

# International Regulatory Update

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### OTC derivatives and market infrastructures: ESMA consults on draft technical standards for OTC derivatives, CCPs and trade repositories

ESMA has launched a [consultation](#) on the Regulatory Technical Standards and Implementing Technical

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Standards it is required to draft under the Regulation on OTC derivatives, central counterparties and trade repositories. The paper follows the structure of the Regulation, with the first section focusing on OTC derivatives and, in particular, the clearing obligation, risk mitigation techniques for contracts not cleared by a CCP and exemptions to certain requirements. The second part focuses on CCP requirements, where a number of provisions need to be specified through technical standards. The third part deals with trade repositories and, in particular, the content and format of the information to be reported to trade repositories, the content of the application for registration to ESMA and the information to be made available to the relevant authorities.

ESMA will be holding a public hearing on 12 July 2012 to give an opportunity to interested stakeholders to express their preliminary views and to get early feed-back. Responses to the consultation paper are due by 5 August 2012 and, on the basis of the responses, ESMA will update the draft technical standards and the impact assessment and will send the final report to the European Commission for endorsement.

### **Banking union: Euro area leaders call for consideration of single supervisory mechanism**

The euro area leaders have issued a [statement](#) from the EU Summit, calling on the European Council to consider an upcoming proposal from the European Commission for a single supervisory mechanism that allow the European Stability Mechanism (ESM) to recapitalise banks directly under certain circumstances and certain conditions. The Commission will be issuing the proposal on the basis of Article 127(6) of the Treaty on the Functioning of the European Union (TFEU), which enables the Council to confer specific tasks upon the European Central Bank (ECB) concerning policies relating to the prudential supervision of credit institutions and other financial institutions (with the exception of insurance undertakings).

The euro area leaders have explained that, when an effective single supervisory mechanism, involving the ECB, is established for banks in the euro area, the ESM could have the ability to recapitalise banks directly. This power would rely on appropriate conditionality, including compliance with State aid rules, which should be institution specific, sector-specific or economy-wide and would be formalised in a Memorandum of Understanding.

The euro area leaders have asked the European Council to consider the Commission's proposal as a matter of urgency by the end of 2012. European Council President Herman Van Rompuy has already issued a statement about the Summit, stressing the importance of integration.

[Remarks by President Herman Van Rompuy following the European Council](#)

### **ESMA consults on remuneration guidelines for alternative investment fund managers**

ESMA has published a consultation paper on proposed Guidelines on the remuneration of alternative investment fund managers (AIFMs). The Alternative Investment Fund Managers Directive requires ESMA to develop guidelines on sound remuneration policies to further clarify the Directive's provisions.

The Guidelines will apply to managers managing alternative investment funds (AIFs), including hedge funds, private equity funds and real estate funds. The Guidelines address: (1) AIFs' internal governance; (2) types of remuneration; (3) other payments; and (4) bonuses and fees.

Consultation responses are due by 27 September 2012. ESMA is aiming to publish a final report before the end of 2012, so that the Guidelines will be in place in advance of the AIFMD transposition deadline of 22 July 2013.

[Press release with link to consultation paper](#)

### **Basel Committee on Banking Supervision issues final rules on banks' disclosure of composition of capital**

The Basel Committee on Banking Supervision (BCBS) has published its final [rules](#) which introduce a framework that is designed to ensure that the components of banks' capital bases are disclosed in standardised formats across jurisdictions.

The BCBS has noted that, during the financial crisis, market participants and supervisors had difficulty making detailed assessments of banks' capital positions and comparisons across jurisdictions. The new rules text is intended to improve the quality of Pillar 3 disclosures in respect of the capital that banks use to meet their regulatory requirements. In addition, the BCBS is considering improvements to the disclosure of banks' capital requirements (i.e. the composition of risk-weighted assets) as part of the Committee's review of Basel III implementation.

[Abstract](#)

### **Financial Policy Committee issues Financial Stability Report – FSA to adjust guidance on appropriate levels of liquid asset buffers**

The Financial Policy Committee has issued its [June 2012 Financial Stability Report](#), covering the Committee's assessment of the outlook for the stability and resilience of the financial sector and the policy actions it advises to reduce and mitigate risks to stability. The report makes a number of recommendations, including that the FSA should make clearer to banks that they are free to use their regulatory liquid asset buffers in the event of a liquidity stress. The report notes that the ability to do so has been enhanced by additional contingent liquidity made available to banks by the Bank of England. The Committee also recommends that the FSA consider whether adjustments to micro prudential liquidity guidance are appropriate, taking some account of this additional liquidity insurance.

Accordingly, the FSA has announced that, in light of the improved level of liquidity insurance to be provided by the Bank of England, it will adjust its guidance to certain banks on appropriate levels of liquid asset buffers. For those banks which hold pre-positioned collateral at the Bank of England, the FSA has advised that it will take some account of their potential access to central bank liquidity when formulating its guidance on appropriate liquidity buffers.

[FPC recommendations](#)  
[FSA press release](#)

### **FSA consults on banks' defences against investment fraud**

The FSA has launched a [guidance consultation](#) on banks' defences against investment fraud. The FSA has also issued a corresponding [thematic review](#) which explains the findings of its visits to seven retail banks and one building society to assess the systems and controls in place to contain the risks posed by investment fraudsters, and which sets out examples of good and poor practice the FSA identified.

The FSA is now consulting on: (1) the examples of good and poor practice it proposes to include in Chapter 14 in Part 2 of 'Financial crime: a guide for firms'; (2) the proposed new text for the fraud chapter of Part 1 of 'Financial crime: a guide for firms'; and (3) the cost benefit analysis of this proposed guidance.

Responses are due by 23 August 2012.

### **FSA Director discusses derivatives reform**

David Lawton, Acting Director of Markets at the FSA, has given a [speech](#) during which he discussed derivatives reform. Amongst other things, he discussed the bilateral collateralisation of uncleared trades. In addition to the European Supervisory Authorities' consideration of collateral requirements under European Market Infrastructure Regulation (EMIR) Regulatory Technical Standard (RTS), a Working Group on Margin Requirements (WGMR) consisting of the principal prudential, markets and payment system regulators has been formed to consider creating standards for margining as a tool to mitigate the risks in the non-cleared part of the market. The WGMR is due to consult in June with final proposals by end-2012 and the European Commission expects the RTS to be compatible with the output of the WGMR.

With respect to the application of requirements cross border, Mr. Lawton stated that the FSA seeks to avoid extraterritorial application of its regulatory rules outside the UK, and instead place reliance on the application of regulation that achieves equivalent regulatory outcomes by overseas regulators in their domestic jurisdictions, where that exists. The FSA believes it would be desirable to achieve a global system of regulation for the OTC derivatives market based upon mutual recognition or substituted compliance where possible.

### **Swiss Funds Association circular on money market funds published**

The Swiss Funds Association (SFA) has published a [circular](#) on money market funds, as part of the self-regulation regime of the Swiss fund industry. The Circular transposes CESR's 2010 'Guidelines on a common definition of European money market funds' into Swiss law. The Circular applies to all Swiss collective investment schemes which are money market funds, independently of their legal structure.

### **French Financial Transaction Tax: Government consults on draft instruction commenting on taxation of acquisition of listed shares**

The 'Haut Comité de Place' of the Ministry of Economy and Finance has launched a consultation on a [draft instruction](#) regarding the French Financial Transaction Tax on acquisitions of listed shares issued by large French companies. This tax, introduced by the Amending Finance Bill for 2012, dated 14 March 2012, will apply as from 1 August 2012.

Amongst other things, this draft instruction comments on: (1) the scope of the tax; (2) applicable exemptions; (3) the tax base; (4) the assessment, declaration and payment of the tax; and (5) methods of control and penalties.

Comments are due by 6 July 2012. A draft instruction on the two other Financial Transaction Taxes introduced by the Amending Finance Bill for 2012 – (i) tax on high frequency trading, and (ii) tax on certain credit default swaps (CDS) on sovereign debt – will be submitted for consultation within a few days.

#### [Explanatory note](#)

[Clifford Chance briefing: The Financial Transactions Tax introduced in France](#)

#### **Belgian regulator issues communication on post-1 July 2012 treatment of applications relating to public offers and admissions to trading on a regulated market**

The Financial Services and Markets Authority (FSMA) has issued a [communication](#) on the policy in effect, as from 1 July 2012, for the treatment of dossiers relating to public offers and admissions to trading on a regulated market. The FSMA has confirmed that, although Belgium will not have transposed the new Prospectus Directive into Belgian law by 1 July 2012, it will apply the provisions of Directive 2010/73/EU of 24 November 2010 (the new Prospectus Directive) unless they should impose new constraints upon issuers.

In practice, this means that, until the new Prospectus Directive is implemented into Belgian law, the FSMA will continue to approve prospectuses that follow the format, and contain the information, prescribed by the existing Directive 2003/71/EC (and the relevant regulations). If, however, an issuer wishes to passport its prospectus into another Member State, then the prospectus prepared by that issuer will need to comply with the new Prospectus Directive (and the applicable regulations) and the FSMA will accept to review and approve such prospectuses as well.

#### **German Federal Council passes Act on implementation of amendments to Prospectus Directive and on amendments to German Exchange Act**

On 24 May 2012, the German Federal Council agreed to the Act on the implementation of Directive 2010/73/EU, which amends the Prospectus Directive, and on amendments to the German Exchange Act without invoking the Conciliation Committee.

The German Securities Prospectus Act, Securities Trading Act, Securities Trading Notification and Insider Directory

Regulation, as well as the Regulation on the Fees for the Deposit of Prospectuses will be amended. Further amendments affect the German Exchange Act and Restructuring Funds Act.

The majority of amendments enter into force on 1 July 2012 and the remainder will become valid one day after the publication of the Act in the German Federal Law Gazette.

[Act on the implementation of Directive 2010/73/EU, and on amendments to the German Stock Exchange Act](#)

## **RECENT CLIFFORD CHANCE BRIEFINGS**

#### **Private equity funds – Trends in key economic terms in the Asia Pacific Region, June 2012**

Over the past years, investors in private equity funds have succeeded in negotiating more favourable economic terms than has traditionally been the case. This is partially a result of a more difficult global fundraising environment as well as increased transparency and coordination among institutional investors in the region. While investors in the Asia Pacific region are perceived to be in a stronger negotiating position than they were five years ago, the extent to which this shift is the result of global economic developments, as opposed to other driving factors, is unclear. Efforts to increase investor cooperation and knowledge of the market have certainly played a major role in this development, maybe even more so in the Asia Pacific region than in the West.

This briefing looks at trends in key economic terms of private equity funds in the Asia Pacific region, including management fees, carried interest and employee incentive arrangements.

[http://www.cliffordchance.com/publicationviews/publications/2012/06/private\\_equity\\_fundstrendsinskeyeconomy.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/private_equity_fundstrendsinskeyeconomy.html)

#### **Contentious Commentary – a review for litigators**

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

[http://www.cliffordchance.com/publicationviews/publications/2012/06/contentious\\_commentary-areviewforlitigator.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/contentious_commentary-areviewforlitigator.html)

#### **Amendments to the Dutch public offer rules**

On 1 July 2012, the long-awaited amendments relating to the Dutch public offer rules will enter into force. These amendments are the result of a legislative and consultation

process that lasted more than two years and they are the first amendments to the Dutch public offer rules since the major revision of these rules in October 2007.

Key changes include: (1) the introduction of a 'put up or shut up' rule; (2) the possibility to 'stop the clock' in case of a leak announcement; (3) additional flexibility in terms of increasing the offer price; and (4) additional exemptions to the mandatory offer requirement.

This briefing discusses these changes in more detail, together with the applicable grandfathering rules.

[http://www.cliffordchance.com/publicationviews/publications/2012/06/amendments\\_to\\_dutchpublicofferrules.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/amendments_to_dutchpublicofferrules.html)

#### **Australia's Minerals Resource Rent Tax in force from July 2012**

Australia's Minerals Resource Rent Tax (MRRT), will apply from 1 July 2012. The Australian Treasury forecasts revenue of A\$10.6 billion from the MRRT in its first three years. The MRRT legislation also extends coverage of the existing Petroleum Resource Rent Tax (PRRT) so that from 1 July 2012 it will apply to all onshore and offshore oil and gas production in Australia.

This briefing outlines the details of the MRRT and amended PRRT.

English version

[http://www.cliffordchance.com/publicationviews/publications/2012/04/australia\\_s\\_mineralsresourcerenttaxinforc.html](http://www.cliffordchance.com/publicationviews/publications/2012/04/australia_s_mineralsresourcerenttaxinforc.html)

Japanese version

[http://www.cliffordchance.com/publicationviews/publications/2012/06/australia\\_s\\_mineralsresourcerenttaxinforc.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/australia_s_mineralsresourcerenttaxinforc.html)

#### **SEC Finalizes Rules Requiring Listing Standards for Compensation Committees and Compensation Advisers**

The SEC issued Final Rules on June 20, 2012 to implement Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 952 of Dodd-Frank directs national securities exchanges to establish listing standards relating to the independence of compensation committees and compensation advisers. In addition, the Final Rules require new proxy disclosure regarding the use of compensation consultants, including fees paid to such consultants, and related conflicts of interest.

This briefing paper which discusses the Final Rules.

[http://www.cliffordchance.com/publicationviews/publications/2012/06/sec\\_finalizes\\_rulesrequiringlistingstandard.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/sec_finalizes_rulesrequiringlistingstandard.html)

#### **Fiduciaries will need to review fee disclosures under new DOL regulations**

Fiduciaries of plans will need to carefully review fee-related information that they receive from service providers, pursuant to US Department of Labor regulations. By July 1, 2012, fiduciaries of employee benefit plans must receive certain fee disclosures from covered service providers pursuant to US Department of Labor regulations under Section 408(b)(2) of ERISA. Beginning August 31, 2012, US Department of Labor regulations under Section 404(a)(5) of ERISA require fiduciaries of self-directed, individual account plans to provide participants with: (1) quarterly statements regarding plan fees and expenses deducted from participant accounts; (2) cost and other information about investments available under the plan; and (3) access to supplemental investment information.

This briefing discusses key aspects of the new regulations.

[http://www.cliffordchance.com/publicationviews/publications/2012/06/fiduciaries\\_willneedtoreviewfeedislosure.html](http://www.cliffordchance.com/publicationviews/publications/2012/06/fiduciaries_willneedtoreviewfeedislosure.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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