



EVERYTHING MATTERS

# FINANCIAL SERVICES REGULATION

## Exchange – International Newsletter

Issue 8 – March 2011

### INTRODUCTION

#### WELCOME

DLA Piper's Financial Services International Regulatory team welcomes you to the eighth edition of 'Exchange – International' – an international newsletter designed to keep you informed of regulatory developments in the financial services sector.

This issue includes updates from the US, Austria, France, Germany, Italy, Spain and the UK as well as news of forthcoming European legislation. This edition also includes an update from Hong Kong on the first RMB-denominated initial public offering in the Hong Kong market and the Securities & Futures Commission's recently published conclusions on draft guidelines on the disclosure of inside information. Please click on the links below to access updates for the relevant jurisdictions.

Our aim is to assist you in providing an overview of developments outside your own jurisdiction which may be of interest to you. In each issue we will also focus on a topic of wider international interest. In this edition, 'In Focus' takes a closer look at the next stage in the reform of the UK financial services regulatory structure.

Your feedback is important to us. If you have any comments or suggestions for future issues, we would be very glad to hear from you.

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### USEFUL INFORMATION

If your colleagues would like to be added to our mailing list to receive future client alerts or newsletters, please email [amy.hammick@dlapiper.com](mailto:amy.hammick@dlapiper.com) with their contact details. For recent publications, legal updates and an overview of our Litigation & Regulatory capabilities please see our [global website](#).

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# EUROPE



## EUROPEAN COMMISSION PROGRESS REPORT ON REGULATING FINANCIAL SERVICES

European Commission, 10 February 2011

The European Commission has published a [progress report on regulating financial services for sustainable growth](#). The report covers the following topics:

- lessons learned from the financial crisis;
- regulatory reform in Europe;
- better protection, confidence and inclusion in respect of consumers;
- reform of financial supervision in Europe;
- a crisis management framework for Europe; and
- deepening the single market.

The Annex to the report sets out a list of outstanding and forthcoming legislative proposals.

## EUROPEAN COMMISSION UPDATES Q&AS ON ELECTRONIC MONEY DIRECTIVE

European Commission, 10 February 2011

The European Commission has published new answers on the following topics as part of its Q&As on the Second Electronic Money Directive (2009/110/EC):

- [agents and distributors](#);
- [transposition in Cyprus](#).

## EUROPEAN COMMISSION UPDATES Q&AS ON PAYMENT SERVICES DIRECTIVE

On 11 and 16 February 2011 the European Commission published answers to further questions on the Payment Services Directive (2007/64/EC). The subjects covered include:

- [access to payment services](#);
- [framework contracts](#);
- [payment services](#);
- [safeguarding of funds](#);
- [cut-off times](#);
- [applicability to currency](#);
- [definition of “immediately”](#);
- [E-money](#);
- [immediate availability of funds](#);
- [definition of payment services \(payment account\)](#);
- [definition of money remittance](#); and
- [definition of payment services \(cash placement\)](#).

A further [update](#) was published on 22 February 2011. The following new subjects are covered at pages 330-337:

- [application of the currency conversion charge to online card transactions](#);
- [foreign cash correspondents](#);
- [licence requirements for merchant cash advances to small and medium sized enterprises](#);

- payment institutions issuing pre-paid cards or debit cards other than on behalf of a bank; and
- the role of FIN-NET under Article 83.

### ESMA UPDATES TABLE OF SHORT SELLING MEASURES

ESMA, 9 February 2011

The European Securities and Markets Authority (ESMA) has updated its [table of members' short selling measures](#). This follows the previous update on 31 January 2011.

The table includes an update on short selling measures in Romania which provide that from 25 January 2011, short selling transactions in shares of Romanian issuers will, subject to certain conditions, be permitted by the Romanian National Securities Commission.

### EUROPEAN COMMISSION PUBLISHES RESPONSES TO CONSULTATION ON REVIEW OF MIFID

European Commission, 22 February 2011

The European Commission has published the following responses received to its 8 December 2010 public consultation on the review of MiFID (2004/39/EC):

- [responses from public authorities](#);
- [responses from registered organisations](#); and
- [responses from individuals and other organisations](#).



### EUROPEAN COMMISSION LEGISLATIVE PROPOSALS FOR 2011

European Commission, 25 February 2011

The European Commission has published a [table setting out its legislative proposals for 2011 together with the expected dates of adoption](#). There are a number of legislative proposals which the Commission intends to adopt which concern financial services.

These include:

- Directive on mortgage credit – expected March 2011;
- Regulation on access to a basic payment account – expected May 2011;
- Securities Law Directive – expected May 2011;
- Recast of the Market Abuse Directive (2003/6/EC) (MAD) and its three implementing directives – expected June 2011;
- Review of the Markets in Financial Instruments Directive (2004/39/EC) (MiFID) (known as MiFID II) – expected June 2011;
- Amendments to the Capital Requirements Directive (2006/48/EC and 2006/49/EC) (CRD) – expected June 2011;
- Legislative initiative on a framework for crisis management and resolution in the banking sector – expected June 2011;
- Regulation of central securities depositories – expected June 2011;
- Review of the regulation of credit rating agencies (1060/2009/EC) – expected September 2011; and
- Legislative instrument on packaged retail investment products (PRIIPs) – expected Q3 of 2011.

# AUSTRIA



## AMENDMENT OF THE AUSTRIAN NATIONAL BANK ACT

As a **consequence of the complete nationalisation** of the Austrian National Bank, the Ministry of Finance plans to amend the Austrian National Bank Act. On 1 March 2011 the **Ministry of Finance started the consultation period** and sent a draft to the relevant market participants. The consultation period ends on 11 April 2011.

Until 2006, 50 % of the Austrian National Bank was owned by the State. After a scandal involving one of Austria's biggest banks, the State took over another 20.27% of the Austrian National Bank.

In most EU Member States national banks are organised as government institutions, which is why the respective Member States are more involved in national banks' dealings than in Austria. Therefore, it seemed to be a reasonable next step for the Ministry of Finance in Austria to amend the Austrian National Bank Act **to become aligned with the other Member States**.

It is **unlikely** that the amendments will result in **any major financial consequences**. In contrast, they will advance Austria as a business location.

The main amendments are as follows:

- The **supervisory board of the Austrian National Bank will consist of fewer members**. Currently the supervisory board has fourteen members. From 2013 onwards there shall only be twelve members and from 2015 onwards there shall be ten members.

- The **directorate and its governor** shall receive a **longer term of office** to boost their continuity. Instead of a five year term, they will stay for six years.
- There will be a **change in appointing members of the supervisory board**. Some of the members were in office because former shareholders (e.g. other banks or market players) had appointed them. Six members were appointed by general meeting, and the rest by the government. Following the amendments, all future members of the supervisory board will be appointed by the State only.
- Importantly, it will become easier to arrange for **own funds** of the Austrian National Bank. During the financial crisis it was forbidden for the National Bank to retain any part of its profits; this was heavily criticised. Following the amendments the National Bank may **retain** part of its profits **if necessary**. However, if it is not necessary, the National Bank will still be required to transfer 90% of its profits to the State; distribution of the remainder will depend on the financial situation in Austria.

The current draft of the legislation is available online (only in German) at: [https://www.bmf.gv.at/Finanzmarkt/RechtlicheGrundlage\\_753/NovelledesNationalb\\_11874/\\_start.htm](https://www.bmf.gv.at/Finanzmarkt/RechtlicheGrundlage_753/NovelledesNationalb_11874/_start.htm).

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# FRANCE



## KEY INVESTOR INFORMATION DOCUMENT

On 18 February 2011, the AMF published a guide to assist asset managers in preparing the Key Investor Information Document (“**KIID**”) required by UCITS IV Directive 2009/65/EC, which will replace the simplified prospectus.

In order “to allow investors to compare the characteristics of different products and provide access to clearer and more concise information”, the AMF has extended the format of the KIID to non-UCITS funds and real estate collective investment schemes (OPCI) available to retail investors.

The KIID will become mandatory from 1 July 2011 for all UCITS products as well as for OPCIs accessible to retail investors.

Existing funds have until 1 July 2012 (UCITS) or 1 July 2013 (OPCIs) to replace their simplified prospectus (or information statement) with the KIID.

## AMF POSITION PAPER 2011-03 (AND Q&A) ON THE INTRODUCTION ON 1 FEBRUARY 2011 OF THE DISCLOSURE REGIME FOR NET SHORT POSITIONS IN SHARES

On 1 March 2011, the AMF published a Q&A which addresses the principal issues and questions relating to the introduction of the new reporting regime for net short positions in shares.

Under Article 223-37 of the AMF Rulebook, and Instruction 2010-08 of 9 November 2010, any holder of a net short position exceeding 0.2% of a company’s share capital must report the same to the AMF.

The requirements do not apply to shares whose principal trading market is outside France or to liquidity providers, which may be granted an exemption upon a written (and duly documented) request to the AMF.

This domestic regime, which came into force on 1 February 2011, is part of the short selling disclosure regime in shares recommended by CESR in May 2010.

## FRENCH CLASS ACTIONS

The consultation period for expressions of opinions on the issue of French class actions (and generally investors’ compensation for damages) has been extended by the AMF, following the Interim Report published at the end of January 2011 on this topic by a Group chaired by two members of the AMF Council, Jacques Delmas-Marsalet and Martine Ract-Madoux.

The Report is a follow up to the AMF’s indication, in its Strategic Report dated July 2009, that regulatory sanctions (pronounced by it) for violations of the rules and regulations applicable to financial markets should be completed by an adequate framework to allow investors who may have been prejudiced by such violations to seek appropriate compensation.

This is a major contribution to the ongoing French debate (including in the French Parliament) concerning the opportunities and risks of introducing class actions in the French legal and judicial system. It formulates helpful proposals in an attempt to craft a legal framework which will balance the advantages and disadvantages, between investors and investment services providers, of such class actions.

## ACP GUIDELINES ON CAPITAL ADEQUACY

On 11 February 2011 the French Autorité de Contrôle Prudentiel (ACP – Banking and insurance regulator) published a Notice describing how the ACP will supervise the implementation of French banking regulations relating to capital adequacy.

The Notice is published for general information; it does not attempt to cover every aspect of the calculation of capital, but only addresses certain critical issues for which



additional explanation was regarded as useful. The Notice is likely to evolve and expand in response to additional questions that will emerge over time as the regulations are implemented and banking and financial practices develop.

The Notice, which will “evolve and expand in response to additional questions that will emerge over time as the regulations are implemented and banking and financial practices develop”, focuses on Pillar 1 of the new capital adequacy framework – the calculation of minimum capital requirements.

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## REAL ESTATE INVESTMENTS OF GERMAN INSURANCE COMPANIES: DRAFT CIRCULAR OF BAFIN PUBLISHED

On 30 June 2010, revised and amended rules for investments of the restricted assets of German insurance companies came into force. The respective decree (*Anlageverordnung*) is subject to a specific circular of the German Regulator (*BaFin*) that sets out in more detail the requirements for insurers' investments (*Anlagerundschreiben*). Though not legally binding and only mirroring the regulator's interpretation of the decree, in practice the provisions in the BaFin's circular guide all investments of insurers' restricted assets in Germany.

On 3 January 2011 the regulator published its draft for a revised circular and began consultations.<sup>1</sup> This draft takes into account the latest amendments to the investment decree, incorporates two earlier statements of the BaFin on structured products and companies' loans, and includes new requirements on the asset liability management of insurance companies. In particular, the draft includes clarifications and interesting explanations with respect to the amended or new asset classes. As the regulator's explanations might be subject to future changes, only a few of these are highlighted here.

### Participation in a company

The legislator has amended the broadly used asset class of Sec. 2 para. 1 No. 13 AnlV for participations in companies, such as limited liability companies or limited partnerships, to now require that such companies have “a *business model*” and need to incur “*business risks*”. In its draft circular, the BaFin clearly states that under the new law, this asset class may no longer be used to make investments which do not themselves fulfil the requirements of any class of AnlV, which are suitable for the restricted assets, by investing indirectly through a company under Sec. 2 para. 1 No. 13 AnlV. The use of this asset class for so called *feeder funds* is now, therefore, quite restricted.

<sup>1</sup> The draft circular can be found at [http://www.bafin.de/SharedDocs/Downloads/DE/Unternehmen/Konsultationen/2011/kon\\_0111\\_\\_entwurf\\_\\_va,templateId=raw,property=publicationFile.pdf/kon\\_0111\\_\\_entwurf\\_\\_va.pdf](http://www.bafin.de/SharedDocs/Downloads/DE/Unternehmen/Konsultationen/2011/kon_0111__entwurf__va,templateId=raw,property=publicationFile.pdf/kon_0111__entwurf__va.pdf)

### Real estate companies

From 30 June 2010 real estate companies under Sec. 2 para. 1 No. 14 AnlV are no longer restricted to three different properties. However, as before, the purpose of a real estate company is restricted to the acquisition, development or administration of real estate within the EU or OECD. In the regulator's opinion, if a company does not qualify under Sec. 2 para. 1 No. 14 AnlV, e.g. because it pursues additional tasks, it may still qualify for the restricted assets as a participation in a company under Sec. 2 para. 1 No. 13 AnlV, even if it does not have a “*business model*” as required for this asset class. In such cases, however, such investment does not fall within the so-called “real estate quota” as it would with Sec. 2 para. 1 No. 14 AnlV.

### REITs

For the first time, the circular includes guidelines on insurers' investments in REITs. In particular, the legislator explains under what conditions a foreign REIT shall be deemed to be comparable to a German REIT joint stock company and, therefore, qualified for the restricted assets. Comparability will be accepted if, amongst others, 75% of the REIT's assets are to be invested in real estate, 75% of its gross earnings derive from leasing, letting or the sale of real estate, 90% of its profits are paid out, and debt financing is limited to 70% of the company's assets.

### Funds of funds

A few further details are provided for the new asset class of closed-ended real estate funds of funds pursuant to Sec. 2 para. 2 No. 14c AnlV. In addition to the requirements already stated in the decree, the regulator clarifies that, in line with the rules of the German Investment Law (*InvG*), debt financing at the level of the fund of funds is restricted to short term loans with interest in line with the market. Debt financing of its target funds shall be restricted to 60% of the fair market value of its real estate assets.

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## OVERALL REFORM IN THE ITALIAN CONSUMER CREDIT SECTOR: NEW MEASURES ON BANKING TRANSPARENCY

As reported in [Issue 5 of Exchange – International](#), the Legislative Decree No. 141 of August, 13 2010 (the “Decree”) aligned Italy with European legislation on consumer credit, as covered by Directive 2008/48/CE.

The Decree introduced several changes to the applicable rules regarding financial institutions, financial agents and banking brokers, but not all the changes will enter into force immediately.

In particular, on 16 February 2011 the Bank of Italy issued a new implementing measure concerning banking transparency rules to be adopted by financial intermediaries in their relationship *vis-à-vis* customers. It is important to note that this new regulation concerning transparency provisions (the so-called “*trasparenza bancaria*”) will apply only after 90 days from its formal approval, **ie from 1 June 2011**.

The main new legislative topics, which will have a deep impact on contracts and transparency documents, are as follows:

- **pre-contractual information:** the creditor shall provide the consumer with the information needed to compare different economic offers in order to take an informed decision on whether to conclude a credit agreement. Such information shall be provided by means of the Standard European Consumer Credit Information (so-called “*Informazioni europee di base sul credito ai consumatori*”);
- **right of withdrawal:** the consumer shall have a period of 14 days in which to withdraw from the credit agreement without giving any reason;

- **new calculation criteria for the so-called “*Tasso Effettivo Globale Annuo*”:** these criteria are based on “total cost of the credit to the consumer” (i.e. all the costs, such as interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement, except for notarial costs);
- **new rules for early repayment:** the early repayment compensation to the creditor may not exceed 1% of the amount of credit repaid early if the period between the early repayment and the agreed termination of the credit agreement exceeds one year (otherwise the compensation may not exceed 0.5%).

Additionally, financial intermediaries will be required to implement their internal organisational procedures in order to ensure that, *inter alia*: (i) an evaluation of a product’s structure is undertaken, in particular with reference to the product’s intelligibility and compliance with legal prescriptions; (ii) the customer is given the opportunity to ask about the essential characteristics of the offered product and pre-contractual documentation; (iii) an explanation is given to the customer of the consequences of stipulation of the contract, in terms of economic obligations and the consequences of missing payments; (iv) there is transparency and fairness in marketing the product, ensuring that the informative documentation shall be complete, clear, easily available to customers, actively utilised by the sellers and properly advertised on internet sites; and (v) the availability of an updated contract at the customer’s request.

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# SPAIN



## **SPANISH SAVINGS BANKS (CAJAS DE AHORRO) HAVE UNTIL MARCH 2012 TO COMPLY WITH TOUGHER CAPITAL REQUIREMENTS**

On 18 February 2011 the Spanish Government issued the Royal Legislative Decree 2/2011 strengthening the financial system (*Real Decreto-ley 2/2011, de 18 de febrero, para el reforzamiento del sistema financiero*). The Decree establishes a plan that toughens capital requirements for banks, particularly savings banks.

The purpose of the plan is to shore up the ailing savings banks that are at the heart of worries that the country might need a bailout. The plan allows savings banks more time to boost capital buffers.

To achieve these objectives, the Decree states new solvency requirements that will be enhanced in advance as a result of compliance with the new Basel III capital requirements. A new minimal core capital ratio of 8% will be required for banks, while unlisted savings banks will be required to raise core capital ratios to 10% (up from the former 6%), due to the fact that they are heavily dependent on wholesale markets for their liquidity and lack outside shareholders holding at least a fifth of their capital.

Financial institutions failing to meet the above capital ratios by 10 March 2011 have 15 working days to inform the Bank of Spain how they plan to achieve the target; for example by realising capital gains on industrial holdings or by attracting new shareholders (particularly in the case of unlisted savings banks). The targets must be met by the end of September 2011, although in exceptional cases the deadline can be extended to the first quarter of next year (March 2012).

The extra time was requested by the Spanish savings banks themselves, who argued that if they all rushed to market at the same time in search of capital, some would get shut out.

The Bank of Spain has invested €15 billion in loans to re-capitalise savings banks.

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## FSA PUBLISHES FIRST RETAIL CONDUCT RISK OUTLOOK

FSA, 28 February 2011

The FSA has published its first [Retail Conduct Risk Outlook](#) (“RCRO”), which examines how a range of current, emerging and potential risks could impact customers. The FSA views the RCRO as a key component in its consumer protection strategy to identify risks and proactively intervene at an earlier stage in the product chain, preventing consumer detriment.

The RCRO’s analysis of current and upcoming risks informs how the FSA will set its priorities and deploy its resources, details of which will be set out in the FSA’s upcoming Business Plan.

## FSA CONSULTS ON IMPROVING PROTECTION FOR WITH-PROFITS POLICYHOLDERS

FSA, 24 February 2011

The FSA has [published proposals to strengthen its existing rules on with-profits funds](#). This follows a review last year of the way in which firms have met the requirements introduced in 2005 for the fair treatment of with-profits policyholders. The review focused on whether firms were treating with-profits policyholders fairly, looking specifically at how senior managers in firms have implemented FSA rules, primarily set out in COBS 20. The review identified a number of concerns about the way in which firms were operating their with-profits funds and treating their policyholders.

The new proposals, which aim to improve protection for with-profits policyholders, include:

- strengthening the requirement for boards and governing bodies to obtain independent advice on the management of funds by enhancing the role of the with-profits committee and the with-profits actuary;

- requiring all firms to have a plan to distribute any excess surplus fairly to policyholders, particularly where a firm experiences a significant fall in the amount of new business it is writing;
- strengthening the requirement for any new business backed by the with-profits fund to deliver value to all with-profits policyholders so that writing new business has no adverse effect on their interests;
- improving the ways in which firms identify and manage conflicts of interest affecting with-profits policyholders;
- emphasising how with-profits policyholders in mutually-owned funds should expect to be treated, specifically around distributions of excess surplus;
- restricting the circumstances under which firms can impose a market value reduction; and
- improving the reattributions process.

The Consultation Paper can be accessed on the [FSA’s website](#). The consultation period will end on 24 May 2011.

## FSA AND BANK OF ENGLAND ANNOUNCE NEW DRAFT CODE OF PRACTICE FOR AUDITORS AND SUPERVISORS

FSA, 10 February 2011

The FSA has [published a draft code](#) for consultation designed to enhance the dialogue between auditors and supervisors. The FSA has worked jointly with the Bank of England via a Working Group set up in September 2010 to produce the new framework. The Financial Reporting Council, the six major audit firms and the Institute of Chartered Accountants in England and Wales were all represented on the Working Group.



The Code aims to improve audit effectiveness and ensure that FSA supervisors are better informed about, and able to challenge, regulated firms. The FSA recognises that auditors have an important role to play in the supervisory process, as the annual financial statements they audit form the basis of the prudential information used by the FSA when supervising firms.

The Code sets out principles to guide interactions between FSA supervisors and auditors. It recognises that timely, relevant information sharing is an essential part of an effective working relationship, and it indicates a minimum level of bilateral and trilateral meetings that should take place for high impact firms.

The Code can be accessed on the [FSA's website](#). The consultation period will end on 25 March 2011.

## **FSA APPOINTS MARTIN WHEATLEY AS MANAGING DIRECTOR, CONSUMER AND MARKETS BUSINESS UNIT**

FSA, 2 February 2011

The FSA has [announced the appointment of Martin Wheatley](#) as managing director of its Consumer and Markets Business Unit, effective from 1 September 2011.

In a separate announcement by HM Treasury, Martin Wheatley has also been confirmed as CEO designate of the new Financial Conduct Authority (previously given the working title of the Consumer Protection and Markets Authority), one of the two successor regulatory bodies that will be formed from the future division of the FSA.

For more information about reforms to the FSA and the new Financial Conduct Authority, see [Reform of the UK financial services regulatory structure – the next instalment](#).

## **FSA ANNOUNCES ANNUAL FUNDING REQUIREMENT FOR 2011/2012**

FSA, 1 February 2011

The FSA has [announced that its proposed Annual Funding Requirement \(AFR\)](#) for 2011/2012 is £500.5 million. This represents a gross increase of 10.1% from £454.7 million in 2010/2011.

Most FSA authorised firms pay a minimum fee, with further variable fees to be paid depending on the type of business conducted. The enforcement fines imposed by the FSA during the previous year are returned to the industry by way of discounts to their fees in the following year. In the first nine months of 2010/2011, the fines collected by the FSA totalled £79.1 million compared with £33 million in 2009/2010. This means that, in total, firms will pay 2% less than last year.

The FSA has said that the key areas that the AFR will be used for are:

- Delivering effective, on-the-ground supervision of firms;
- Completing the organisational and technological change that underpins the move to an intensive supervisory regime;
- Continuing to deliver a tough and determined enforcement approach that achieves results;
- Taking forward the domestic and international policy agenda, particularly in respect of the banking agenda set by the Basel Committee;
- Ensuring that the wider policy agenda primarily mandated by the European Union is delivered; and
- Preparing the FSA move to the new structure of the Prudential Regulatory Authority and Financial Conduct Authority.



## FSA OPENS PUBLIC DEBATE ON PRODUCT INTERVENTION

FSA, 25 January 2011

The FSA has [published a Discussion Paper](#) on how the FSA, and in time, the Financial Conduct Authority, should pursue the objective of consumer protection and specifically the issue of product intervention.

As part of its new consumer protection strategy the FSA has already introduced a more interventionist approach which aims to anticipate consumer detriment where possible and stop it before it occurs.

The paper sets out possible future interventions in areas with the greatest potential for consumer harm, for example, banning products or prohibiting the sale of certain products to specific groups of customers.

The Discussion Paper can be found on the [FSA's website](#). The consultation period will end on 21 April 2011.

## FSA VARIES BANK OF SCOTLAND PERMISSION

FSA, 22 February 2011

The FSA has published [a document setting out requirements included in Bank of Scotland plc's \("BoS"\) permission](#) under Part IV of the Financial Services and Markets Act 2000 ("FSMA"). The requirements, which came into effect on 21 February 2011, require BoS to establish and operate a customer review and contact programme with certain Halifax plc ("**Halifax**") mortgage customers. BoS is the successor to Halifax and trades under the Halifax name.

Under the programme, BoS will contact approximately 600,000 Halifax customers who were sent mortgage offer documents under the Halifax brand between September 2004 and September 2007, and who still held their mortgage in January 2009. BoS has accepted that wording in the offer documentation relating to Halifax's standard variable rate ("**SVR**") had the potential to cause confusion. BoS will seek to ensure that affected customers are made fully aware of the nature of the Halifax SVR cap and how it relates to their borrowing. BoS expects to make goodwill payments to approximately 300,000 customers. Lloyd's Banking Group plc, which now owns BoS, has made a £500 million provision within its 2010 accounts in respect of these payments.

BoS applied to the FSA for a voluntary variation of permission to carry out the programme and make the goodwill payments, in order to bring it within section 404F(7) of FSMA. The powers under this section enable the FSA to vary the permission of an individual firm to require it to establish and operate a scheme which "corresponds to, or is similar to, a consumer redress scheme" (ie an industry-wide consumer redress scheme made under section 404 of FSMA). The FSA can also "bind" the Financial Ombudsman Service to a section 404(F) scheme, and has done so in relation to the BoS programme. The FSA has duly varied BoS's permission, for the first time making use of its powers under section 404(F).

## ENFORCEMENT DECISIONS

### DB Mortgages fined for irresponsible lending and poor treatment of customers in arrears

FSA, 22 February 2011

The FSA has [fined DB Mortgages](#), part of the Deutsche Bank Group, £840,000 for irresponsible lending practices and unfair treatment of customers in arrears. DB Mortgages will also pay redress of approximately £1.5 million to its customers.



The FSA found failings in the firm's lending practices: the firm failed to show that customers could afford mortgages sold where the term continued into their retirement, failed to consider whether cheaper mortgages were available for customers seeking self-certified mortgages, and failed to ensure that customers had considered where they would live at the end of the mortgage term if they had to sell their house to pay off an interest-only mortgage. Failings were also found in relation to the treatment of customers in arrears: DB Mortgages did not consider customers' individual circumstances or inform them of the range of options available to them, and also applied charges that were unfair.

DB Mortgages is the fourth lender to be referred to enforcement following the FSA's thematic project on mortgage arrears handling. Enforcement action has previously been taken against GMAC-RFC, Kensington Mortgages and Redstone Mortgages Limited.

#### **Former City worker banned for performing a significant influence function without FSA approval**

FSA, 9 February 2011

The FSA has [banned Daniel Hassell from working in regulated financial services](#). Despite knowing that the FSA was not satisfied that he was a fit and proper person to perform a significant influence function, Hassell nonetheless performed such a function at Vantage Capital Markets LLP ("**Vantage**"), an interdealer broker, for four years without obtaining FSA approval.

Hassell was not a capital partner at Vantage but exercised a significant influence over the firm. Individuals performing significant influence functions are required, under FSA rules, to be approved persons. Vantage had previously applied for Hassell to become an approved person, but withdrew the application when the FSA raised concerns. A further application for approval was made in 2007, but this too was

withdrawn when the FSA indicated that it would not approve Hassell due to issues arising from an earlier investigation. Despite this, Hassell continued to exercise a significant influence function, without any oversight by the FSA.

Vantage was previously fined £700,000 by the FSA for failing to prevent Hassell from performing a significant influence function.

#### **Corporate finance advisor banned and fined £150,000 for market abuse**

FSA, 7 February 2011

The Upper Tribunal (Tax and Chancery Chamber) has directed the FSA to [fine David Massey £150,000](#) and ban him from performing any role in regulated financial services for engaging in market abuse.

Massey, an FSA approved person, short sold 2.5 million shares of Eicom, the then AIM-listed digital broadcaster, at 8p per share on the basis of inside information that Eicom was intending to issue new shares at 3.5p per share. Within minutes of the sale, he accepted an offer to subscribe for 2.6 million newly issued Eicom shares at 3.5p, using the shares he obtained to close his short position, making a net profit of over £100,000.

Following the trading, Massey attempted to book the transaction to the account of an associate. When questioned about the deal by his employers, he gave the impression that he hardly knew Eicom despite his occasional role as a financial PR consultant for the company.

#### **Investment banker sentenced for insider dealing**

FSA, 2 February 2011

On 2 February 2011 [Christian Littlewood, a senior investment banker, his wife Angie Littlewood, and family friend Helmy Omar Sa'aid were sentenced for insider dealing](#).



The three had previously pleaded guilty to eight counts of insider dealing contrary to section 52 of the Criminal Justice Act 1993. The offences related to trading in a number of different London Stock Exchange and AIM listed shares between 2000 and 2008.

Christian Littlewood was sentenced to three years and four months in custody, the longest sentence imposed to date for insider dealing. Angie Littlewood received a sentence of twelve months in custody, suspended for two years. Helmy Sa'aid was sentenced to two years in custody.

#### **FSA fines Barclays Capital for client money breaches**

FSA, 26 January 2011

The FSA has [fined Barclays Capital £1.12 million](#) for breaches of the client money rules. Barclays Capital failed to protect and segregate on an intra-day basis client money held in sterling money market deposits. Under the client money rules, firms are required to keep client money separate from the firm's money in segregated accounts with trust status, to safeguard the client money in the event of the firm's insolvency.

For over eight years, between 1 December 2001 and 29 December 2009, Barclays Capital failed to segregate client money maturing from its sterling money market deposits on an intra-day basis. Client monies were segregated overnight, but matured into a proprietary bank account and were mixed on a daily basis with Barclays Capital's own funds. Had the firm become insolvent within that period, this client money would have been at risk of loss.

The fine underlines the FSA's continued focus on the client money regime, led by the regulator's Specialist Client Assets Unit which was formed in 2010.

#### **JJB Sports Plc fined £445,000 for failing to disclose information to the market**

FSA, 26 January 2011

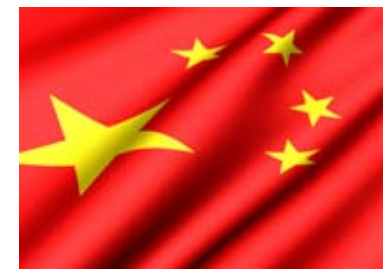
The FSA has [fined JJB Sports Plc \(JJB\) £455,000](#) for breaches of the Disclosure & Transparency and Listing Rules. JJB failed to disclose information to the market about the true cost of two acquisitions of retail chain stores.

Disclosure & Transparency Rule 2.2.1 R requires an issuer to notify a RIS (Regulatory Information Service) as soon as possible of any inside information which directly concerns the issuer, unless certain exceptions apply. Listing Principle 4 states that a listed company must communicate information to holders and potential holders of its listed equity securities in such a way as to avoid the creation or continuation of a false market in such listed equity securities.

JJB's failure to adhere to the rules led to a false market in its shares for over nine months. During that period JJB made a number of market announcements which did not correct the position.

The fine is the second largest imposed by the FSA for breaches of the Disclosure & Transparency and Listing Rules, following the £500,000 fine imposed on Photo-me International plc in June 2010.

# HONG KONG



## HKEX TO PREPARE FOR FIRST RMB LISTING

The People's Republic of China (“PRC”) has traditionally kept a tight control over its currency, the Renminbi (“RMB”), to minimise speculative activities. However, due to market demands there have been careful moves to gradually internationalise its currency in the last couple of years. With the increasing number of PRC enterprises seeking to raise capital overseas through stock exchange listings, as well as the gradual internationalisation of the RMB, the first RMB-denominated initial public offering (“IPO”) in the Hong Kong market is set to debut on the Hong Kong Stock Exchange (“HKEx”) in the first half of 2011.

The HKEx has launched various initiatives to prepare for this. For instance, it has made available the exchange rates of Hong Kong dollars (“HKD”) against the RMB and US dollars for calculating stamp duty and other trading related fees. In addition, circulars have been issued to urge HKEx participants to review their internal operational procedures and set up RMB banking facilities. The HKEx has also conducted RMB IPO trial runs to test the operational readiness of its participants.

The potential RMB IPOs should help Hong Kong maintain its competitive edge as the leading destination in the world for equity fundraisings. However, a possible constraint to this development is the limited liquidity of the RMB in the Hong Kong market, since local individuals can only purchase a maximum of RMB 20,000 a day, and banks cannot provide RMB margin finance to individual customers. The HKEx is looking to devise a plan which will allow investors to purchase RMB-denominated shares using HKD through a specially created RMB liquidity pool. Once this mechanism is in place, it will hopefully allow investors to deal in RMB-denominated shares even if they do not have any RMB holdings.

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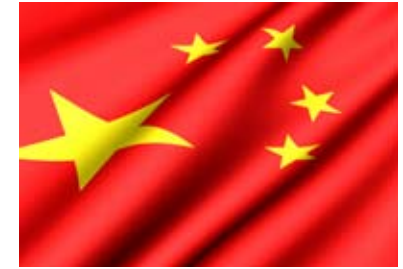
## CONSULTATION CONCLUSIONS ON DISCLOSURE OF INSIDE INFORMATION BY HONG KONG LISTED CORPORATIONS

The Hong Kong Securities & Futures Commission (the “SFC”) recently published its conclusions on the Consultation Paper on the Draft Guidelines on Disclosure of Inside Information (the “Consultation”).

The Consultation began in March 2010 and its main objective was to introduce a statutory regime to codify the requirements for the disclosure of price sensitive information (“PSI”) by corporations listed on the Hong Kong Stock Exchange (“SEHK”).

Currently, the mandatory standard in relation to the disclosure of PSI is set out in the respective listing rules for Main Board and GEM securities (collectively, the “Listing Rules”). A major shortcoming of the current regime is that listed corporations are bound by it only by reason of their agreement to comply with the Listing Rules when they became listed. Accordingly, the current regime does not have statutory backing, and only the SEHK is in a position to enforce it. As a result, the disciplinary powers available in the event of a breach of the current disclosure regime are very limited (even where the breach was deliberate), and the sanctions usually imposed by the SEHK on offending directors and corporations are private reprimands and public censures. That said, the SFC does have powers to intervene under certain circumstances and penalise directors in breach of the existing disclosure requirements.

Not surprisingly, most of the respondents to the Consultation welcomed the proposed new regime to codify the obligations of listed corporations in respect of disclosure of PSI. For investors, the new regime will enhance the market transparency and promote fair play in trading activities on the stock exchange. For listed corporations and their officers, the new regime will provide certainty as to what information constitutes PSI and also when and how PSI ought to be disclosed.



One of the most significant differences between the old and new regimes is a new definition of PSI in the proposed statute to implement the new regime. Instead of adopting the existing term and definition set out in the Listing Rules, the proposed new regime uses the term “inside information” and adopts the definition of “relevant information” from the concept of insider dealing under the Securities and Futures Ordinance (“SFO”).

“Inside information” under the proposed new regime means specific information that is about the corporation, its shareholder or officer, or the listed securities of the corporation or their derivatives, which is generally not known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would, if generally known to them, be likely to materially affect the price of the listed securities.

It appears that the definition of “inside information” would be more restrictive than that of the definition of “PSI” under the Listing Rules, in that only information which is non-public and which may have a material effect on the price of listed securities would qualify as “inside information”. PSI as defined under the Listing Rules appears to have a wider scope as it does not differentiate between public and non-public information, and it also covers information that may not have any material effect on price, but is only necessary to enable a person to appraise the financial position of the listed corporation.

The Government is now preparing a bill to incorporate the proposed statutory codifications for PSI disclosure into the SFO. No concrete timetable has yet been discussed but it is expected that the bill will be submitted to the legislature of Hong Kong for approval later this year.

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## US PROHIBITIONS ON PROPRIETARY TRADING BY BANKS: EMERGING STANDARDS UNDER THE NEW DODD-FRANK LEGISLATION

One of the most controversial and closely monitored developments arising from passage by the US Congress in July of 2010 of the comprehensive banking legislation known as the “Dodd-Frank Wall Street Reform and Consumer Protection Act” was the constraints imposed on proprietary trading and sponsorship of certain hedge and private equity funds by US banks. Dubbed the “Volcker Rule” as a result of its sponsorship by former Federal Reserve Chairman Paul Volcker, this broadly worded provision of Dodd-Frank was designed to shield insured depositories from certain market risks, namely risks associated with proprietary trading in equity positions and sponsorship of designated hedge and private equity funds.

As noted, the actual statutory language of the Volcker Rule utilised expansive terminology. The legislation delegated to the bank regulatory agencies (most notably, the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) authority to focus and implement these restrictions through definitions for broad, and previously undefined, statutory concepts such as “proprietary trading,” “hedging,” “market-making activities,” and “on behalf of clients,” among other crucial terms.

To this end, both agency personnel and industry groups, as well as the interested public, awaited with keen anticipation a Financial Stability Oversight Council (“FSOC”) study, as required by Dodd-Frank, to provide guidance on how the rules and regulations implementing the Volcker Rule should be crafted. In January, FSOC (which consists of representatives of the aforescribed banking agencies and the Securities and Exchange Commission and the Commodity Futures Trading Commission), issued the mandated study entitled “Study & Recommendation on Prohibitions on Proprietary Trading &

Certain Relationships with Hedge Funds & Private Equity Funds.” Although not legally binding on the agencies, the FSOC Study is nevertheless highly indicative of what these regulations may eventually entail, given the overlap between the membership of the FSOC and the ultimate banking and regulatory agencies that will issue the regulations.

Approximately eighty pages in length, the FSOC Study provided a number of key recommendations and conclusions, which reflect an underlying philosophy of delegating the initial definitional and analytical work to the affected banking firms, while requiring those firms and their Chief Executive Officers to accept responsibility for such analyses and to be transparent in allowing supervision and review by their regulators.

More specifically, the recommendations in the FSOC Study included the following:

- Banking entities must sell or wind down unconditionally all impermissible proprietary trading desks;
- Banking firms must develop and implement “robust” compliance regimes to ensure conformity with these prohibitions, and notably including a public attestation by the CEO of each firm as to the efficacy of the entity’s overall compliance regime;
- Banking entities must perform quantitative analyses to detect potentially impermissible proprietary trading undertaken without provisions for safe harbours;
- Banking entities must perform supervisory review of trading activity to distinguish between permitted and impermissible proprietary trading activities;
- Banking entities must implement a mechanism that identifies for pertinent regulatory agencies those trades which are initiated by customers;
- Banking firms must divest of impermissible proprietary trading positions, with expectation of administrative penalties for noncompliance when warranted;



- Banking entities may not invest in or sponsor any hedge fund or private equity fund, except on behalf of legitimate trust, fiduciary or investment advisory clients;
- Banking firms may not engage in transactions that would allow them to “bail out” a hedge fund or private equity fund;
- Banking firms must identify “similar funds” that should be brought within the scope of the Volcker Rule in order to prevent evasion of the intent of the rule (keeping in mind the need of the CEOs to certify compliance with the rules, one might expect fairly inclusive definitions of “similar funds” in practice); and
- Banking entities must publicly disclose permitted exposure to hedge funds and private equity funds – a departure from the standards and practices typically followed today by sponsoring entities.

Industry reaction to the FSOC Study was generally positive, as banking representatives were encouraged by the outlook it adopted in allowing the firms themselves to develop key elements of their compliance structures, while recognising that “one size” of regulatory and compliance does not fit all firms. Concern was articulated by the industry, however, that the proposed CEO certification is unprecedented in the banking compliance area and could lead to complex legal consequences and concerns for the executives.

From this point in time onward, the FSOC Study will continue to be reviewed and dissected by interested parties, including the on-going consideration by the federal banking agencies ultimately responsible for the final regulatory architecture. Doubtlessly, it will continue to serve as a guide for the implementation of the crucial definitional and jurisdictional provisions of the Volcker Rule, as this concept is refined and further codified through the rulemaking process and in practice over the months and years to come.

## HOUSING FINANCE REFORM PROPOSED IN THE US

The Obama Administration presented its report to Congress last month outlining its agenda to overhaul the role of government in the US housing finance market, particularly as it relates to the government-sponsored enterprises (GSEs) – Fannie Mae and Freddie Mac. The Plan, entitled *Reforming America’s Housing Finance Market – A Report to Congress*, identifies key objectives as transition of mortgage credit and the related risk of loss from the government to the private market with the government’s role being focused primarily on:

- Consumer protection;
- Oversight and regulation of lenders; and
- Targeted assistance for low- and moderate-income Americans.

The Plan calls for the ultimate and incremental wind-down of Fannie Mae and Freddie Mac, noting that GSEs currently insure or guarantee more than 90 percent of all new mortgages. In order to reduce the role of the government in the market, the Plan proposes to (i) gradually increase the guarantee pricing at Fannie Mae and Freddie Mac to levels that would exist if they were subject to the capital standards established for private institutions; (ii) reduce the conforming loan limits by allowing the 2008 temporary increases to expire as scheduled on 1 October 2011; (iii) increase credit loss protections from private entities and down payment requirements by borrowers to increase the level of loss exposure absorbed by the private market as compared to taxpayers; (iv) increase borrower down payment requirements; and (v) gradually reduce the investment portfolios of Fannie Mae and Freddie Mac by at least 10 percent per year. In a potential shift from past housing policies, the report notes that homeownership is not the best option for everyone and that a fundamental portion of housing finance reform should focus on the availability of affordable rental housing.



The Plan sets out the Administration's objective to address fundamental and systematic flaws in the mortgage market highlighted by the economic crisis. The report points to many of the reforms called for in the Dodd-Frank Wall Street Reform and Consumer Protection Act as the primary method by which borrower, lender and investor confidence will be restored to the mortgage market. Examples of such reforms in the Dodd-Frank Act include increased underwriting standards, risk-retention requirements for mortgage originators and securitisers, and increased capital standards to provide additional support and cushion to banks during periods of economic decline. Finally, Treasury and the other federal financial regulatory agencies are in the process of developing and implementing national servicing standards and coordinating review of the mortgage industry's foreclosure process.

The Administration outlines three options going forward. The first option would limit the government's role almost exclusively to targeted assistance initiatives for low- to moderate-income borrowers, and borrowers in underperforming or underserved communities. The second option would involve targeted assistance with an incremental government backstop to promote stability and access to mortgage credit in times of market stress. This option (consistent with the Plan generally) assumes that under normal economic conditions there would be little or no government presence in a large portion of the mortgage market; however, government support would scale up if private capital became unavailable or credit otherwise froze in times of distress. The third option includes government support for securities backed by high-quality mortgages, requiring private companies, under strict capital standards and oversight, to guarantee the securities. The government would reinsure the securities at a premium and would not pay a claim until all resources of the private company guarantors are exhausted.

At a minimum, two significant changes to the US housing market are likely under each of the proposed options. First, one would expect a smaller portion of Americans to be homeowners as compared to renters under the revised programs, simply as a function of heightened lending standards and down payment requirements. In fact, in a speech discussing the Plan before the US House of Representative Committee on Financial Services in early March, Treasury Secretary Geithner said repeatedly that home ownership is not the best option for everyone, and the government needs to ensure low cost rental opportunities. Second, one may assume that available mortgage products may carry increased consumer cost, to reflect the increased and ongoing costs and risks borne by private lenders.

The Administration's Plan noted the various advantages and disadvantages of each approach in some detail. Each long-term reform option requires federal legislation to be put into place. As a result, the report urges Congress and the public to evaluate the proposals under certain criteria, including (i) the optimum level of access to mortgage credit needed, including the role of the 30-year, fixed-rate mortgage; (ii) incentives for private investment in the housing finance industry; (iii) taxpayer protection; and (iv) long term financial and economic stability.

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## REFORM OF THE UK FINANCIAL SERVICES REGULATORY STRUCTURE – THE NEXT INSTALMENT

In June of last year the UK Government announced substantial reforms to the UK financial services regulatory structure (see our client alert [“Abolition of the FSA”](#)). Since then the financial services industry has been eagerly awaiting the next instalment of the Government’s reform agenda. That instalment is now here, with the publication by HM Treasury on 17 February 2011 of its next consultation paper ([“the Consultation Paper”](#)). Here we provide some initial thoughts on the paper and the UK Government’s most recent proposals.

### BACKGROUND

In June 2010 the UK Government announced its plans for reform focused on three key institutional changes; the establishment of a new Financial Policy Committee (“**FPC**”) responsible for macro-prudential regulation; a Prudential Regulation Authority (“**PRA**”) responsible for micro-prudential regulation; and a specialist regulator responsible for conduct of business regulation, which had the working title of the Consumer Protection and Markets Authority (“**CPMA**”). The Consultation Paper confirms that the Government has now finalised the name of this body as the Financial Conduct Authority (“**FCA**”).

In July 2010, the Government published its first consultation paper on the proposed reforms and followed this up in November 2010 with a summary response to points made in consultation responses. This identified five key themes:

- The need for the regulatory authorities’ core statutory objectives to be balanced and supplemented with other factors;
- The importance of accountability and transparency for the PRA, the FCA and the CPMA;

- The need for a strong, coherent markets regulation function within the CPMA, including the functions of the UK Listing Authority and responsibility for market abuse enforcement;
- The importance of the European and international agenda, both during the transition phase and in steady state; and
- The importance of effective coordination between the new regulatory authorities.

### THE NEW PROPOSALS

#### Statutory objectives of the new authorities

The UK Government has made clear that it will legislate to provide for a clear primary objective for each new authority.

The FPC’s objective will be to exercise its functions with a view to contributing to the achievement of the Bank of England’s financial stability objective. The responsibility of the FPC will relate primarily to the identification of, monitoring of and taking of action to remove or reduce systemic risks, with a view to protecting and enhancing the resilience of the UK financial system. The Government will also ensure that the FPC takes decisions relating to financial resilience and stability in a way that seeks to reduce the potential for adverse impacts on the medium or long term growth of the UK economy.

The PRA’s strategic objective will be to contribute to the promotion of the stability of the UK financial system.

The FCA’s strategic objective will be to protect and enhance confidence in the UK financial system.



## **Competition**

The UK Government notes that competition will be an important new feature of the regulatory framework and will be incorporated in a way that goes significantly beyond the current framework of the Financial Services and Markets Act 2000 (“FSMA”).

In addition to an operational objective which recognises the importance of efficiency and choice (which the Government sees as core characteristics of a competitive market), the new legislation will place the FCA under a duty to advance its operational objectives, where appropriate, by promoting competition. This will require the FCA to consider competition matters and act upon them when it has identified a problem.

## **Accountability**

The UK Government has made it clear that it is committed to the accountability and transparency of the new regulatory authorities. Each authority will be subject to internal and external mechanisms of accountability.

In the July 2010 consultation paper, the Government included very little obligation on the PRA with regard to good governance, consultation and external transparency. There was strong criticism of this and the new proposals are a significant improvement.

## **A strong markets function**

The UK Government intends the FCA to contain a strong specialists markets regulation function. The UK Government’s commitment to this function was demonstrated in its November 2010 response, where it announced that the UK Listing Authority would be retained within the FCA. At the same time, the Government also announced that the FSA’s criminal prosecution powers in relation to market abuse will be retained within the FCA and will not be given to an Economic Crime Agency.

The markets function will provide the expertise underpinning the FCA’s representation of the UK in the new European Securities and Markets Authority (ESMA), including working with the Bank of England on issues relating to systemic infrastructure.

## **European and international engagement**

An international programme of reform is currently being taken forward by the Financial Stability Board, the International Monetary Fund, the Basel Committee on Banking Supervision and within the EU. The UK Government recognises that engagement with these processes will be a vital part of the UK’s response to the financial crisis and ensuring effective UK representation in European and international forums will be a key part of this.

The UK Government notes that domestic responsibilities do not currently, and will not in the future, map neatly onto the institutional structures within Europe and internationally. It will, therefore, be crucial for the new institutions, as well as the Treasury and the Bank of England, to approach international and European engagement with a consistent, strategic view of the UK’s priorities and interests, and the new legislation will provide for a statutory Memorandum of Understanding between the new institutions to this effect.

Notwithstanding the above, there remains significant scepticism in the City of London about the Government’s preparedness to fight for sensible European regulation and concern that the new UK regulatory authorities will have a weaker voice in Europe compared to the FSA.



## Coordination

The UK Government recognises that effective coordination between the PRA and the FCA will be a vital part of the new regulatory framework and, accordingly, the Government will legislate to provide for a number of coordination mechanisms.

The Government also proposes to provide the PRA with a veto function, to be exercised when the regulators are unable to agree on a course of action and the PRA is “materially concerned” that a proposed action by the FCA would lead to the disorderly failure of a firm or firms, or wider systemic instability.

## Consumer redress

The UK Government recognises that redress and compensation have a part to play in the regulatory system, to provide consumers with appropriate mechanisms to protect them if things go wrong. The Government remains committed to a model in which the bodies responsible for compensation, dispute resolution and financial education are operationally independent of the new regulators. Within this framework of operational independence, the Government proposes to take two different approaches to the independent bodies:

- The FCA and PRA will jointly take on the FSA’s powers and responsibilities in relation to the Financial Services Compensation Scheme; and
- The FCA will solely take on the FSA’s existing functions in relation to both the Financial Ombudsman Service (“**FOS**”) and the Consumer Financial Education Body.

It is said that there will be a better coordinated relationship between the FCA and the FOS than there was between the FSA and the FOS, but it is not clear how this will work.

## Next Steps

The UK Government has made it clear that it is committed to putting the new regulatory architecture in place by the end of 2012. Interestingly, the reforms will be implemented through primary legislation amending FSMA rather than an entirely new piece of legislation. The Government states that this will allow it to implement the changes more quickly, whilst minimising the cost and disruption to firms.

An eight week consultation has now begun, with responses due by 14 April 2011. The Government then intends to publish a White Paper in the spring, including a draft Bill for Parliamentary pre-legislative scrutiny.

The consultation paper is available on the [HM Treasury website](#).

## FSA

The Government believes that the FSA is on track to make the transition to the new regulatory structure by the end of 2012. In April 2011, the FSA will replace its current Risk and Supervision business units with a prudential business unit and a consumer and markets unit, to reflect the new regulatory framework. Following that, the focus will be on changing regulatory processes so that the FSA can begin to operate distinct prudential and conduct approaches to regulation.

The FSA is already beginning to move over to this new approach as outlined in a recent Dear CEO letter by Hector Sants (the letter can be accessed on the [FSA website](#)).

The Bank of England has also begun to take initial steps to implement the new system and in February set up an interim financial policy committee which will begin to shadow the role which the FPC will carry out once the new legislation is passed.

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