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Briefing note

International Regulatory Update

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IN THIS WEEK'S NEWS

- UK Treasury Committee reports on LIBOR
- Financial Conglomerates Directive: ESAs consult on application of capital calculation methods
- OTC derivatives and market infrastructures: ESRB publishes advice to ESMA on regulatory technical standards
- ECON Committee reports on shadow banking
- ECON Committee consults on market manipulation
- IOSCO consults on technological challenges to market surveillance
- Basel Committee consults on supervisory guidance for managing risks associated with the settlement of foreign exchange transactions
- Short selling: FSA consults on Handbook changes
- HM Treasury publishes draft legislation on resolution of non-bank financial institutions
- FSA consults on restricting retail distribution of unregulated collective investment schemes and close substitutes
- FSA assesses possible sources of systemic risk from hedge funds
- Consumer Rights Directive: BIS consults on implementation
- CRD 4: German government adopts draft Implementation Act
- AIFMD: Implementing Bill submitted to Luxembourg Parliament
- Swiss financial authorities consult on bank capital and liquidity rules
- China Securities Finance Corporation launches pilot refinancing programme for margin trading and securities lending
- CSRC consults on amendments to rules on establishment of foreign-invested securities companies and trial rules on establishment of subsidiaries by securities companies
- CSRC consults on administrative rules on securities companies selling financial products on commission

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- CSRC consults on administrative measures on client asset management business of securities companies and relevant implementing rules
- FSS announces Basel implementation plan for bank holding companies
- APRA consults on proposals to strengthen counterparty credit risk capital framework for ADIs
- FRB considers changes to implementation timeline for annual company-run stress test requirements under Dodd-Frank Act
- International regulators comment on CFTC's proposed cross-border swaps guidance
- SEC Chairman issues statement on money market fund reform
- CFTC approves conforming rule on registration of intermediaries
- CFTC proposes inter-affiliate clearing exemption
- Recent Clifford Chance briefings: Market trends in cornerstone investment; and more. Follow this link to the briefings section.

UK Treasury Committee reports on LIBOR

The Treasury Committee has published its report on LIBOR, which calls for specific action to be taken by a number of institutions as well as by some of the inquiries and reviews currently being undertaken. Amongst other things, the report argues that the FSA and its successors should consider greater flexibility in fine levels, levying much heavier penalties on firms which fail fully to co-operate with them. It also argues that firms must be encouraged to report to the regulator instances they find of their own misconduct. The Committee has called on the FSA to report on how it will alter its supervisory efforts to counter weak compliance in future.

The report further argues that a stronger governance framework is needed for the Bank of England. The Committee notes that the regulatory authorities need to possess the ability to remove senior executives, but has emphasised that they should recognise their duty of care to shareholders when they exercise this power. The report calls for this issue to be examined by the Bank of England, the FSA and its successor bodies.

The Committee further recommends that, following the Wheatley review, the government should consider clarifying the scope of the FSA's, and its successors', power to initiate criminal proceedings where there is serious fraudulent conduct in the context of the financial markets.

The report also urges the Wheatley review to consider the case for amending the present law by widening the meaning of market abuse to include the manipulation, or attempted manipulation, of the LIBOR rate and other survey rates, and to consider the case for widening the definition of the criminal offence in section 397 of FSMA to include a course of conduct which involves the intention or reckless manipulation of LIBOR and other survey rates. The Committee recommends that the Wheatley review examines whether there is a legislative gap between the responsibility of the FSA and the SFO to initiate a criminal investigation in a case of serious fraud committed in relation to the financial markets.

Finally, the report argues that the Parliamentary Commission on Banking Standards' examination of the corporate governance of systemically important financial institutions should consider how to mitigate the risk that the leadership style of a chief executive may permit a lack of effective challenge or contribute to the firm committing strategic mistakes.

Financial Conglomerates Directive: ESAs consult on application of capital calculation methods

The Joint Committee of the European Supervisory Authorities (ESAs) has issued a consultation paper on draft regulatory technical standards (RTS) for the calculation methods under Article 6.2 of the Financial Conglomerates Directive (FICOD).

The proposed draft RTS set out specifications for institutions in a financial conglomerate to ensure uniform conditions of application of the calculation methods for determining the amount of capital required at the level of the financial conglomerate. The draft RTS are based on the following general principles: (1) elimination of multiple gearing; (2) elimination of intra-group creation of own funds; (3) transferability and availability of own funds; and (4) coverage of deficit at financial conglomerate level having regard to definition of cross-sector capital.

The consultation paper is based on the draft Capital Requirements Regulation (CRR)/Capital Requirements Directive (CRD 4) as proposed by the EU Commission on 20 July 2011.

Comments are due by 5 October 2012. The Committee has indicated that the proposal might be subject to further changes, following the consultation and the final adoption

of CRR/CRD 4. The RTS have to be submitted to the European Commission by 1 January 2013.

OTC derivatives and market infrastructures: ESRB publishes advice to ESMA on regulatory technical standards

The European Systemic Risk Board (ESRB) has published its advice to ESMA on the regulatory technical standards ESMA is required to draft under the regulation on OTC derivatives, central counterparties and trade repositories (EMIR) concerning the use of OTC derivatives by non-financial corporations, and the eligibility of collateral for CCPs.

Advice concerning use of OTC derivatives by non-financial corporations
Macro-prudential stance on use of OTC derivatives by non-financial corporations
Advice concerning eligibility of collateral for CCPs
Macro-prudential stance on eligibility of collateral for CCPs

ECON Committee reports on shadow banking

The European Parliament's ECON Committee has published a draft report on shadow banking, dated 14 August 2012.

Amongst other things, the report:

- emphasises the need to ensure greater transparency in the structure and activities of financial institutions, and invites the Commission to propose legislation to separate commercial and investment banks, in particular in order to avoid the financing of shadow banking activities via savings;
- invites the Commission to adopt measures, by the beginning of 2013, to increase transparency in the repo and security lending market, as well as to allow regulators to impose minimum haircuts or margin levels for the collateralised financing markets;
- invites the Commission to examine the securitisation market and to submit a legislative proposal at the latest by the beginning of 2013 for limiting the number of times a financial product can be securitised;
- stresses that additional measures need to be taken to improve the resilience of money market funds (MMFs) and to cover the liquidity risk, and invites the Commission to submit a legislative proposal at the beginning of 2013 requiring MMFs either to adopt a variable asset value with a daily evaluation or, if retaining a constant value, to be subject to capital requirements; and
- highlights the risks exchange traded funds (ETFs) carry in terms of complexity, counterparty risk, liquidity of products and possible regulatory arbitrage, and invites the Commission to submit a legislative proposal at the beginning of 2013 to tackle these potential structural vulnerabilities.

ECON Committee consults on market manipulation

The European Parliament's ECON Committee has issued a consultation on market manipulation in the context of the preparation of Arlene McCarthy MEP's reports on the European Commission's amended proposals of 25 July 2012 for a regulation on insider dealing and market manipulation (market abuse) and for a directive on criminal sanctions for insider dealing and market manipulation.

Responses are due by 17 September 2012.

IOSCO consults on technological challenges to market surveillance

IOSCO has published a consultation report, 'Technological Challenges to Effective Market Surveillance: Issues and Regulatory Tools', which seeks comments on a series of proposed recommendations on improving market surveillance.

In particular, the proposed recommendations are intended to assist market authorities in addressing the challenges posed by the latest technological developments to effective market surveillance with respect to: (1) improving surveillance capabilities on a cross-market and cross-asset basis; and (2) making the data collected for surveillance purposes more useful to market authorities.

Comments are due by 10 October 2012.

Basel Committee consults on supervisory guidance for managing risks associated with the settlement of foreign exchange transactions

The Basel Committee on Banking Supervision has published a consultation paper setting out proposed new supervisory guidance on managing risks associated with the settlement of foreign exchange transactions.

The proposed new guidance provides direction on governance arrangements and the management of principal risk, replacement cost risk and all other FX settlement-related risks. In addition, the guidance promotes the use of payment-versus-payment (PVP) arrangements, where practicable, to reduce principal risk.

The guidance is organised into seven guidelines that address governance, principal risk, replacement cost risk,

liquidity risk, operational risk, legal risk and capital for FX transactions.

Comments are due by 12 October 2012.

Short selling: FSA consults on Handbook changes

The FSA has published a consultation paper (CP12/21) setting out proposed amendments to its Handbook relating to the EU regulation on short selling, which applies from 1 November 2012.

In particular, CP12/21 invites comments on the following proposed amendments:

- the repeal of the UK's current short selling regime contained in FINMAR 2;
- an amendment to DEPP 7 to note that the existing interview policy covers the short selling regulation – the FSA is also proposing applying the existing penalties policy contained in DEPP 6 to the regulation;
- an amendment to SUP to provide that a firm must allow access to FSA representatives to its business premises so the FSA can fulfil its obligations under the regulation;
- an insertion in FINMAR 2 outlining the framework for the FSA's use of temporary suspension powers given in the regulation;
- an insertion in FINMAR 2 specifying the method for converting a Euro value into Sterling for the purposes of determining one of the categories of shares admitted on UK trading venues to which the temporary suspension powers apply;
- an insertion in FINMAR 2 outlining the procedure applying to reviews of decisions by the FSA to prohibit persons from using the market-maker and authorised primary dealer exemption; and
- consequential amendments to the glossary and other parts of the handbook, including GEN.

Comments are due by 20 September 2012.

HM Treasury publishes draft legislation on resolution of non-bank financial institutions

HM Treasury has published draft legislation to inform responses to its consultation paper 'Financial sector resolution: broadening the regime', which was published on 1 August 2012 and set out proposals on enhancing the mechanisms available for dealing with the failure of systemically important non-bank financial institutions and financial market infrastructures.

The consultation covers the following four broad groups: (1) investment firms and parent undertakings; (2) central counterparties (CCPs); (3) non-CCP financial market infrastructures (such as payments systems); and (4) insurers.

Comments are due by 24 September 2012.

Consultation page
Draft legislation for consultation
Explanatory notes to draft legislation

FSA consults on restricting retail distribution of unregulated collective investment schemes and close substitutes

The FSA has published a consultation paper (CP12/19) setting out its proposals to ban the promotion of unregulated collective investment schemes and close substitutes to ordinary retail investors in the UK. According to the FSA, the majority of retail promotions and sales of unregulated collective investment schemes that it has reviewed fail to meet its requirements, exposing ordinary investors to significant potential for detriment.

Comments are due by 14 November 2012.

FSA assesses possible sources of systemic risk from hedge funds

The FSA has published a report assessing possible sources of systemic risk from hedge funds and describing some of the survey work the FSA has carried out to address the issue. The report highlights the findings of the FSA's latest hedge fund survey (which focuses on the market channel for the potential systemic risks posed by hedge funds) and the latest hedge fund as counterparty survey (which focuses on the credit channel for systemic risk), which were conducted in March and April 2012 respectively.

The FSA intends to repeat these surveys in September and October 2012.

Consumer Rights Directive: BIS consults on implementation

The Department for Business, Innovation and Skills (BIS) has issued a consultation paper on the UK's implementation of the Consumer Rights Directive.

The Directive focuses on: (1) ensuring transparency of information, in particular with regard to pre-contractual information for distance and off-premises contracts (but also for other goods and services contracts); (2) ensuring

there is express consent from the consumer for any additional payments; (3) cancellation rights for distance and off-premises contracts; (4) prohibiting excessive fees for paying the trader (which will be the subject of a separate consultation to effect early implementation of this provision); and (5) prohibiting excessive phone charges for consumers contacting traders about existing contracts.

The provisions of the Directive will apply, subject to some limited exceptions, to all contracts for sales of goods and services by traders to consumers, whether the transactions are within the UK or effected across EU borders.

Responses are due by 1 November 2012.

CRD 4: German government adopts draft Implementation Act

The German government has adopted a draft CRD 4 Implementation Act. Although CRD 4 has not yet been adopted in final form by the EU, the German government has decided to adopt the draft CRD 4 Implementation Act and commence the legislative procedure.

AIFMD: Implementing Bill submitted to Luxembourg Parliament

Bill 6471 relating to alternative investment fund managers (AIFMs) has been submitted to the Luxembourg Parliament. As anticipated, Luxembourg is planning to adopt a legislative package providing for:

- a specific law on AIFMs and transposing the AIFMD;
- amendments to several product laws, including the UCI Law, SIF Law, SICAR Law, and the Financial Sector Law; and
- changes to existing fund laws and company law not directly related to the AIFMD, including the modernisation of the Luxembourg common limited partnership and the introduction of the special limited partnership without legal personality.

Swiss financial authorities consult on bank capital and liquidity rules

The Federal Department of Finance (FDF) has launched a consultation on the proposed Liquidity Ordinance, based on the international rules of the Basel Committee on Banking Supervision. At the same time, the Swiss Financial Market Supervisory Authority (FINMA) has launched a consultation on its new circular, 'Liquidity – banks', which focuses on new reporting and liquidity risk management requirements under the ordinance.

In view of the introduction of the LCR and NSFR, banks will be obliged to submit regular reports on their liquidity to FINMA.

The ordinance is intended to enter into force on 1 January 2013, except for the provisions on systemically important banks, which are pending approval by Parliament as part of the 'too big to fail' legislation.

Both consultations will close on 1 October 2012.

China Securities Finance Corporation launches pilot refinancing programme for margin trading and securities lending

The China Securities Finance Corporation (CSFC) has published the 'Trial Rules on Refinancing of Margin Trading and Securities Lending', the 'Trial Implementing Rules on Margin Requirements for Refinancing of Margin Trading and Securities Lending', and the 'Trial Rules on Statistics and Supervision of Margin Trading and Securities Lending', together with the implementing measures published by the China Securities Depository and Clearing Corporation, the Shanghai Stock Exchange and the Shenzhen Stock Exchange. This follows the approval of the rules by the China Securities Regulatory Commission (CSRC).

The pilot refinancing programme for margin trading and securities lending will be led by the CSFC. The launch of the refinancing platform is intended to allow securities companies to borrow money or stocks on behalf of their clients from the CSFC to facilitate margin trading and securities lending activities.

Rules

CSRC consults on amendments to rules on establishment of foreign-invested securities companies and trial rules on establishment of subsidiaries by securities companies

The China Securities Regulatory Commission (CSRC) has issued the draft 'Amendments to the Rules on the Establishment of Foreign-invested Securities Companies' and 'Trial Rules on the Establishment of Subsidiaries by Securities Companies' for public consultation. The consultation draft is intended to materialise the commitments made by the PRC government during the fourth round of Sino-US strategic economic dialogue in May 2012.

Amongst other things, under the new rules: (1) the aggregate foreign shareholding or interests in a joint venture securities company, whether held directly or

indirectly, is raised from 33% to 49%; and (2) where a joint venture securities company applies to expand its business scope, the required term of its continuous operation is shortened from 5 years to 2 years and the required term of its compliance record is shortened from 3 years to 2 years.

Comments are due by 22 September 2012.

CSRC consults on administrative rules on securities companies selling financial products on commission

The China Securities Regulatory Commission (CSRC) has issued the consultation draft on its 'Administrative Rules on Securities Companies Selling Financial Products on Commission'. The consultation draft is intended to standardise the sale by securities companies of financial products on commission and enlarge the permissible scope of financial products.

Amongst other things, under the draft rules:

- the permissible scope of financial products is expanded to cover all onshore financial products approved by or filed with competent regulators (e.g. the CSRC, the China Banking Regulatory Commission and the China Insurance Regulatory Commission) including bank wealth management products, trust schemes, and insurance products;
- securities companies should review the capacity of the principals, conduct due diligence for financial products, and set up a sales control system based on appropriateness by assessing the risk status of the financial products, knowing the basic status of the investors, and refraining from recommending financial products if they believe they are not suitable for the investors; and
- securities companies should take proper steps to disclose to investors information related to the financial products and whether the securities companies have a connected relationship with any contracted parties.

CSRC consults on administrative measures on client asset management business of securities companies and relevant implementing rules

The China Securities Regulatory Commission (CSRC) has issued the draft 'Administrative Measures on Client Asset Management Business of Securities Companies' and the relevant implementing rules for public consultation. The consultation draft is intended to promote the development of securities companies' asset management business for the purpose of better serving the real economy.

Amongst other things, under the draft measures:

- the application process for launching a collective asset management scheme is changed from prior approval to filing administration;
- certain investment restrictions are removed for special asset management schemes and targeted asset management schemes, such as the 10% holding limited restriction on the issued shares of a company and 10% investment restriction on the total net value of a scheme to the issued shares of a company;
- units of the collective asset management scheme are allowed to be transferred among qualified investors subject to relevant requirements; and
- the securities under a collective asset management scheme are permitted to be repurchased.

Responses are due by 21 September 2012.

FSS announces Basel implementation plan for bank holding companies

The Korean Financial Supervisory Service (FSS) has announced its Basel II and III implementation plan for bank holding companies. Under the implementation plan, the Basel II framework will be applied from 2013 to financial holding companies with banks as their subsidiaries. Financial holding companies which have bank subsidiaries will also be subject to Basel III from 2013, as banks have agreed to adopt Basel III from the same year.

Under Basel II, bank holding companies are allowed to utilise their own internal models in calculating risk-weighted assets (RWA). Bank holding companies without such models can use the standardised approach provided by the Basel Committee on Banking Supervision. As most bank subsidiaries are using supervisor-approved internal models, bank holding companies will be allowed to use the internal models of their bank subsidiaries. From 2016, however, bank holding companies can use the internal ratings-based (IRB) approach only when they establish a single IRB model at the group level.

Under Basel III, implementation of the minimum common equity tier 1 capital ratio and tier 1 requirements and a capital conservation buffer will begin in 2013, but the Basel Committee on Banking Supervision has allowed the phase-in of such requirements over several years. The FSS' implementation schedule will be determined by checking the preparedness of bank holding companies in Korea.

Considering the time required to move to the new standards, banks are allowed to calculate their minimum

capital requirements as set out in Basel I as well as Basel II and III until 2013. Starting from 2014, all bank holding companies should follow Basel II and Basel III standards in assessing capital adequacy. The relevant regulations regarding the implementation of the Basel II and Basel III framework for bank holding companies will be revised from 2012.

APRA consults on proposals to strengthen counterparty credit risk capital framework for ADIs

The Australian Prudential Regulation Authority (APRA) has published a discussion paper outlining its proposals to strengthen the counterparty credit risk capital framework for authorised deposit-taking institutions (ADIs) in Australia. This starts APRA's public consultation following the latest set of interim rules announced by the Basel Committee on 25 July 2012. Final changes to the Australian prudential and reporting standards will be adopted in late 2012.

ADIs that transact OTC derivatives will be subject to a credit value adjustment risk capital charge covering the risk of mark-to-market losses for bilateral transactions. This charge will not apply to transactions cleared through a central counterparty classified by the local regulatory authority as a qualifying central counterparty. Further charges will also be introduced for ADIs exposed to central counterparties arising from OTC derivatives, exchange-traded derivatives and securities financing transactions.

Other amendments include: (1) an increased asset value correlation for ADIs exposed to financial counterparties; (2) a new covered bond regime; and (3) qualitative requirements for the calculation of the probability of default for highly leveraged counterparties.

Comments are due by 28 September 2012.

FRB considers changes to implementation timeline for annual company-run stress test requirements under Dodd-Frank Act

The Federal Reserve Board (FRB) has announced that, in light of comments received in response to a previously issued notice of proposed rulemaking, it is considering making changes to the implementation timeline for the annual company-run stress test requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The changes under consideration would delay implementation until September 2013 for bank holding companies, state member banks, and savings and loan holding companies with between USD 10 billion and USD 50 billion in total consolidated assets. The delay under consideration is intended to allow these companies sufficient time to develop high-quality stress testing programs.

The FRB has indicated that additional details about the timing and scope of Dodd-Frank stress test requirements for bank holding companies, state member banks, and savings and loan holding companies with between USD 10 billion and USD 50 billion in total consolidated assets will be included in a forthcoming final rule.

International regulators comment on CFTC's proposed cross-border swaps guidance

Regulators and foreign governments have submitted comments on the CFTC's proposed interpretive guidance and policy statement regarding the cross-border application of the swaps provisions of the Commodity Exchange Act that were enacted by Title VII of the Dodd-Frank Act.

Proposed interpretive guidance and policy statement
Link to comments

SEC Chairman issues statement on money market fund reform

SEC Chairman, Mary L. Schapiro, has announced that the SEC's proposal for money market fund reform cannot be published for comment because three Commissioners refused to support it, and that she is unwilling to issue the proposal as a concept release.

Schapiro noted that the proposed structural reforms were intended to reduce money market fund susceptibility to runs, protect retail investors and lessen the need for future taxpayer bailouts. She emphasized that she, as well as other regulators and commentators, considers the structural reform of money markets to be one of the most important pieces of 'unfinished business' from the financial crisis. Schapiro's statement encourages other policymakers to reform the way money market funds operate as they consider ways to address the systemic risks posed by money market funds. The statement goes on to summarize Schapiro's views on the history of the money market fund reform proposal, existing money market structural issues, and various reform alternatives.

CFTC approves conforming rule on registration of intermediaries

The CFTC has approved a final rule to conform its current intermediary registration rules to changes made to the Commodity Exchange Act by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The rule is intended to:

- produce consistency in the handling of previously regulated and newly regulated commodity interest transactions (e.g. swaps and futures) by registered intermediaries, such as futures commission merchants and other registrants;
- ensure that the intermediary registration process applies to new categories of registrants, such as swap dealers and major swap participants that were added by the Dodd-Frank Act;
- enlarge an existing exemption from being registered as a futures commission merchant to foreign brokers and other foreign intermediaries that execute a swap transaction either bilaterally or subject to the rules of a designated contract market or on a swap execution facility on behalf of non-US persons; and
- add references to new terms, including swap execution facility, swap dealer, and major swap participant.

The final rule will be effective 60 days after it is published in the Federal Register.

CFTC proposes inter-affiliate clearing exemption

The CFTC has issued a proposed rule to exempt swaps between certain affiliated entities within a corporate group from the clearing requirement of the Dodd-Frank Act. Section 723 of the Dodd-Frank Act added Section 2(h) to the Commodity Exchange Act to establish a clearing requirement for swaps. Under Section 2(h), it is unlawful for any person to engage in a swap that the CFTC determines must be cleared, unless the swap is submitted for clearing to a derivatives clearing organization.

The CFTC is proposing to exempt certain inter-affiliate swaps from the clearing requirement subject to certain conditions. In particular, the proposed exemption would be limited to swaps between majority-owned affiliates whose financial statements are included in the same consolidated financial statements.

The proposed rules would require: centralized risk management, swap trading relationship documentation, variation margin payments, and satisfaction of reporting requirements.

The proposed rules would permit affiliates of the same corporate group to elect the exemption for their inter-affiliate swaps if one of the following four conditions is satisfied for each affiliate: (1) the affiliate is located in the United States; (2) the affiliate is located in a jurisdiction with a comparable and comprehensive clearing requirement; (3) the affiliate is required to clear all swaps it enters into with non-affiliate counterparties; or (4) the affiliate does not enter into swaps with non-affiliate counterparties.

Comments will be accepted for 30 days from publication in Federal Register, which is expected shortly.

RECENT CLIFFORD CHANCE BRIEFINGS

Draft of updated Equator Principles released

Following a strategic review of the Equator Principles ('EPs'), the Equator Principles Association, which governs membership and use of the EPs, has released a draft of the updated EPs for stakeholder consultation and public comment. As well as expanding the types of projects that will be subject to the EPs, it also proposes enhanced reporting requirements. If approved, it will be the third version of the EPs and so is known as 'EPIII'.

This briefing sets out the principal changes.

http://www.cliffordchance.com/publicationviews/publications/2012/08/clifford_chance_commentdraftofupdatedequato.html

Market trends in cornerstone investment

Cornerstone investors have become a regular feature of Asian IPOs over recent years. Cornerstone investors are usually sovereign wealth funds, institutional investors or, in the case of Hong Kong, local tycoons. They are important not only because they guarantee that a proportion of the offer will be sold but also because they stimulate investor demand and, for some investors, lend credibility to the company that is proposing to IPO. They are particularly important when investor confidence is at a low ebb and equity markets are volatile.

This briefing discusses market trends in cornerstone investment.

http://www.cliffordchance.com/publicationviews/publications/2012/08/market_trends_incornerstoneinvestment.html

France – Entry into force of the first Amending Finance Bill of the new government

A first series of tax measures announced by the new French government in order to redress public finances was presented to the Council of Ministers on 4 July 2012 as part of the second Amending Finance Bill for 2012. The law has now been adopted by Parliament and was published in the

French Journal Officiel on 17 August 2012 (Law n° 2012-958 dated 16 August 2012).

This briefing provides a brief overview of the main tax measures provided for by the second Amending Finance Act for 2012.

http://www.cliffordchance.com/publicationviews/publications/2012/08/france_entry_intoforceofthefirstamendin.html

Tax measures emerging from the conversion into law of the 'Growth Decree'

On 22 June 2012 the Italian Government issued the Decree Law 82 (the 'Growth Decree') containing a set of urgent measures to foster the economic growth and the competitiveness of Italian enterprises. The Law 134 of 7 August 2012 converted the Growth Decree into law with some amendments.

This briefing summarises the most significant tax measures introduced under the Growth Decree, also considering the amendments introduced by the Law 134.

http://www.cliffordchance.com/publicationviews/publications/2012/08/tax_measures_emergingfromtheconversionint.html

Russia accedes to the WTO – problems and opportunities

On 22 August 2012, Russia's accession to the World Trade Organisation took effect. This briefing summarises Russia's undertakings upon accession and the impact they may have on different sectors of the Russian economy.

http://www.cliffordchance.com/publicationviews/publications/2012/08/russia_accedes_tothewtoproblemsan0.html

SAFE blazing a trail to boost private outbound investment

China's SAFE has issued an important notice to relax the procedures for foreign exchange administration in respect of fund remittance and offshore loans. The notice also aims to loosen control over foreign security provided by domestic individuals. These measures will strengthen the financing ability of offshore companies invested by Chinese domestic enterprises, in line with China's strategy in encouraging private enterprises to 'go global' and engage in outbound investments.

This briefing discusses the notice.

http://www.cliffordchance.com/publicationviews/publications/2012/08/safe_blazing_a_trailtoboostprivateoutboun.html

Boutique fund managers – how the enhanced regulatory regime impacts you

The Monetary Authority of Singapore (MAS) announced on 6 August 2012 that the implementation of the enhanced regulatory regime for fund management companies (FMCs) would take effect from 7 August 2012. This marks the end of a series of public consultations undertaken by the MAS since April 2010, the developments of which have been closely watched by the fund management industry.

This briefing focuses on the impact of the enhanced regulatory regime for existing licensed boutique FMCs which intend to continue their fund management business in Singapore, operating under the enhanced regulatory regime (this accordingly assumes that such FMCs do not manage retail monies nor carry out any other regulated activities).

http://www.cliffordchance.com/publicationviews/publications/2012/08/boutique_fund_managershowtheenhance.html

Opportunities and challenges for new investors in Myanmar

Recent democratic reforms in Myanmar have encouraged foreign governments to relax economic sanctions, leading to increased foreign investor interest in the country. Although there are positive signs of further reform, new investors in Myanmar face significant challenges.

This briefing comments on recent developments and key issues to be considered by investors wishing to do business in Myanmar.

http://www.cliffordchance.com/publicationviews/publications/2012/08/opportunities_andchallengesfornewinvestorsi0.html

SEC proposes rule amendments to lift ban on general solicitation and general advertising for certain US private placements

The SEC has proposed amendments to Rule 506 of Regulation D and Rule 144A under the US Securities Act of 1933 that would permit companies to publicly advertise opportunities to invest in these offerings in the United States. The proposed amendments would also permit issuers to solicit a wide range of potential US investors for either type of private placement. Until amended rules are formally adopted by the SEC, the current ban on general solicitation and general advertising in connection with US private placements remains in effect.

This briefing summarises the SEC's proposed rule amendments, which were announced at its open meeting held on 29 August 2012.

http://www.cliffordchance.com/publicationviews/publications/2012/08/sec_proposes_ruleamendmentstoliftbano.html

Delaware Bankruptcy Court holds claim purchasers subject to the same disabilities as the original creditors

In a recent decision, the Delaware Bankruptcy Court concluded that the purchaser of a bankruptcy claim is subject to the same disabilities as the original creditor — specifically, preference liability pursuant to Section 547 of the Bankruptcy Code. This decision reinforces that claim purchasers are responsible for performing careful due diligence to ensure that the claims they are evaluating for purchase are not subject to any disallowance or possible impairment. Also, buyers should always price the risk of claim impairment into their bids, and when possible, potential buyers should insist on receiving fulsome representations, warranties, covenants, and indemnifications from their sellers, particularly those regarding claim disallowance and impairment.

This briefing discusses the decision.

http://www.cliffordchance.com/publicationviews/publications/2012/08/delaware_bankruptcycourtholdsclaimpurchaser.html

Second Circuit lowers the bar for aiding and abetting liability in SEC securities fraud actions

On 8 August 2012, in SEC v. Apuzzo, the United States Court of Appeals for the Second Circuit ruled that the SEC is not required to establish that a defendant proximately or directly caused injury in a securities fraud action to be liable for aiding and abetting a primary actor. This ruling settles a longstanding question regarding what conduct satisfies the 'substantial assistance' prong of the DiBella test for determining aiding and abetting liability in securities fraud enforcement actions.

This briefing discusses the ruling.

http://www.cliffordchance.com/publicationviews/publications/2012/08/second_circuit_lowersthebarforaidingan.html