to make recommendations for legislative and other action.

The Commission, which held its first formal meeting on 24 July 2012, has been asked to report on proposals for legislative action no later than 18 December 2012 and on

other matters as soon as possible thereafter. The Commission has therefore requested responses to its initial call for evidence as soon as possible, preferably by 24 August 2012. Further requests for written evidence may follow as the Commission's work evolves.

#### **FSA consults on CASS firm classification, oversight, reporting and mandate rules**

The FSA has published a [consultation paper \(CP12/15\)](#) on two areas of client assets policy, CASS oversight and reporting, and the mandate rules (CASS 8).

The purpose of CP12/15 is to clarify existing CASS firm classification, operational oversight and reporting requirements. CP12/15 also seeks to make minor amendments to the language and presentation of some questions contained within the CMAR and the CMAR guidance notes, based on industry feedback. Finally, the FSA wants to clarify the scope of the mandate rules (CASS 8).

Comments are due by 30 September 2012.

#### **FSA consults on new funding model for FSCS**

The FSA has published a [consultation paper \(CP12/16\)](#) on changes to how the Financial Services Compensation Scheme (FSCS) is funded.

Under the proposed new funding model, there would be two separate approaches for funding the FSCS' costs – one for activities the FSA expects will be subject to the Prudential Regulation Authority's (PRA) funding rules for the FSCS, such as deposit takers and insurance providers, and one for the other activities it expects will be subject to the Financial Conduct Authority's (FCA) funding rules. There would be no cross-subsidy between the two.

The other main features of the proposed new funding model include the following: (1) no changes to the current funding classes; (2) a retail pool made up of all classes subject to the FCA's funding rules; (3) revised annual thresholds based on assessments of affordability; and (4) the FSCS to consider compensation costs expected in 36 months following the levy instead of the current twelve months.

Comments are due by 25 October 2012.

#### **House of Lords EU Committee launches inquiry into reform of banking sector**

The House of Lords European Union Sub-Committee on Economic and Financial Affairs has [launched an inquiry](#) into



reform of the EU banking sector. The Committee will look at the sector in the context of the agenda of reforms at an EU level. This will include assessing proposals for an EU directive on bank recovery and resolution, looking into the European Council's vision for an Economic and Monetary Union as set out by President Van Rompuy, and investigating the intention of euro area leaders to create a single banking supervisory mechanism.

Written evidence is due by 1 October 2012.

#### **Kay Review sets out measures to reform UK equity markets**

Professor John Kay has published the [final report](#) on his independent review to examine investment in UK equity markets and its impact on the long-term performance and governance of UK quoted companies. The report argues that short-termism is an underlying problem in UK equity markets, principally caused by a misalignment of incentives within the investment chain and the displacement of trust relationships by a culture based on transactions and trading.

The report's recommendations, which are aimed at participants in UK equity markets, as well as government and regulators, seek to improve the incentives and quality of engagement, including by establishing an Investor Forum to foster more effective collective engagement by investors with UK companies. Professor Kay also wants to restore relationships of trust and confidence in the investment chain, including by applying fiduciary standards more widely within the investment chain. The report also seeks to change the culture of market participants, including by adoption of 'good practice statements' by company directors, asset managers and asset holders that promote a more expansive form of stewardship and long-term decision making throughout the investment chain. Finally, the report suggests how to realign incentives by better relating directors' remuneration to long-term sustainable business performance and better aligning asset managers' remuneration to the interests of their clients.

#### **CONSOB introduces naked short selling ban and issues FAQs**

The CONSOB has issued Resolution No. 18283 which introduces a naked short selling ban in relation to the share capital of certain issuers (i.e. banks and insurance companies) operating in the financial markets, as identified in a list published by CONSOB.

In addition, CONSOB has published an updated version of its frequently asked questions (FAQs) on restrictive measures on naked short selling.

According to the FAQs, 'naked short selling' refers to a sale that, upon submission of the relevant order, is covered neither by the 'right to receive' nor by the availability of the securities within the settlement date. For instance, the 'right to receive' requirement is not considered met with the stipulation of a securities lending contract.

The ban applies regardless of the trading venue (i.e. it applies to transactions carried out not only on Italian regulated markets, but also on different trading venues such as multilateral trading facilities, even foreign, as well as to over-the-counter transactions). An exemption has been created for activities carried out by market makers and specialists (as defined in the rules of the regulated markets organised and managed by Borsa Italiana S.p.A) acting in the exercise of their own functions, and for intermediaries acting in the performance of a liquidity contract. For the sole purposes of the ban, the concept of market maker shall not be limited to the activity carried out on regulated markets and multilateral trading facilities, but shall also comprise any off-market activities.

The restrictive measures provided by Resolution No. 18283 entered into force on 23 July 2012 at 13.30 p.m. CET and will remain in force until 27 July 2012 at 6 p.m. CET.

[Communication \(Italian\)](#)

[Resolution no. 18283 \(Italian\)](#)

[Resolution no. 18283 \(English\)](#)

[FAQs on naked short selling ban \(Italian\)](#)

[FAQs on naked short selling ban \(English\)](#)

#### **Short selling: CNMV introduces temporary ban of short positions on stocks admitted to trading in a Spanish regulated market**

The CNMV has temporarily banned short positions on stocks admitted to trading in a Spanish regulated market until the closing of the market session on 23 October 2012 (inclusive). The ban can be renewed or lifted as needed.

The preventive ban affects any trade on equities or indices, including cash equities transactions, derivatives in regulated markets or over-the-counter (OTC) derivatives, that has the effect of creating a net short position or increasing a previous one, even on an intraday basis.

Positions arising from market making activities will be exempted from this ban. For this purpose, market making covers investment firms that incur a transitory (especially

intraday) net short position either as: (1) a response or a hedge to a client order; or (2) as a result of quoting bid and ask prices on a continuous way as market members, with or without a public commitment with the issuer or the market.

[Press release](#)

### **HKEx consults on trading halts proposal**

Hong Kong Exchanges and Clearing (HKEx) has published a [consultation paper](#) on its proposal to implement trading halts that would allow its listed companies to publish announcements with price sensitive information (PSI) during trading hours.

A listed company will be able to release a PSI announcement on the HKExnews website during the Stock Exchange's trading hours provided there is a short halt in trading of the company's shares to enable investors to digest the contents of the announcement. At present, if a disclosure obligation is triggered during trading hours, trading in the company's shares must be suspended immediately and will only resume in the next trading session following publication of an announcement. An HKEx review found that most leading overseas markets allow publication of PSI announcements throughout the day. Trading will either continue without interruption or resume subject to a short trading halt after publication of the announcement.

Comments are due by 8 October 2012.

[Questionnaire](#)

### **SFC consults on proposals to enhance regulatory framework for electronic trading**

The Securities and Futures Commission (SFC) has published a [consultation paper](#) on proposals to enhance the regulatory framework for electronic trading, which includes internet trading, direct market access (DMA) and algorithmic trading. In view of the increased use of electronic trading by intermediaries, the SFC proposes to build on the existing regulatory requirements by providing a more coherent and comprehensive regulatory framework for electronic trading. The proposals also aim to bring the regulation of DMA activities in line with the IOSCO standards.

Comments are due by 24 September 2012.

### **SGX announces changes to default management framework of derivatives market**

The Singapore Exchange (SGX) has [announced](#) that it intends to strengthen its default management framework to protect its derivatives market against systemically destabilising events, which include the possibility of multiple member defaults. The announcement follows a [consultation paper](#) on enhancements to the SGX-Derivatives Clearing (SGX-DC) default management framework that was issued in September 2011.

According to the SGX, the move to make it mandatory to clear OTC derivatives through a central counterparty (CCP) by early 2013 concentrates more risks in CCPs and increased participation of global institutions in CCP clearing raises the risk of contagion effects arising from the interconnectedness of financial markets. The SGX intends to implement its rule changes in anticipation of the expansion in the scope of its clearing business and to address the needs of its members.

The rule changes will be effective on 7 August 2012.

### **CFTC approves rules establishing scheduled phase-in of compliance with new Dodd-Frank clearing requirements**

The CFTC has approved [final regulations](#) which set out a schedule phasing in compliance with new clearing requirements mandated under the Dodd-Frank Act. The schedule is based on the type of market participant and phases in compliance in three stages.

The first category includes swap dealers, security-based swap dealers, major swap participants, major security-based swap participants and active funds. For this category, the transactions must be cleared within the first 90 days after the CFTC official determines a type of swap must be cleared.

The second category includes commodity pools, private funds as defined in Section 202(a) of the Investment Advisors Act of 1940 (other than active funds in the first category), or persons predominantly engaged in banking or financial activities. This category of market participants must come into compliance with the clearing mandate within 180 days.

The third category of market participants includes all other swaps market participants, including those involving third-party subaccounts and ERISA plans. The CFTC has given this category of market participants 270 days to come into compliance. The CFTC has indicated that third-party

subaccounts are in the third category because they are likely to require the most amount of time for documentation, coordination, and management.

## RECENT CLIFFORD CHANCE BRIEFINGS

### Corporate Update July 2012

The bi-annual Corporate Update provides a round-up of developments in company law and corporate finance regulation over the last six months.

The July 2012 edition of Corporate Update examines the question of executive pay and the issue of 'wall crossing' (the practice of making a person an 'insider' by providing them with inside information), in addition to a host of other recent legal and regulatory developments of interest to corporates and their advisers.

[http://www.cliffordchance.com/publicationviews/publications/2012/07/corporate\\_update.html](http://www.cliffordchance.com/publicationviews/publications/2012/07/corporate_update.html)

### Spanish liquidity measures for the Public Administration and the financial sphere

On 14 July 2012 the Official State Gazette published Royal Decree-law 21/2012, of 13 July, on liquidity measures for the Public Administration and the financial sector.

This briefing discusses the creation of the Autonomous Community Liquidity Fund, the financial and fiscal conditions of the support mechanism, and the operation of the fund and guarantee.

[http://www.cliffordchance.com/publicationviews/publications/2012/07/liquidity\\_measuresforthepublicadministration.html](http://www.cliffordchance.com/publicationviews/publications/2012/07/liquidity_measuresforthepublicadministration.html)

### SFC consultation on new regulatory framework for electronic trading

On 24 July 2012, the Hong Kong SFC published a consultation paper on a proposed regulatory framework for electronic trading, including internet trading, direct market access (DMA) and algorithmic trading. Electronic trading has been under active scrutiny by the SFC for some time. The regulatory focus is typically on whether there are sufficient controls and safeguards around the trading systems to prevent market manipulation or the creation of a disorderly market. In the case of DMA or internet broking, the concern is whether there are sufficient safeguards to prevent a client using an intermediary's infrastructure and market access for an abusive purpose. In the case of high-frequency and algorithmic trading, the regulatory enquiry is often whether there are sufficient safeguards to

prevent market disorder or distortion as can occur, for example, when a high-volume of trades executed through an algorithm are not responsive to a lack of liquidity in target shares.

This briefing discusses the SFC's proposals.

[http://www.cliffordchance.com/publicationviews/publications/2012/07/consultation\\_on\\_newregulatoryframeworkfo.html](http://www.cliffordchance.com/publicationviews/publications/2012/07/consultation_on_newregulatoryframeworkfo.html)

### Bank Indonesia tightens rules on ownership of Indonesian banks

Until recently, Indonesia has had a liberal policy on the ownership of its banks, allowing any single investor (including a foreign investor) to acquire up to 99% of an Indonesian commercial bank. This was due, in part, to the Indonesian government's bail-out and recapitalisation of many ailing banks during the Asian financial crisis in the late 1990s and the subsequent privatisation of those banks in the early 2000s, many of which were sold to foreign investors. Recent moves by Bank Indonesia to review ownership rules for its domestic lenders were accelerated when Singapore's DBS Bank announced its proposed takeover of Bank Danamon for USD 7.3 billion in April 2012. After widespread speculation, Bank Indonesia unveiled its new rules on the ownership of Indonesian banks last week.

This briefing discusses the new rules.

Please contact Mhairi Appleton by email at [mhairi.appleton@cliffordchance.com](mailto:mhairi.appleton@cliffordchance.com) for a copy of this briefing.

### Debtor with multiple commercial properties is subject to single asset real estate provisions of the US Bankruptcy Code

A recent decision by the United States Bankruptcy Court for the Southern District of Georgia holds that a debtor owning multiple commercial properties is nevertheless subject to the single asset real estate provisions of the Bankruptcy Code when a secured creditor holds a lien on one of the properties and that property generates substantially all the debtor's gross income and otherwise satisfies the 'single asset real estate' definition.

This briefing discusses the Court's decision.

[http://www.cliffordchance.com/publicationviews/publications/2012/07/debtor\\_with\\_multiplecommercialproperties.html](http://www.cliffordchance.com/publicationviews/publications/2012/07/debtor_with_multiplecommercialproperties.html)



**Courts struggle over whether FCPA whistleblowers may sue under the Dodd-Frank anti-retaliation provision**

In recent months, two district courts have addressed the issue whether employees who claim they were retaliated against for internally reporting violations of the Foreign Corrupt Practices Act can bring a private civil lawsuit against their former employers under the Dodd-Frank anti-retaliation provision. Although both courts decided that the anti-retaliation provision of the Dodd-Frank Act did not

apply in these particular cases, the courts disagreed over whether Dodd-Frank whistleblower protections could apply to FCPA whistleblowers who report internally, but not to the SEC.

This briefing discusses the two decisions.

[http://www.cliffordchance.com/publicationviews/publications/2012/07/courts\\_struggle\\_overwhetherfc pawhistblower.html](http://www.cliffordchance.com/publicationviews/publications/2012/07/courts_struggle_overwhetherfc pawhistblower.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.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance LLP 2012

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to [nomorecontact@cliffordchance.com](mailto:nomorecontact@cliffordchance.com) or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

---

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh\* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

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