



EVERYTHING MATTERS

FINANCIAL SERVICES REGULATION

Exchange – International Newsletter

Issue 6 – December 2010

INTRODUCTION

WELCOME

DLA Piper's Financial Services International Regulatory team welcomes you to the sixth 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, Luxembourg, Spain and the UK as well as news of forthcoming European legislation. 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 impact. In this edition, 'In Focus' will take a more detailed look at the Basel III Accord which represents a comprehensive change to global banking regulation of bank capital requirements and will involve a substantial increase of bank capital for most banks.

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.

CONTENTS

[Europe](#) | [Austria](#) | [France](#) | [Germany](#) | [Italy](#) | [Luxembourg](#) | [Spain](#) | [UK](#)

[United States](#)

[In Focus](#)

[Europe/US Contacts](#)

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](#).

CONTACTS

Editor

Elisabeth Bremner

London

T +44 (0)20 7796 6230

elisabeth.bremner@dlapiper.com

Europe

Mathias Hanten

Frankfurt

T +49 (0)69 271 33 381

mathias.hanten@dlapiper.com

Michael McKee

London

T +44 (0)20 7153 7468

michael.mckee@dlapiper.com

US

Jeffrey L. Hare

Washington D.C.

T +1 202 799 4375

jeffrey.hare@dlapiper.com

James I. Kaplan

Chicago

T +1 312 368 7027

jim.kaplan@dlapiper.com

[Next Page >](#)

EUROPE



EUROPEAN COMMISSION CONSULTATION ON PRIPs

On 26 November 2010, the European Commission published a [consultation](#) on legislative steps for the packaged retail investment products (PRIPs) initiative.

Problems have been identified in the EU retail investment market, including weak and complicated product information, conflicts of interest and fragmented regulation. The Commission announced legislative changes to address these problems in its April 2009 communication on PRIPs. The aim of the consultation is to receive feedback on possible ways to deliver the PRIPs initiative.

The consultation is divided into the following areas:

Scope of the PRIPs initiative. The Commission defines a PRIP as a product where the amount payable to the investor is exposed to fluctuations in the market value of assets or payouts from assets, through a combination or wrapping of those assets, or other mechanisms than a direct holding. The Commission also discusses potential exceptions to the definition and whether it would be appropriate to develop an indicative list of products which are PRIPs.

Legislative approach. The Commission discusses the use of an “instrument” which would require pre-contractual product disclosure targeted at PRIPs sold in the retail market. Such an instrument would apply the same broad principles as developed for the UCITS key investor information (KII) document. The Commission also proposes to use its reviews of the Insurance Mediation Directive (2002/92/EC) (IMD) and the Markets in Financial Instruments Directive (2004/39/EC) (MiFID) to deliver the PRIPs initiative on sales rules.

Product disclosure. The Commission would like to introduce a PRIPs pre-contractual product disclosure regime and discusses how this should be standardised and what the contents of a disclosure document should contain.

The Commission has separately published a consultation on its review of the Insurance Mediation Directive (see below), which should be read alongside its PRIPs consultation.

Consultation will close on 31 January 2011.

EUROPEAN COMMISSION REVIEW OF THE INSURANCE MEDIATION DIRECTIVE

On 26 November 2010, the European Commission published a [consultation](#) on its review of the Insurance Mediation Directive (IMD).

The IMD’s minimum harmonisation regime has resulted in inconsistencies in its application across the EEA. The Commission wants to address these issues. It also wants to ensure that the IMD reflects its ongoing work on PRIPs (see above) and its planned revision of the Markets in Financial Instruments Directive (MiFID).

The Commission is seeking views on proposals relating to the following issues:

- **Policyholder protection.** The Commission suggests that the same obligations concerning disclosure to customers before the sale or renewal of an insurance contract should apply to insurers and to insurance intermediaries.
- **Conflicts of interest and transparency.** The Commission intends to revise the current IMD provisions on conflicts of interest, which it does not consider to be sufficiently clear or effective. It is considering applying high level principles concerning conflicts of interest and transparency to insurance intermediaries and to insurers, possibly based on the MiFID conflicts regime. The Commission may also impose requirements on the disclosure of brokers’ remuneration.
- **The scope of the IMD.** The Commission proposes amending the exemptions from the IMD’s scope so that they derive from particular activities, rather than from specific professions (such as travel agents). The IMD would also apply to direct sales by insurers and to sales made by an insurer on behalf of another insurer.



- **Passporting.** The Commission intends to improve the notification process for passporting under the IMD. It also wishes to amend the IMD to include a definition of freedom of establishment based on its February 2000 communication on the freedom to provide services and the general good in the insurance sector.
- **Professional requirements.** The Commission wishes to establish basic common principles for professional requirements for all sellers of insurance products.

Consultation will close on 31 January 2011.

COUNCIL OF THE EU ADOPTS LEGISLATION ON EU SUPERVISORY FRAMEWORK

The Council of the EU published a [press release](#) announcing that the following legislation reforming the EU supervisory framework was adopted at a meeting of the Economic and Financial Affairs Council (ECOFIN) on 17 November 2010:

- **Regulation** on EU macroprudential oversight of the financial system and establishing a European Systemic Risk Board.
- **Regulation** establishing a European Banking Authority.

- **Regulation** establishing a European Insurance and Occupational Pensions Authority.
- **Regulation** establishing a European Securities and Markets Authority.
- **Directive** amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, 2009/65/EC in respect of the powers of the EBA, the EIOPA and the ESMA (known as the Omnibus I Directive).
- **Regulation** conferring specific tasks on the European Central Bank (ECB) concerning the functioning of the ESRB.

The new EU supervisory system will operate from 1 January 2011 setting up from that date the European Banking Authority (“EBA”), the European Securities and Markets Authority (“ESMA”) and the European Insurance and Occupational Pensions Authority (“EIOPA”). These authorities have separate legal status under EU law and will take a key role in harmonising the approach of national supervisors to the regulation of financial institutions.

AUSTRIA



ABOLITION OF STAMP DUTY FOR LOAN AGREEMENTS

On 27 October 2010, the Ministry of Finance proposed a law which includes the abolition of stamp duty for loan agreements. The draft law (Ministerialentwurf 234/ME XXIV. GP), if enacted in its current form, brings an end to an Austrian singularity: a levy on all credit agreements which demonstrate minimum contact with Austria. Under current legislation, such agreements are subject to a 0.8% tax – in some situations even if the document never physically enters Austria. Stamp duties have been repeatedly criticised for their negative impact on the Austrian economy and the country's international competitiveness. Its abolition has long been demanded by both local and international interest groups. However, even if the bill is enacted, other stamp duties will still be in place, including others for most lease contracts and some guarantee agreements. The deadline for proposals and objections concerning the draft law ended on 17 November 2010. Currently the abolition is scheduled for 1 January 2011.

Please contact jasna.zwitter-tehovnik@dlapiper.com for further information.

BANK LEVY

Austria's government plans to introduce a solidarity bank levy to be imposed on banks from next year as part of the proposed budget for 2011 – 2014. The bank levy shall be designed to make speculation more costly and give incentives for lending to households and businesses.

The bank levy on capital assets will be determined by the size of the bank. For banks with a balance sheet total of more than €1 billion there will be a 0.055% tax levy. For banks with a balance in excess of €20 billion a 0.085% tax levy will apply. Furthermore, banks shall pay an additional tax levy of 0.015%.

The draft for the bank levy is included in the draft for the law implementing the budget measures for 2011 – 2014.

The aforementioned draft is still in the consultation process. However, we expect a decision of the parliament before the end of this year since the legislative package should enter into force on 1 January 2011. This means that it is very likely that a bank levy will be in force from January 2011 onwards.

http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00981/fname_201067.pdf
(available only in German)

Please contact bettina.hoertner@dlapiper.com for further information.

FMA CIRCULAR ON PROSPECTUS LAW

The Austrian Financial Market Authority ("FMA") published a circular regarding prospectus law in accordance with the Austrian Capital Market Act ("KMG", see link below (first part KMG)). The objective of this document is to specify the provisions of the Prospectus Law.

As the competent administrative body for Austria, the FMA stresses that it only investigates whether the prospectus is complete – i.e. whether all the information required by the Prospectus Act is included, is coherent and comprehensible, and complies with any other conditions prescribed by the KMG (see Article 8a para 1 KMG). However, the accuracy of the prospectus or whether all the necessary information in accordance with Article 7 para 1 KMG is included, will not be investigated by the FMA.

This means that the central notion of the Prospectus Law is making available all the essential information an interested investor needs for his investment decision in one document. The issuer is responsible for the accuracy and the completeness of the prospectus.



According to Article 1 para 1 n°1 KMG, a public offering is a communication to the general public in any form that contains adequate information on the terms and conditions of an offering for securities or an investment, and on the securities or investment themselves and that gives potential investors a basis on which to reach an informed decision on the purchase or subscription to securities. A communication to the general public means a communication to a number of people, as well as entries in trading or order systems. Disclosures required by law or activities regarding “market maker functions” are not considered as public offerings.

There are a number of exceptions to the obligation to publish a prospectus, as described by Article 3 para 1 KMG. For example, a securities or investment offer that is addressed exclusively to qualified investors does not need to include a prospectus. Qualified investors are defined in Article 1 para 1 n° 5a KMG. Both legal entities and natural persons may be deemed qualified investors.

A prospectus must also include a chapter on risks. The essential risks shall be clearly defined, so that the investor obtains a comprehensive picture of the whole investment and the risks involved therein. The prospectus should also stress that the realisation of the risk may lead to a whole or partial loss of the invested capital.

<http://en.wienerbourse.at/static/cms/sites/wbag/media/en/pdf/agb/kapitalmarktgesetz.pdf>

Please contact bettina.hoertner@dlapiper.com for further information.

FRANCE



INSIDER DEALING WITHIN LISTED COMPANIES

The French Securities Regulator (AMF) published detailed Recommendation and Guidance on the prevention of insider dealing by persons holding management positions within listed companies. The recommendation follows the conclusions of Bernard Esambert, a member of the AMF board, who was appointed by the AMF in April 2010 to review this issue after several cases of suspected insider dealing by high profile executives were publicised in the French press. The AMF Recommendation describes a range of best compliance practices to avoid suspicions of insider trading by persons who, by virtue of their management positions, are “quasi-permanent insiders”. It suggests that the AMF (and the Criminal Courts) should impose more severe sanctions for such offences, and welcomes the fact that the recent law on Banking and Financing Regulation (see below) has increased the maximum fine which the AMF can impose from €10 million to €100 million. The AMF’s major operational recommendation, however is that managers and executives should enter into “mandats de gestion programmée” (planned investment management agreements), partly copied from “trading plans” developed in the UK and the US, whereby the appointed investment manager would benefit from an effective independence, and which would afford to executives a rebuttable presumption that any investment management decisions were not made on the basis of insider information.

http://www.amf-france.org/documents/general/9673_1.pdf (available only in French)

FRENCH BANKING AND FINANCIAL REGULATION BILL

On 11 October 2010, the French Parliament adopted the French Banking and Financial Regulation Bill (Loi de Regulation Bancaire et Financière). The 100 page Bill contains a number of significant provisions relating notably to:

- Credit Rating Agencies: a specific liability regime is created, enabling third parties (and not only the issuer being rated) to claim damages from CRAs.

- Short Selling: the AMF is now empowered to adopt permanent and general disclosure rules regarding not only short selling but any short positions generally.
- Naked Short Sales/Settlement and Delivery Dates: to avoid naked short sales, a new regime is enacted inspired by US securities rules and the EU Commission’s draft rules regarding short sales and credit default swaps (CDS). Further, the settlement date will be reduced from three to two trading days.
- Temporary Holdings prior to Shareholders’ Meetings: in order to limit adverse effects of shareholder activism, new disclosure rules are provided, relating to the temporary holding of voting shares before shareholders’ meetings are envisaged.
- Mandatory Takeovers: the threshold for mandatory takeovers is decreased from 1/3rd to 30% of the share capital or voting rights of a French issuer.
- AMF powers: the powers of the AMF are reinforced in a number of areas:
 - the AMF may settle cases involving suspected administrative breaches (other than market abuse);
 - Credit Rating Agencies and derivatives now fall under the control and sanctions powers of the AMF;
 - Maximum fines which the AMF Sanctions Committee may impose have been multiplied by ten. Investment service providers (ISPs) now face fines of up to €100 million);
 - In addition to the parties involved, the President of the AMF may now file an appeal against decisions of the AMF Sanctions Committee; and
 - In cooperation with the Commission de Régulation de l’Energie (Regulatory Authority for Energy), the AMF is designated as the Regulator for Carbon markets.

Please contact jean.lhomme@dlapiper.com for further information.

GERMANY



THE DRAFT INVESTOR PROTECTION IMPROVEMENT ACT

The German legislators intend to improve investor protection with regard to bad advice and have recently issued the draft Act, subject to the Federal Council's consent. The Act is scheduled to come into force in spring 2011. The Act brings in an amended approach to investor protection and will strengthen the rights of private investors.

The legislation is in response to the financial crisis; with the legislator taking the view that investment firms did not thoroughly take care of the client's interest in the past. German retail investors suffered substantial losses from, for example, Lehman Bank certificates, which in a number of cases were not explained to the customers. Furthermore, those certificates carried substantial kick-back fees for the investment firms which marketed the certificates.

The legislation, inter alia, imposes higher advisor professional qualifications and criticises the fact that the banks' employees were very much dependent on incentive schemes, which did not take into account the clients' interests but rather the investment firms' remuneration.

In addition to a new requirement for a short information brief, which can summarise the prospectus, the new structures use four columns to base the new regulation on. These columns will be integrated into the German Securities Trading Act ("WpHG"). The reasoning of the draft makes clear that, pursuant to home country supervision, the amendments will only apply to investment firms with their registered office in Germany. The German legislator seems to claim that the amendments are a further transposition of MiFID.

The regulator will set up a data base in which investment firms must record all their investment advisors, marketing officers and compliance officers. The investment advisors' professional know-how must be displayed. The firms will be obliged to report customers' complaints to the regulator and display the names of the investment advisors and the marketing officers who were complained about. Therefore, all customers' complaints can be allotted to the member of bank staff whose conduct led to the complaint.

The amended WpHG will impose an express duty on the investment firm to recommend only suitable financial instruments to customers. The duty is connected to the suitability test (Art.19 para. 4 of MiFID). However, the current transposition does not enable administrative proceedings to be taken against those banks that failed their suitability test obligations.

If investment firms fail to engage fit and proper personnel, the regulator may take direct action against those members of staff that have been identified as not fit and proper and may prohibit them from carrying out further activities in their role as investment advisor.

A new marketing organisation must make sure that the marketing approach of investment firms will not be detrimental to clients' interest. This has specific impact on the marketing staff's remuneration.

This new approach will have a severe impact on the industry. Firstly, the requirements will affect about 300,000 staff. The new regime for customers' complaints may cause disturbance among the firms' staff. Further, the new marketing organisation will impose major changes for the banks' remuneration policy, which must also comply with the remuneration requirements, e.g., under the CEBS guidance on remuneration. The views of the market participants differ. While the consumer protection associations support the Act, the industry associations question the effect of the initiative and claim that the new reporting tools will require substantial investments with limited benefits.

Please contact mathias.hanten@dlapiper.com for further information.

ITALY



THE CORRECTIVE DECREE FOR CONSUMER CREDIT REGULATION

As stated in the previous issue of Exchange, the consumer credit legislation has been substantially enacted by the Legislative Decree No. 141 of August, 13 2010 (the “Decree”).

However, the government has now submitted to the Parliament a corrective decree aimed at specifying or amending some of the relevant provisions in the Decree. The corrective decree will most probably be issued by the end of 2010.

The corrective decree:

- Confirms that financial intermediaries will have to comply with the new provisions regarding consumer credit within 90 days from the relevant measures to be implemented by the Bank of Italy. These measures will be adopted within 190 days after the coming into force of the Decree: this means that the final implementation of the consumer credit regulation is expected by the first half of 2011;
- Specifies that the new regulation concerning transparency provisions (the so-called “trasparenza bancaria”) would apply after 120 days from the approval of the Decree (whilst the Decree had established a 90 days period); and
- Clarifies that financial intermediaries currently enrolled under the register kept by the Bank of Italy may continue to operate for 1 year following the constitution of the Entity responsible for the verification of the requirements in the legislation. Such an Entity will be formed no later than 31 December 2011. Similar terms will also apply to financial/banking services brokers and financial advisers.

Please contact marco.zechini@dlapiper.com for further information.

LUXEMBOURG



MODIFICATIONS AND CLARIFICATIONS OF ANTI MONEY-LAUNDERING AND TERRORIST FINANCING LEGAL FRAMEWORK

The Luxembourg anti money-laundering (“AML”) and terrorist financing legal framework has been significantly amended by the Law of 27 October 2010 (“New AML Law”), which entered into force on 6 November 2010. The New AML Law enhances the AML and counter terrorist legal framework. It introduces a law controlling the physical transport of cash entering, transiting through, or leaving the Grand Duchy of Luxembourg. It also introduces a law implementing the United Nations Security Council resolutions and Acts adopted by the European Union on prohibitions and restrictive measures in financial matters against certain persons, entities and groups in the context of combating terrorist financing.

The implemented amendments and clarifications to the Luxembourg AML framework have to be regarded as the direct follow-up to the Financial Action Task Force (FATF) report and recommendations in February 2010, by which the FATF had highlighted a number deficiencies in the existing Luxembourg AML framework. The New AML Law has a substantial impact on the Luxembourg AML legislation. Twenty-one Luxembourg laws or codes have been amended by the New AML Law, including, the Law of 12 November 2004 on the Fight Against Money-laundering and the Financing of Terrorism, the Criminal Code, the Criminal Procedure Code, the Law of 5 April 1993 on the Financial Sector and the Law of 7 March 1980 on the Judicial Organisation.

The New AML Law reinforces and clarifies the existing Luxembourg AML legislation. It provides clarification on the offences, their definitions and the sanctions to be applied. On the sanction side, the New AML Law significantly enforces sanctions for breaches of professional obligations which may be up to €1,250,000 in case of intentional breach. The scope of AML legislation is extended to managers and advisors of UCITS(3), SICARs and pension funds, securitisation vehicles acting as service providers and “fiduciaries”, insurance and reinsurance undertakings and their intermediaries in certain circumstances, foreign professionals providing services in Luxembourg on a cross-border basis without having a branch in Luxembourg and any other entity performing an activity mentioned in the New AML Law. Furthermore, a written policy of a company’s specific business risk analysis is required in terms of AML for all entities in the scope of the New AML Law. With regard to politically exposed persons, clarification on their definition and monitoring requirements has been introduced. The monitoring of politically exposed persons, for example, has been extended to the beneficial owner of the customer.

<http://www.legilux.public.lu/leg/a/archives/2010/0193/a193.pdf> (available only in French)

Please contact andrea.muenchen@dlapiper.com for further information.

SPAIN



EUROPEAN COMMISSION APPROVES AID FOR RESTRUCTURING OF SPANISH SAVING BANK CAJASUR AND THE SALE OF ITS BANKING ACTIVITIES

The European Commission has authorised, under EU state aid rules, Spanish aid for the restructuring of CajaSur, a savings bank, and the sale of its banking activities. The European Commission considers that the restructuring plan adequately addresses the problems that led to the bail-out of the bank in May 2010, whilst avoiding undue distortions of competition.

CajaSur provided retail banking services in the region of Andalucía, in southern Spain. It got into financial difficulties in particular due to its significant exposure to developers and other real estate-related transactions. The Bank of Spain intervened in May 2010, placing it under the control of the Fund for Orderly Bank Restructuring (Fondo de Reestructuración Ordenada Bancaria or FROB). FROB provided CajaSur with two temporary rescue measures: a capital injection of €800 million, to meet regulatory capital requirements, and a liquidity line of €1,500 million to meet its estimated liquidity needs until its restructuring were finalised. In July BBK SA, another Spanish savings bank, agreed to buy the banking business of CajaSur after an open and competitive tender. Before the sale becomes effective, CajaSur will repay the capital injection to FROB. The liquidity measure, which was never used, will be terminated.

As part of the sale, a guarantee for five years of approximately €392 million on losses stemming from a €5.54 billion portfolio of loans has been granted by the FROB to the banking business bought by BBK Bank. The European Commission decision finds that the liquidation of CajaSur and the sale of its banking business in an open and competitive tender ensured that the sold business became viable without continued state support.

The European Commission further concluded that the distortion of competition caused by the significant amount of aid compared to the size of the banking business – in June 2010 it had a total balance sheet of €17.6 billion – was limited by the liquidation of CajaSur and the sale of its banking business through an open and competitive auction. Furthermore, CajaSur had a limited market presence in the Spanish banking market of around 0.8% in mid 2010.



FSA CONSULTS ON REMUNERATION DISCLOSURE REQUIREMENTS

FSA, 10 November 2010

The FSA has published a [Consultation Paper](#), CP10/27, on the implementation of remuneration disclosure requirements based on those set out in the Capital Requirements Directive (CRD3). CRD3 requires firms to disclose information on their remuneration policies and pay-outs on an annual basis.

The consultation period ends on 8 December 2010 and the FSA intends to publish a Policy Statement on remuneration disclosure in mid-December. The CRD3 requirements come into force on 1 January 2011 so there is little time for firms to complete implementation. The changes apply to all BIPRU firms.

FSA “KNOW YOUR RIGHTS” BOOKLET PUBLISHED

FSA, 9 November 2010

The FSA has launched a [“Know Your Rights” booklet](#) for bank and building society customers, to clarify the service standards customers can expect and to mark the first anniversary of the regulation of banking conduct. The booklet covers typical scenarios that might affect customers and is intended as a key source of information that will develop over time. The FSA has stated that it will be updated to keep customers aware of any new issues affecting their rights.

FSA GRANTED NEW CONSUMER REDRESS POWER

FSA, 12 October 2010

As part of the Financial Services Act 2010, [the FSA has been granted a new power](#) to deliver prompt and effective redress for consumers when firms have not followed FSA rules. A Commencement Order was laid in Parliament on 12 October 2010 by HM Treasury. The FSA can use the new power in instances where there is evidence of widespread or regular failings that have caused consumer detriment.

A consumer redress scheme can secure redress for consumers of services provided by:

- Authorised persons in carrying on regulated activities;
- Authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;
- Authorised persons in communicating, or approving the communications by others of, invitations or inducements to engage in investment activity;
- Authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;
- Persons acting as appointed representatives; and
- Payment service providers in providing payment services.

The FSA notes that the new power is a rule making power, so the FSA must undertake cost-benefit analysis and consult each time that it wants to establish a redress scheme. A comparison of the advantages and disadvantages of a consumer redress scheme against other available tools will form part of the decision making process. The Financial Services and Markets Act 2000 provides a range of other tools, for example, own initiative variation of permission and restitution orders.



BBA SEEK JUDICIAL REVIEW OF FSA'S NEW PPI COMPLAINTS HANDLING MEASURES

On 8 October 2010, the British Bankers' Association (BBA) published a [statement](#) confirming that it has filed papers with the High Court seeking judicial review of the FSA's new rules on the handling of payment protection insurance (PPI) complaints.

The background to the action is that in August 2010, the FSA published a [policy statement](#) with final rules on the assessment and redress of PPI complaints, introducing measures intended to ensure that customers are treated more fairly and consistently. Firms are required to implement these new rules by 1 December 2010.

The BBA press release states that it has sought judicial review "*because there is insufficient legal clarity about what the FSA and Financial Ombudsman Service is proposing in this area. Everyone's actions must be assessed on the basis of a proper understanding of the relevant law and regulation and this procedure will bring this about*".

The BBA states that it believes that the FSA is effectively creating a precedent which permits it to apply new rules to previous sales, even where those sales were regulated by other FSA rules. The BBA is therefore concerned that the rules might not only affect customers who have bought PPI, but might also set a precedent that could affect all products regulated by the FSA.

The FSA has [stated that it will contest the BBA's judicial review](#) and believes that the package of new complaint handling measures outlined in its policy statement is "*a sensible and fair solution for consumers and the industry alike*".

The FSA notes that in the last five years there have been more than a million complaints made to firms about PPI. In 2009/2010, customers referred 49,196 complaints to the Financial Ombudsman Service, which then upheld nine out of ten in the complainant's favour.

Since the FSA took on regulation of PPI in 2005, it has taken enforcement action against 24 firms for sales failings. The FSA has carried out three thematic reviews, issued warnings, halted the selling of single premium PPI with unsecured personal loans and visited over 200 firms in order to improve the market.

FSA CHIEF EXECUTIVE ADDRESSES THE ROLE THAT CULTURE AND ETHICS PLAY IN SHAPING BEHAVIOUR AND JUDGMENTS

FSA, 4 October 2010

The chief executive of the FSA, Hector Sants [gave a keynote address](#) at a Mansion House conference on values and trust. Exploring the role for regulators in facilitating the right culture within firms, Sants said that it is crucial to address the role that culture and ethics play in shaping behaviours and judgments and until this issue is addressed it is impossible to prevent another financial crisis and the trust of society in the financial system will not be restored.

Also addressing the issue of remuneration, Sants considered bonuses paid to bankers and stated that he believed that until bankers demonstrate sensitivity and restraint in this area, public trust will not be restored.

CHANGES TO THE CLIENT ASSETS REGIME

On 20 October 2010, the FSA published a [Policy Statement](#), PS10/16, which introduces a number of rules which aim to enhance standards of client protection in the UK, as well as market confidence and financial stability. In March 2010, the FSA published a [Consultation Paper](#), CP10/9, containing proposals to enhance the protections offered by its Client Assets Sourcebook (CASS) in response to issues highlighted by the global financial crisis and a number of insolvency appointments, most notably that relating to the insolvency of Lehman Brothers International (Europe). The Policy Statement summarises the feedback received from the consultation and the final form changes to the CASS rules.



This Policy Statement will be of interest to regulated investment firms and groups who hold the relevant client assets and money permissions, as well as:

- Their senior management and staff with client money and/or assets responsibility;
- Their trade associations; and
- Firms who intend to hold or control client money.

The major areas of reform are the following:

- Prime brokerage agreements are to include a mandatory disclosure annex summarising re-hypothecation provisions;
- Daily reporting is to be provided by firms to all clients of UK authorised prime brokers;
- Intra-group client money deposits are to be restricted to 20 per cent of the firm's total client money held in client bank accounts;
- General liens are to be prohibited in custodian agreements;
- New CASS oversight controlled function CF10a to be introduced;
- A new client money and assets return framework to be introduced; and
- Reintroduction of a Client Money and Assets Return (CMAR) to FSA.

The new rules will come into force over the course of 2011. In early January 2011, all firms with the relevant investment business and client assets permissions and requirements will be sent an email requesting certain information about their client money and asset holdings.

The FSA have also published a [Consultation Paper](#), CP10/20, which sets out their proposals that aim to produce improvements in the quality and consistency of the auditors' report on client assets. The Paper proposes FSA Handbook amendments to confirm and clarify the standards required for the auditor's report on client assets, increase and make consistent the information provided within the auditor's report to enhance its supervisory value, and improve firms' governance oversight of their auditors and client assets compliance.

FSA CONSULTS ON ELECTRONIC MONEY DIRECTIVE

On 29 October 2010, the FSA published a [Consultation Paper](#), CP10/25, on the Implementation of the new Electronic Money Directive (2009/110/EC) ("2EMD"). 2EMD was adopted by the European Parliament and the Council of the European Union on 16 September 2009. It has an implementation deadline of 30 April 2011 for member states. The Paper supplements a [Consultation Paper](#) published by HM Treasury on 22 October 2010, which sets out the changes that need to be made to the legal framework on electronic money to implement 2EMD.

The FSA consultation focuses on the technical changes that will be made to the FSA's Handbook. There will be changes to the Financial Ombudsman Service's jurisdiction so it can perform an out-of-court redress function for issuing and redeeming electronic money and consequent changes in the scope of the complaints handling rules (DISP).

The deadline for responses to the FSA's consultation was 30 November 2010. The final Handbook changes will take effect on 1 May 2011. The FSA intends to provide guidance about the regulatory regime for electronic money issuers in an electronic money approach document, the content of which it is discussing with an industry stakeholder group that it has established.



ENFORCEMENT DECISIONS

FSA bans three fraudulent mortgage brokers and imposes fines totalling more than £400,000

FSA, 12 October 2010

The FSA has [banned three individuals](#) from working in the financial services industry for mortgage fraud and fined two of them a total of £414,683. Mark Bates of Pace Financial Management, Sheffield, Alan Hill also of Pace Financial Management and Waqarul Hassan Shah of K S Financial Services, Manchester knowingly submitted false and misleading information to secure mortgages for themselves and their customers.

Bates obtained a mortgage for himself using false payslips and P60s and also submitted a mortgage application for a client using false income and employment information. Furthermore, Bates gave mortgage advice despite not being qualified. The FSA's investigation also indicated that Bates had recruited an advisor that he knew had been dismissed twice before for gross misconduct, therefore wilfully disregarding his obligation to monitor the actions of his staff and allowing the firm to be used for financial crime.

Hill admitted to manufacturing false documentation then using it to fraudulently apply for mortgages for six customers. Hill also admitted to creating false documentation that he knew would be used for mortgage fraud by a third party and in two cases was paid by a third party for doing this. Hill's misconduct resulted in his firm, Pace Financial Management, committing a breach of Principle 1 of the FSA's Principles of Business, which states that a firm must conduct its business with integrity.

Shah knowingly submitted false income figures on a mortgage for himself and was also found to have acted recklessly by submitting false and misleading details in a customer's mortgage application. In addition, the FSA found that Shah had failed to put in place adequate systems and controls to prevent false and misleading applications being submitted to lenders and to ensure customer files were checked.

Both Bates and Hill have also faced criminal convictions for their behaviour following an investigation by South Yorkshire Police.

FSA wins market abuse case in the Tribunal

FSA, 20 October 2010

The Upper Tribunal (Tax and Chancery Chambers) (the "Tribunal") [has issued its decision in the matter of Andre Jean Scerri and the FSA](#). The Tribunal decided that it was appropriate to impose a financial penalty of £66,062.50 for market abuse.

The fine represents disgorgement of profits made through the use of inside information and a penalty of £20,000 for engaging in market abuse. The Tribunal's decision increases the penalty of £46,062.50 originally imposed by the FSA.

Scerri was a private investor in Amerisur Resources (then known as Chaco Resources Plc), an oil and gas exploration company whose shares are admitted to trading on the Alternative Investment Market of the London Stock Exchange.

Scerri was provided with inside information by another retail investor. The FSA found that Scerri took advantage of that information by selling his existing position, and rebuilding it at a discounted price, despite knowing that he should not do so.

The FSA originally decided not to impose the penalty of £20,000 on Scerri, on the grounds that it would cause serious financial hardship. However, in a hearing on 21 May 2010, the Tribunal ruled that information that Scerri had provided to the FSA in connection with his financial hardship claim was incomplete and misleading and found that Scerri's current financial situation was as a result of self-induced damage occurring after he became aware of the proposed penalty. The Tribunal considered that Scerri's market abuse was serious and they decided to impose the additional £20,000 financial penalty irrespective of his current financial position.

On 19 December 2008, the FSA fined Steward McKegg and Brian Valentine Taylor for market abuse in relation to Amerisur. On 1 September 2009, the FSA fined Mark Lockwood



for breaching Statement of Principle 3 of the FSA's Principles for Approved Persons in relation to his failure to file and STR in relation to suspicious trading in Amerisur by a client.

FSA FINES MORTGAGE LENDER AND ITS DIRECTOR FOR IRRESPONSIBLE LENDING AND UNFAIR TREATMENT OF CUSTOMERS IN ARREARS

FSA, 4 November 2010

The FSA has [fined small mortgage lender, Bridging Loans Ltd, £42,000 and its director Joseph Cummings £70,000](#) for serious failings relating to lending practices and for failing to treat customers fairly in arrears. The FSA has also banned Cummings and taken action to prevent three other directors at the firm from being able to operate in senior positions within the financial services industry.

The FSA regards the failings as particularly serious as they impacted on customers who were financing or re-financing their home, some of whom already had impaired credit histories. This is the first case of its kind by the FSA against a mortgage lender's senior management concerning irresponsible lending and unfair practices in respect of dealing with customers in arrears.

FSA CONSULTS ON CHANGES TO THE FSA HANDBOOK AS A RESULT OF GOVERNMENT REFORMS TO WORKPLACE PENSION SCHEMES

FSA, 9 November 2010

The FSA has published a [Consultation Paper](#) outlining changes to the Conduct Of Business Sourcebook in the Handbook following the Government's confirmation of workplace pension reforms.

From October 2010, employers have been required to automatically enrol their eligible employees into a qualifying pension and contribute into it. One option for employers is the National Employment Savings Trust ("NEST"), a multi-employer occupational

pension scheme. The FSA is proposing changes to its Conduct of Business sourcebook to ensure that consumers remain protected and that there are no unnecessary barriers to employers using group personal pensions for automatic enrolment.

The consultation period ends on 9 February 2011. The FSA proposes to publish a Policy Statement with final Handbook text in the second quarter of 2011.

FSA PUBLISHES POLICY STATEMENT ON THE TAPING OF MOBILE PHONES – FEEDBACK ON CP 10/7 AND FINAL RULES

FSA, 11 November 2010

The FSA has published a [Policy Statement](#) reporting back on the responses it received to its Consultation Paper, CP 10/7: Taping: Removing the Mobile Phone exemption. It describes the FSA's final policy decision and includes the Handbook text that will give effect to that policy. The FSA has decided to remove the current exemption (COBS 11.8.6R(1)) which applied to mobile phones and other handheld electronic communication devices from its taping rules. The FSA will require the recording and storage for a period of six months of all relevant communications made with, sent from, or received on mobile phones and other handheld electronic communication devices. The FSA will also introduce a rule requiring firms to take reasonable steps to ensure that such communications do not take place on private communication equipment that firms cannot record for privacy reasons.

Firms must comply with the changes to the taping rules by 14 November 2011.

SPEECH ON THE FSA'S MORTGAGE MARKET REVIEW: WHAT IT MEANS FOR INTERMEDIARIES

11 November 2010

Sheila Nicoll, Director of the Conduct Policy Division at the FSA gave a speech to the Mortgage Business Expo in which she provided an update on the progress of the



FSA's Mortgage Market Review (“**MMR**”) since last year. The MMR aims to address the major failures that occurred in the mortgage market and to replace risky lending and unaffordable borrowing with a return to commonsense standards. Because of firms' failures to undertake proper affordability checks, the FSA is proposing that income must be verified in all cases and that every lending decision should be based on the borrower's free disposable income. The FSA expects intermediaries to play a role in assessing affordability by checking whether the consumer fits within expected parameters of the lenders' affordability criteria. Instead of placing detailed affordability rules on intermediaries the FSA will impose high-level requirements which will require intermediaries to ensure that a customer is eligible for the product and that it is appropriate for them. Lenders will be ultimately responsible for assessing affordability.

On 16 November 2010, the FSA published a [Consultation Paper](#) “Mortgage Market Review: Distribution & Disclosure”, CP 10/28, in which it outlines proposals which focus on enhancing the mortgage sales process, the role of intermediaries and improving disclosure of information for customers.

DLA Piper has published an update on the FSA's mortgage market review, including FSA enforcement action and next steps. Please click [here](#) for further information.

The FSA will be running a number of MMR roadshows for intermediaries across the UK in December 2010 and January 2011.

PROPOSED DEAR CEO LETTER ABOUT FSA LIQUIDITY REGIME

December 2010

In January 2010 the FSA wrote to all chief executives of authorised firms subject to the new liquidity regime contained in the Prudential Sourcebook for Banks, Building Societies and Investment Firms (BIPRU), requesting confirmation that their firms were in compliance with the new regime. A majority of firms indicated that they were not

in compliance. These firms received a follow-up letter from the FSA setting out the requirements for compliance and the possible sanctions for non-compliance.

The FSA also sent a follow-up letter to a sample of the firms that confirmed their compliance, requesting further information about the systems they had put in place to ensure their compliance.

Following this review, the FSA published a guidance consultation setting out a proposed “Dear CEO” Letter, to highlight the areas of concern where the FSA found that firms were often not in compliance including:

Pricing liquidity risk — the FSA expects to see that firms are employing a centrally managed “funds transfer process” that allocates rewards to the part of the business that raises liabilities and charges parts of the business that take exposure via assets. The FSA believes that a failure to do so could result in a misalignment of risk incentives. The FSA went on to state that the process should attribute the costs, benefits and risks instead of holding the costs at the centre; be applied on a granular level; be applied consistently to on and off balance sheet businesses; utilise automated inputs where possible; avoid using only blended historical and/or budgeted funding costs and allow senior management to consider the marginal cost of funding where appropriate.

Intra-day management of liquidity — the FSA expects to see that a firm has, as a minimum, contingent procedures in place to deal with an unexpected reduction in a daylight limit and also an operational failure of its agent.

Management of collateral — the FSA expects to see that any firm that is exposed to risks from movements of collateral in cash or securities maintains the ability to calculate positions and mobilise resources from a central treasury function. The FSA reminds those firms whose only requirement around collateral management is related to derivative exposure, that an efficient process is essential to manage counterparty perceptions of liquidity.



REGULATORY PROGRESS IN DODD-FRANK ACT IMPLEMENTATION

Almost five months have passed since the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) was signed into law. As 2010 draws to a close, U.S. regulators are now fully engaged in drafting proposed rules, holding meetings with interested stakeholders, seeking public input and conducting the numerous studies called for in the Act. Information-gathering being conducted by the agencies is perhaps one of the most important activities at the moment – as it will help develop some of the scope and baseline definitions for many of the Act’s key provisions.

Several agencies are tackling the rulemaking process head on, recognizing that proposed rules for some of the Act’s most controversial and politically-charged issues will likely result in the largest number of comments, require the most factual development and take the most time to finalize. For example, the Federal Reserve Board has indicated its plans to issue proposed amendments to Regulation E to incorporate the Durbin Amendment – calling for new regulatory standards for determining the reasonableness of debit interchange fees – before the end of the year. Below are some of the more significant rulemaking efforts that are underway.

Recent Proposed and Final Rules

Systemically Important Nonbank Financial Companies. One of the first initiatives of the Financial Stability Oversight Council (the “FSOC”), a new regulatory body created by the Act, involved an advance notice of proposed rulemaking seeking public comment on the FSOC’s authority to designate nonbank financial companies as systemically important. The advance notice was published in the *Federal Register* on October 6, 2010. Nonbank financial companies so-designated under the final rule will be subject to, among other things, oversight by the Federal Reserve, enhanced prudential supervision and, in some cases, capital standards and activities limitations similar to those existing for holding companies of insured depository institutions. It is also expected that such

companies will be subject to the resolution authority of the Federal Deposit Insurance Corporation (the “FDIC”) under Title II of the Act and be required to adopt and annually update resolution plans or “living wills.” Comments on this advance notice were due on November 5, 2010.

Systemically Important Financial Market Utilities. At its November 23rd meeting, FSOC undertook another initiative that is captured in a advance notice of proposed rulemaking regarding the designation of financial market utilities as systemically important and subject to additional supervision and regulation. Financial market utilities are defined in the Act as “a multilateral system [managed or operated] for the purpose of transferring, clearing, or settling payments, securities, derivatives or other financial transactions among financial institutions or between financial institutions and that person.” Like the earlier notice on nonbank financial companies, this notice invites comment on the criteria and analytical framework FSOC should apply in designating financial market utilities as systemically important under the Act. This notice has the potential to bring previously unregulated companies and market participants under federal regulation. Comment on the notice will be due 30 days after publication in the *Federal Register*.

Bureau of Consumer Financial Protection Timeline. The Bureau of Consumer Financial Protection (the “Bureau”) is another new federal financial regulator with substantial rulemaking obligations created by the Act. On September 20, 2010, the Bureau issued a notice designating July 21, 2011 (the Act’s one year anniversary) as the transfer date of certain functions from other federal agencies, primarily to the Federal Reserve, to the Bureau. As the Bureau selects and convenes its implementation team, it is anticipated that additional rules and regulations will be issued to develop the Bureau’s internal policies and procedures and address its stated mandate of setting and enforcing “clear, consistent rules that allow banks and other consumer financial services providers to compete on a level playing field and that let consumers see clearly the costs and features of products and services.”



Deposit Insurance Reforms. The FDIC has issued final rules called for in the Act for, among other things, increase of the standard maximum deposit insurance limits from \$100,000 or \$250,000, and unlimited deposit insurance coverage for noninterest-bearing transaction accounts for two years beginning on December 31, 2010. The FDIC has also issued proposed rules under the Act that remain open for comment, including rules modifying the deposit insurance assessment calculation to reflect a formula based on total assets less tangible equity, as opposed to total insured deposits. Comments on these rules are due by January 3, 2011.

Derivative Participant Definitions. On December 7th, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Federal Reserve, further defined the terms “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant,” and “eligible contract participant.” Each of these terms are used in, and have certain implication under, the Act. As proposed, a “security-based swap dealer” is a person who: (i) holds himself out as a dealer in security-based swaps; (ii) makes a market in security-based swaps; (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for their own account; or (iv) engages in activity causing himself to be commonly known in the trade as a dealer or market maker in security-based swaps. The rules also create a de minimis exemptions for those who meet the foregoing definition but do not engage in more than 20 security-based swaps as a dealer, do not engage in more than \$100 million (or \$25 million with certain “special entities”) in security-based swaps, and do not have more than 15 counterparties – in each case over the prior 12 months. A “major security-based swap participant” is someone who maintains a

substantial position in any major security-based swap category (excluding, except in the case of highly leveraged financial entities without capital requirements imposed by a federal banking agency, hedging or commercial risk mitigation positions) or maintains substantial counterparty exposure that could have serious adverse effects on financial stability.

Public Comments on the Volcker Rule. The Act prohibits banking entities from engaging in proprietary trading and from maintaining certain relationships with hedge funds and private equity funds, commonly referred to as the Volcker Rule. Under the Act, FSOC is directed to study and make recommendations which must be considered by the banking and securities regulators as they implement the prohibitions. FSOC is now soliciting public comment to inform its study, which represents the first opportunity for interested industry participants to voice their concerns or expectations and help shape the ultimate implications of the Volcker Rule.

The outcome of these and other regulatory actions is critical as US agencies continue to shape and create the scope, framework and ultimate implications of the Dodd-Frank Act. They also provide insight into the thinking and analyses being conducted by the various agencies. The rulemaking process under the Act will be ongoing for several months, with significant opportunity for interested parties to weigh-in on the outcome of final regulations.

Please contact jeffrey.hare@dlapiper.com or christopher.steelman@dlapiper.com for further information.



BASEL III ANNOUNCED

The Basel III Accord endorsed by the G20 countries in Seoul in November 2010 represents a comprehensive reform of global banking regulation and will involve a substantial strengthening of bank capital requirements:

- There will be a strengthening of the quality of capital required to be held by banks;
- The minimum level of core bank capital will be increased;
- Banks will be required to hold a separate capital conservation buffer;
- A countercyclical buffer will also be implemented according to national circumstances; and
- A non-risk based leverage ratio will be introduced.

Basel III is at the core of the Basel Committee on Banking Supervision (BCBS's) efforts to apply lessons learnt from the global financial crisis. Regulators have said that they hope that the changes will push banks towards less risky business strategies and ensure that they have enough reserves to withstand financial shocks, thus avoiding a repeat of the recent crisis. Basel III revises certain aspects of the Basel II framework and will be implemented in the EU via CRD IV, the Fourth Capital Requirements Directive.

Improved Capital Quality and Deductions

Under Basel III, there will be strengthening of the quality of capital required to be held by banks:

- There will be new requirements for the composition of Tier 1 capital. Tier 2 capital will be less important in the calculation of bank regulatory capital and Tier 3 capital will be abolished entirely.
- Tier 1 capital must be made up of predominantly equity and retained earnings.

- All innovative hybrid forms of capital, such as certain perpetual securities, which had been viewed since 1998 by the BCBS as economically equivalent to Tier 1 capital (up to a set maximum of 15%), will be excluded from Tier 1 capital.
- Non-core Tier 1 capital will need to meet virtually identical requirements as common equity instruments in relation to loss absorbency.
- The minimum capital ratio for common equity, which is the highest form of loss absorbing capital, will increase to 4.5% from the current level of 2%.
- The Tier 1 capital ratio (which includes common equity and other qualifying financial instruments based on stricter criteria) will increase from 4% to 6%.
- The current limit under Basel II of 2% core capital is set as a percentage level before certain adjustments are made, for example deductions for certain significant exposures that are not comprised in the weighting of the risk weighted asset portion. The new limit of 4.5% is set assuming that this level is reached after the adjustments for such significant exposures have been made. Banks will therefore need to make necessary deductions from core capital prior to the calculation of the minimum level of core capital.

Definitions in Basel II of the constituent parts of bank capital consisting of Tier 1, Tier 2 and Tier 3 were not detailed or prescriptive. Following the experience of the financial markets during the financial crisis, policymakers were intent on changing this. This ultimately results in less flexibility for banks in raising funds on the international capital markets that are eligible for inclusion in the regulatory own funds calculation. Banks are already now considering alternatives. The recent issuing of contingent capital instruments by a number of significant European banks may be seen as one of the innovations in response to the Basel III accord.

The new requirements will also prevent banks from meeting capital adequacy rules by using mid-term subordinated instruments (Tier 3 capital) as loss absorbing capital for exposures in the trading book.



Capital Conservation Buffer and Countercyclical Buffer

Banks will be required to hold a separate capital conservation buffer comprising 2.5% of common equity. The intention behind this new requirement is to ensure that banks maintain a buffer of capital that can be used to absorb losses during periods of financial and economic stress. Banks will be allowed to draw upon the buffer during such periods but, should they do so, they will face constraints on earnings distributions.

This framework is intended to reinforce the objective of sound supervision and bank governance, and address the issue of the collective failure of banks to curtail distributions such as discretionary bonuses and high dividends, even when faced with deteriorating capital positions.

A countercyclical buffer will also be implemented, according to national circumstances. This buffer will range from 0% to 2.5% of common equity or other fully loss absorbing capital. Its purpose is to achieve the broader macro-prudential goal of protecting the banking sector from periods of “excess aggregate credit growth”. For any given country, the countercyclical buffer will only be in effect when there is excess credit growth resulting in a system wide build up of risk. Decisions on when economies have entered such periods will be taken by national regulators. Once put into operation, the countercyclical buffer will be introduced as an extension of the capital conservation buffer.

The conservation buffer is an additional capital requirement for banks that is intended to stimulate them to increase the minimum level of core capital from 4.5% to 7% as a target percentage. From a corporate governance point of view, therefore, it is a regulatory limitation on the levels of return that banks may distribute to shareholders. Banks will have little option but to impose restrictive dividend distribution policies in order to increase levels of core capital.

The current language of the Basel III accord does not make clear distinctions between the conservation buffer and countercyclical buffer requirements. As the countercyclical buffer must be maintained by common equity or other fully loss absorbing capital, fully subordinated long term non-callable debt could potentially be used to meet this requirement, in contrast to the conservation buffer, which must be maintained with core capital only.

Leverage Ratio

As a separate requirement for banks, a non-risk based leverage ratio will also be introduced.

A minimum Tier 1 leverage ratio of 3% will be tested during the period from 1 January 2013 to 1 January 2017.

The final level of required leverage ratio will be determined following the test periods.

From 1 January 2013 until 1 January 2017, a parallel run period will commence in which banks will be required to submit calculations on actual figures of a leverage ratio calculated on the actual balance sheet positions of individual banks.

Based on the results of the parallel run period, any final adjustments would be carried out in the first half of 2017 with a view to migrating to a Pillar 1 treatment on 1 January 2018 based on appropriate review and calibration.

During the crisis a number of countries found that some of their largest banks had taken on very large leveraged positions – invariably within their investment and wholesale banking portfolios. Most of these banks also had a substantial number of retail depositors and played key roles within the economies of the countries affected. Had one of these banks collapsed, the day-to-day operation of the economy of the country affected would have been crippled.



A leverage ratio is a way in which a banking supervisor can restrict the amount of leverage a particular bank takes on. Supervisors will have a considerable amount of discretion in how they will operate the leverage ratio with regard to a particular bank. The imposition of leverage ratios will, however, reduce the activity of the banks most affected. This is likely to have a direct impact on the availability of credit within individual countries and regions. It is for this reason that the leverage ratio is being introduced over a relatively long period of time and with a considerable period of parallel running. This will allow the macroeconomic impact to be assessed, as well as the impact on individual banks. In view of the significant pressure on the regulators by the European banking industry not to introduce the leverage ratio for European banks, it is uncertain whether this Basel III requirement will be adopted on a global scale.

Systemically important financial institutions (“SIFIs”)

SIFIs are described as financial institutions whose disorderly failure, because of their size, complexity and systemic interconnectedness, would cause significant disruption to the wider financial system and economic activity.

The Financial Stability Board (“FSB”) working group which developed the proposals relating to SIFIs was chaired by Paul Tucker, Deputy Governor of the Bank of England. The Bank of England, the FSA and the Federal Reserve Bank in the USA, together with the European Central Bank (“ECB”), were right at the centre of the global crisis and have particular expertise in international cooperation and colleges of supervisors for large banks. The Bank of England and the FSA have also had particular experience working closely with the ECB and other European central banks and supervisors within the EU supervisory framework.

While Europe leads the way in cross-border coordination of banking supervision, the task of coordinating approaches to SIFIs remains something which will be a mammoth task for banking supervisors in the global context. A considerable amount of work

remains in (1) developing more standardised approaches to resolution regimes for banks, (2) deciding burden sharing arrangements between countries when a large bank collapses on a cross-border basis and (3) in finding an effective balance in supervisory colleges between the need for effective operation of the college and the need to ensure all supervisors affected by the decisions of a college are adequately consulted and informed.

Further Changes

The Basel III proposal also sets out a number of other changes to the existing Basel II framework, as follows:

- As noted previously, there will be changes in relation to the regulatory adjustments of bank capital (i.e. deductions and prudential filters). These regulatory adjustments include amounts above the 15% (10% in Europe) limit for investments in financial institutions, mortgage servicing rights and deferred tax assets from timing differences.
- The CRD IV proposal, as published by the European Commission in the form of a consultation document in February 2010, includes proposals for the introduction of a revised set of rules for liquidity management. The BCBS has made equivalent proposals, but these are not contained within the Basel III framework.
- The Basel III and CRD IV proposals also contain significant chapters on the revisions to the existing risk weighting rules for OTC derivatives. These revisions for counterparty credit risk are distinct from the initiatives to introduce a new method for clearing and settlement of derivatives and the organisation of central clearing institutions.

CONTACT US

For further information, please contact:

EUROPE

AUSTRIA

Bettina Hörtnner

Senior Associate

T +43 | 531 78 1508

bettina.hoertner@dlapiper.com

Jasna Zwitter-Tehovnik

Partner

T +43 | 531 78 1025

jasna.zwitter-tehovnik@dlapiper.com

BELGIUM

Koen Vanderheyden

Partner

T +32 (0)2 500 6552

koen.vanderheyden@dlapiper.com

Patrick van Eecke

Partner

T +32 (0)2 500 1630

patrick.van.eecke@dlapiper.com

Emma Greenow

Account Director

T +32 (0)2 500 1623

emma.greenow@dlapiper.com

BULGARIA

Katerina Kraeva

Senior Associate

T +359 2 935 56 13

katerina.kraeva@dlapiper.com

CZECH REPUBLIC

Radka Kotrasova

Associate

T +420 222 817 803

radoslava.kotrasova@dlapiper.com

FRANCE

Anne Maréchal

Partner

T +33 (0)1 40 15 24 40

anne.marechal@dlapiper.com

Jean L'Homme

Partner

T +33 (0)1 40 15 25 65

jean.lhomme@dlapiper.com

GERMANY

Dr. Ludger C. Verfürth

Partner

T +49 (0)40 | 88 88 127

ludger.verfuerth@dlapiper.com

Dr. Mathias Hanten

Partner

T +49 (0)69 271 33 381

mathias.hanten@dlapiper.com

Dr. Gunne W. Bähr

Partner

T +49 (0)221 277 277 283

gunne.baehr@dlapiper.com

HUNGARY

András Nemescsói

Partner

T +36 | 510 1183

andras.nemescsoi@dlapiper.com

ITALY

Alessandro Corno

Partner

T +39 02 80 618 508

alessandro.corno@dlapiper.com

Luigi Rizzi

Partner

T +39 06 68 880 1

luigi.rizzi@dlapiper.com

Marco Zechini

Partner

T +39 06 68 880 509

marco.zechini@dlapiper.com

NETHERLANDS

Paul Hopman

Partner

T +31 (0)20 541 9952

paul.hopman@dlapiper.com

Bart Joosen

Partner

T +31 (0)20 541 9905

bart.joosen@dlapiper.com

Aryan Schoorl

Legal Director

T +31 (0)20 5419 332

aryan.schoorl@dlapiper.com

NORWAY

Karl-Fredrik Lindblom

Of Counsel

T +47 24 13 16 46

karl.fredrik.lindblom@dlapiper.com

POLAND

Patryk Laskorzynski

Partner

T +48 22 540 7456

patryk.laskorzynski@dlapiper.com

ROMANIA

Sabin Volciuc-Ionescu

Senior Associate

T +40 372 155 820

sabin.volciuc-ionescu@dlapiper.com

SLOVAKIA

Eva Skottke

Senior Associate

T +421 2 592 021 11

eva.skottke@dlapiper.com

Radoslava Rojkova

Senior Associate

T +421 2 5920 2114

radoslava.rojkova@dlapiper.com

SPAIN

Miguel Bermúdez de Castro

Partner

T +34 91 788 7333

miguel.bermudezdecastro@dlapiper.com

UK

Elisabeth Bremner

Partner

T +44 (0)20 7796 6230

elisabeth.bremner@dlapiper.com

Michael McKee

Partner

T +44 (0)20 7153 7468

michael.mckee@dlapiper.com

UNITED STATES

US – BALTIMORE

Megan Kraai

Partner

T +1 410 580 4186

megan.kraai@dlapiper.com

US – CHICAGO

Jim Kaplan

Partner

T +1 312 368 7027

jim.kaplan@dlapiper.com

US – LOS ANGELES

Nicolas Morgan

Partner

T +1 310 595 3146

nicolas.morgan@dlapiper.com

US – NEW YORK

Caryn Schechtman

Partner

T +1 212 335 4593

caryn.schechtman@dlapiper.com

US – WASHINGTON D.C.

Richard Coll

Of Counsel

T +1 202 799 4433

richard.coll@dlapiper.com

Luis Mejia

Partner

T +1 202 799 4572

lou.mejia@dlapiper.com

Jeffrey Hare

Partner

T +1 202 799 4375

jeffrey.hare@dlapiper.com

Frank M. Conner III

Partner

T +1 202 799 4221

frank.conner@dlapiper.com

FINANCIAL SERVICES TEAM

DLA Piper's dedicated Financial Services team offers specialist legal expertise and practical advice on a wide range of contentious and advisory issues. The team can assist clients on contentious legal matters including: internal and regulatory investigations, enforcement actions and court proceedings in the financial services sector. There is also an experienced advisory practice which gives practical advice

on all aspects of financial regulation, including the need for authorisation, regulatory capital, preparation for supervision and thematic visits, conduct of business issues and financial promotions.

DLA PIPER REGULATORY & GOVERNMENT AFFAIRS GROUP

[Find out more](#) about DLA Piper's global Regulatory & Government Affairs group.

IMPORTANT NOTE TO RECIPIENTS: We may supply your personal data to other members of the DLA Piper international legal practice (which may be situated outside the European Economic Area ("EEA")) so that we or they may contact you with information about legal services and events offered by us or them subject to your consent.

It is our policy not to pass any of your personal data outside of the DLA Piper international legal practice or use your personal data for any purposes other than those indicated above.

If you no longer wish to receive information from DLA Piper UK LLP and/or any of the DLA Piper members, please contact louise.boydell@dlapiper.com

The email is from DLA Piper UK LLP and DLA Piper SCOTLAND LLP.

This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper UK LLP and DLA Piper SCOTLAND LLP will accept no responsibility for any actions taken or not taken on the basis of this publication.

Please note that neither DLA Piper UK LLP or DLA Piper SCOTLAND LLP nor the sender accepts any responsibility for viruses and it is your responsibility to scan or otherwise check this email and any attachments.

DLA Piper UK LLP is a limited liability partnership registered in England and Wales (registered number OC307848) which provides services from offices in England, Belgium, Germany, France, and the People's Republic of China. A list of members is open for inspection at its registered office and principal place of business, 3 Noble Street, London EC2V 7EE. DLA Piper Scotland is a limited liability partnership registered in Scotland (registered number SO300365) which provides services from offices in Scotland. A list of members is open for inspection at its registered office and principal place of business, Rutland Square, Edinburgh, EH1 2AA.

Partner denotes member of a limited liability partnership.

DLA Piper UK LLP is a law firm regulated by the Solicitors Regulation Authority. DLA Piper SCOTLAND LLP is a law firm regulated by the Law Society of Scotland. Both are part of DLA Piper, an international legal practice, the members of which are separate and distinct legal entities.

For further information, please refer to www.dlapiper.com/structure

If you have finished with this document, please pass it on to other interested parties or recycle it, Thank you.

www.dlapiper.com

DLA Piper is an international legal practice, the members of which are separate and distinct legal entities. For further information please refer to www.dlapiper.com/structure | A list of offices can be found at www.dlapiper.com

Copyright © 2010 DLA Piper. All rights reserved. | DEC10 | 1988550