

Being better informed

FS regulatory, accounting and audit bulletin

*PwC FS Regulatory
Centre of Excellence*

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In this issue:

EC approves SSM

*AIFMD delegated acts
and consultations*

*OTC reforms closer to
implementation*

*2013 regulatory
themes*



Executive Summary

Welcome to this edition of “Being better informed”, our monthly FS regulatory, accounting and audit bulletin, which aims to keep you up to speed with significant developments and their implications across all the financial services sectors.



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In mid-December, EU regulators cleared their desks for the holiday, issuing a raft of technical standards, consultations and guidelines. They are tying up loose ends on CRD IV, EMIR, AIFMD and other reforms coming into force this year.

The EU’s banking union proposal gained traction as Eurozone leaders agreed to hand over the prudential supervision of large banks to the ECB from early 2014. The UK government won a major voting concession - the EBA’s decisions will need to be supported by majority of Eurozone and non-Eurozone countries. But the political debate on the UK’s long-term role in Europe looks likely to continue through 2013.

On OTC derivatives, the EC adopted the first batch of EMIR technical standards setting out most of the operational requirements for firms, CCPs and TRs.

In the US, the CFTC issued a second wave of no-action and interpretation letters. An interim final rule release further delayed some rules due to come into force on 1 January 2013.

Asset managers have a busy year ahead implementing AIFMD. In December, the EC adopted its AIFMD Delegated

Regulation, which sets out requirements for fund managers. ESMA published draft AIFMD RTS, setting out the criteria for AIFMs and draft guidelines clarifying some key AIFMD concepts.

Other important asset management developments last month included: ESMA’s publication of the official translations of its UCITS guidelines, which kick-starts a two month period for Member States to ‘comply or explain’. The EP and Council also agreed on the texts of European Social Entrepreneurship Funds and European Venture Capital Funds regulations, which will come into force with AIFMD in July.

In the UK, the FS Bill 2012 received Royal Assent in December – putting the new regulatory framework on track to launch on 1 April 2013.

After many years of consultation and some disagreement, the UK’s revised retail rules under RDR came into force on 31 December 2012. Several rules, such as commission bans, precede EU retail proposals so all eyes should look to the UK’s experience as a test case.

Our first 2013 publication wouldn’t be complete without gazing into our crystal ball. In this month’s feature article we share our perspectives on the regulatory reforms likely to affect you.

We wish you a happy, healthy and prosperous New Year.

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2013: a transformative year

We expect 2013 to be another remarkable year in the development of financial services regulation. Key post-financial crisis reforms will begin to take hold, intensifying implementation pressure on banks, asset managers and other market participants.

This new regulation is designed to make our markets and financial institutions safer, more transparent, and more closely supervised – this year we should start to see if these solutions are working. Below we consider how key regulatory initiatives coming into force this year will impact firms and our markets.

RRPs: extending the resolution framework

Last year the FSB and other international regulators worked on getting RRP in place for G-SIBs. In 2013 the resolution efforts will extend to other systemically significant institutions. Regulators will develop a more international approach for G-SIBs and other G-SIFIs: producing institution-specific co-supervisory agreements for international firms, information sharing agreements and

frameworks for resolvability assessments.

Investment firms, insurers and financial infrastructure providers such as CCPs, exchanges, payment institutions, and even large investment funds, will come onto the RRP radar. The FSB plans to publish a list of globally significant insurers (G-SIIs) in April 2013, and finalise policy measures 18 months later.

Regulators will extend the RRP framework to domestically significant financial institutions. Canada, Australia, Hong Kong, Singapore and India all plan to require RRP for both global and domestic firms operating in their jurisdictions.

Regulators' biggest challenge this year may be resolving the balance between global, regional (e.g. the Liikanen EU proposals) and domestic requirements. Groups operating in multiple jurisdictions need certainty and consistency of international rules to manage their businesses effectively.

OTC derivatives: a higher price for safer markets

In 2013 the full force of Dodd-Frank Act Title VII derivatives rules take hold, before EU and other jurisdictions implement their OTC reforms later this year. The new OTC derivative reforms will fundamentally change the US\$650trillion global OTC derivatives market's trading, operations and culture. Here is how we see this play out in 2013:

- Due to tight deadlines, firms will struggle to comply with deadlines for transaction reporting, with some less prepared financial institutions and non-financial firms possibly missing them altogether.
- Extra-territorial rules will become clearer and firms are likely to reduce or restructure some of their cross-border trading activity. Platform providers may delay developing new trading models until such time as the extra-territorial rules are fully understood.
- International standards for managing CCP risk will evolve, but will not be fully tested until the next bout of market volatility.

- The demand for eligible collateral will spike, so collateral optimisation will become more crucial.

From next year onward FMIs will become the dominant force in these markets – designating which trades are cleared and who manages risk in the system.

Shadow banking: more data, please

Policymakers should make significant strides this year to strengthen the oversight and regulation of shadow banking. The FSB proposed many new reforms in securities lending, repos and money market funds in November 2012. These measures will bring many more financial institutions inside the traditional regulatory parameter, substantially increase regulation in some existing regulated sectors, to mitigate potential systemic risks on the financial system and wider-economy.

However, significant challenges remain. Shadow banking reforms must ensure they achieve their primary purpose, and don't impose unnecessary costs on market players.

Data is critical to effective supervision because shadow banking, by its very nature, is ever evolving. Shadow banking supervisors will need to closely monitor data to spot the build-up of risks in the non-regulated banking system. The FSB have also emphasised the importance of international coordination and the need for regulators to regularly share information.

The FSB plans to publish final policy recommendations by September 2013. The EC is also expected to issue legislative proposals on shadow banking in early 2013.

Banking restructuring: policy harmonisation – or not?

In September 2011 the ICB recommended ring-fencing retail banking; increasing loss absorption in ring-fenced banks; and improvements to competition. In October 2012, the Government published a draft bill to bring these recommendations into law. But the draft bill delegates much of the definition, including levels for the de-minimis threshold, to secondary legislation that comes later.

In the wider European context, Ekki Liikanen (Governor of Central Bank of Finland) delivered his recommendations for reforming bank

structures in Europe. It echoes the ICB report, calling for trading to be separated from deposit-taking activities, but does not specify how that will be achieved. The Liikanen report proposals are at an early stage than the US and UK measures and it remains to be seen how the EU will take this forward in 2013.

The US Volcker rule, which places limits on banks' proprietary trading abilities, was meant to be finalised by end-2012 but the timetable has slipped to at least Q1 2013. This is due to its complexity and the volume of feedback the SEC received.

These regulators will need to reconcile the restructuring rules they agree this year with RRP requirements, which have similar objectives, and restructuring requirements issued in other jurisdictions. While RRP and restructuring rules will inevitably make groups more local, market infrastructure reforms go the other way, making global markets more interconnected than ever.

Remuneration: finalising CRD IV

If the Council and EP don't reach political agreement on CRD IV by the end of January, it is unlikely that any bonus cap provisions could be in place ahead of the banks' 2013 compensation

round. Bonus capping is a major threat to European banks' competitiveness. Any compromise which includes a relaxation of the strict 1:1 bonus to salary ratio will be welcomed by the industry.

But even if the bonus cap is relaxed, these new regulations will still probably have a major impact on compensation structures in the European banking sector.

Moving from regulatory to market transparency

The new FINREP and COREP regimes, Form PF requirements for asset managers, and new derivative transaction reporting requirements under Dodd-Frank and EMIR will give regulators unprecedented views into firm's risks and business operations.

We'll see more proposals to support the wider transparency agenda. Policy makers will move to extend risk disclosure requirements made by the largest financial institutions, in line with the FSB's comments, and new rules for consumer products will lead to greater transparency on pricing and sales incentives.

Firms will be closely watching how consumers, investors and market counterparties react to this information.

Insurance: LTGA decisions, interim Solvency II measures and G-SIIs

Virtually all insurance regulatory developments in Europe are dominated by Solvency II and its progress toward implementation. EIOPA aims to launch its impact assessment of the Solvency II LTG package in January, completing it in March 2013. EIOPA is conducting the LTGA at the request of the EU legislators, in context of the Omnibus II negotiations. The LTGA results should provide legislators with information that will allow them to complete the Omnibus II negotiations and the LTG rules. A report on the LTGA is likely to be published in June 2013.

With delays to the Solvency II implementation date now inevitable, EIOPA issued its opinion on what measures insurers should take during the period between January 2014 and the new implementation date. While EIOPA will likely issue detailed guidelines shortly for national supervisors, EIOPA may require national supervisors to implement certain aspects of Solvency II from 1 January 2014, particularly Pillar 2 and potentially aspects of Pillar 3. Firms may be required to demonstrate an effective risk management framework, system of governance, an ORSA which is both current and forward looking,

pre-application of internal models and reporting requirements.

The IAIS will publish by Q2 2013 its conclusions about the data it collected from its October 2012 consultation on policy measures for G-SIIs. This followed the IAIS's earlier consultation proposing a methodology to identify G-SIIs. We expect the IAIS to publish its first list of G-SIIs, but policy measures for (re)insurers designated G-SII will come in until 2014.

Outside of the EU, a number of policy developments are seeking to achieve rules equivalent to Solvency II or simply seek to modernise supervisory regimes. This year could be dominated by EU and US discussions exploring the similarities between the two insurance regimes and a growing mutual recognition of their markets. The US will continue work on the Solvency Modernisation Initiative. This introduces, among other things, rules for the US ORSA as well enhances group company supervisory requirements. A number of insurance regulatory developments are taking place other countries this year as well, in South America, Africa and Asia.

Focus on culture and conduct

Our financial institutions lost ground in 2012 in the fight to regain public trust

after the financial crisis. This year, regulators and institutions will be reflecting on failings that came to light last year – fraud in setting LIBOR and other benchmarks, more mis-selling of financial products and failures to comply with basic AML requirements, to name a few. Financial institutions and their investors are paying a huge price for these conduct failings. In 2013, supervisors will expect firms to improve their conduct risk management significantly, but that alone will not be enough.

In many parts of the industry, institutions have cultures that are not in alignment with regulators' and the public's expectations. Recovering from the financial crisis and building trust isn't just about creating new rules and regulations, and no amount of robust new regulation or more intrusive supervision can ever fully counteract a poor culture. Change must come from within. To achieve better outcomes for financial stability and for individual customers, the industry needs to put building stronger culture at the top of its agenda in 2013.

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Regulation

AIFMD

Swiss funds enter EU market

ESMA and the Swiss Financial Market Supervisory Authority (FINMA) announced *terms of a Memorandum of Understanding* (MoU) on 3 December 2012, meeting one of the AIFMD requirements for Swiss funds to market in the EU. The MoU establishes the regulators' respective roles and responsibilities in supervising Swiss alternative AIF and AIFM cross-border activities.

ESMA must conclude cooperation agreements with non-EU country regulators to establish the exchange of information and supervision of cross-border activities regulated under AIFMD. AIFMs and AIFs located in non-EU countries cannot access the EU market after July 2013 unless ESMA has a cooperation agreement place. Also, EU AIFMs cannot delegate activities, such as portfolio management, to firms outside the EU without a cooperation agreement with a firm's national regulator in place.

The ESMA/FINMA MoU covers the AIFMD technical standards as drafted by ESMA. ESMA finalised the MoU before the publication of the final AIFMD technical standards (published by the Commission on 19 December but

subject to a three month scrutiny period by the European Parliament and the Council). It may need to amend the MoU if EU legislators make any late stage changes to the technical standards.

This MoU is the first AIFMD regulatory cooperation agreement even though AIFMD comes into force in July 2013. EU fund managers with offshore structures may find they face barriers if ESMA does not complete international cooperation agreements with the US and other key jurisdictions soon. Verena Ross, speaking on 4 December 2012 (see 'Ross gives 2013 outlook'), indicated that ESMA will make completing these agreements a top priority during early 2013.

AIFMD Delegated Regulation

After months of speculation, the EC published the AIFMD *Delegated Regulation* (Level 2 technical standards) on 19 December 2012, finally giving AIFMs certainty about the implementing requirements.

The technical standards include:

- general operating conditions – the risk management, valuation, fair treatment and liquidity requirements for AIFMs
- scope of delegation – what AIFMs can delegate without becoming a 'letter-box' entity

- depositary provisions – defining assets depositaries must take into custody and their oversight of AIFMs
- third country requirements – the details of the cooperation agreements that need to be signed with non-EU countries before they can access the EU market after the AIFMD is implemented
- leverage rules – setting out that AIFMs must calculate leverage using the gross and commitment methods
- transparency requirements – setting out the frequency and detail of information that AIFMs must submit to their national competent authority.

The technical standards are now subject to a three month scrutiny period by the EP and Council, but we don't expect significant changes.

More details on the technical standards and our AIFMD information for firms can be found [here](#).

Alternative investment fund definition remains elusive

ESMA also published *Consultation paper: guidelines on key concepts of the AIFMD* (the guidelines) on 19 December 2012, which follows its February 2012 discussion paper.

ESMA is seeking to clarify the characteristics of an AIF under AIFMD. In particular, ESMA provides guidance on the following terms used in the AIF definition:

- raising capital
- collective investment undertaking
- number of investors
- defined investment policy.

However, this guidance does not provide definite answers as to the structures and activities which are in the scope of an AIF. Each Member State is required to develop its own statutory definition of an AIF.

The consultation closes on **1 February 2013.**

Clarifying open-ended and closed-ended AIFs

ESMA published *Consultation paper: draft regulatory technical standards on types of AIFMs* on 19 December 2012, the same day on which it published guidelines on the key concepts of the AIFMD and that the EC adopted the AIFMD delegated acts.

The draft RTS set out that an AIFM can be either an AIFM of open-ended AIF(s) or an AIFM of closed-ended AIF(s) and subject each type of AIF to different rules.

To qualify as an open-ended AIF, a fund's unitholders should have the right to redeem under the following conditions:

- unitholders can exercise redemption at least once a year
- redemptions are carried out at a price that does not significantly vary from the NAV
- there is no restriction in the AIF's rules or instrument of incorporation to apply special arrangements, such as side pockets, gates, suspensions and lock-up periods.

Any AIF that does not meet these criteria will be considered a closed-ended AIF under AIFMD.

Other issues raised in ESMA's preceding February 2012 discussion paper - such as the interaction of AIFMD with the UCITS Directive, MiFID and the range of activities an AIFM must perform and can delegate - may form part of later guidelines or a Q&A.

The consultation closes on
1 February 2013.

Capital and liquidity

Basel III implementation falls further behind

The Basel Committee discussed at its meeting on 13-14 December progress on the implementation of Basel III. 11

countries have finalised regulations: Australia, Canada, China, Hong Kong SAR, India, Japan, Mexico, Saudi Arabia, Singapore, South Africa and Switzerland.

Seven other jurisdictions have issued draft regulations and are working towards completing these as quickly as possible: Argentina, Brazil, EU, Indonesia, Korea, Russia and the US. Turkey plans to issue draft regulations early in 2013.

The Cypriot Presidency didn't manage to finalise the CRD IV trialogue negotiations (given other priorities) before the end of December. However, the negotiations are expected to wrap up by the end of January 2013 under the Irish Presidency. Othmar Karas, the EP rapporteur, recently said that the prolonged negotiations are likely to require a 1 January 2014 launch date for the new regime, with the transitional implementation period contracted from 10 to 9 years.

Liquidity and coverage reporting for supervisors

The EBA published an update on supervisory reporting requirements for liquidity and leverage ratio on 20 December 2012. The EBA consulted on these issues in June 2012 but is unable to finalise ITS recommendations until legislators complete the CRR.

In the interim, this update provides:

- a draft feedback statement on the ITS consultation on supervisory reporting requirements for liquidity coverage and stable funding
- draft templates and related instructions for supervisory reporting requirements for liquidity coverage and stable funding
- a draft feedback statement on the ITS consultation on supervisory reporting requirements for leverage ratio
- draft templates and related instructions regarding supervisory reporting requirements for leverage ratio.

Under the CRR proposal, the EBA is required to report to the EC on the impact of the liquidity coverage requirement by September 2013 and annually thereafter. The EBA plans to consult on the data point model for leverage and liquidity reporting in Q1 2013.

The EBA says that the new reporting provisions are likely to be implemented within a year of CRR's completion.

Consumer protection

Rebuilding trust in capital markets

Steven Maijoor, ESMA Chairman, spoke on ESMA's initiatives on Rebuilding investors trust in EU capital markets on 4 December 2012.

Maijoor supports the EC's MiFID II proposals to ban inducements, stating that at a minimum they should be banned for advisers providing discretionary portfolio management and those classified as 'independent'. Maijoor hopes EU legislators will follow the example of some Member States that have already banned inducements but also that legislators will give stakeholders reasonable time to implement the ban.

Maijoor believes that it is necessary to review banks' remuneration practices to determine if their policies bias advisers towards in-house products. The MiFID II inducement requirements will be key to ensuring that pay structures do not create false incentives.

To regain the trust of more sophisticated investors, Maijoor believes that they must have access to appropriate and reliable information. ESMA sees enforcement of IFRS as crucial - it recently published a set of common IFRS enforcement priorities.

Regarding forbearance, Maijoor said that lenders need to clearly state in their financial statements the credit risk they are exposed to in relation to forbearance. They should disclose their forbearance practices when the exposure is material, and evaluate the need for potential impairments.

ESMA is also focused on corporate governance practices. It will push proxy advisors to come up with a code of conduct built on key principles, as an alternative to regulatory rules. ESMA is also likely to seek to strengthen convergence of the rules with regards to the Takeover Bids Directive (2004/25/EC) during 2013.

Kay Blair argues disclosure is not enough

Kay Blair, Vice Chair of the Financial Services Consumer Panel, discussed *the dangers of over-reliance on the new Key Investor Information Document (KIID)* at EIOPA's Consumer Strategy day in Frankfurt on 4 December 2012. Blair welcomed the KIID's potential to improve disclosure to consumers, but stressed that the KIID should be seen as only one part of a wider consumer protection framework.

Blair highlighted the unequal relationship between highly knowledgeable providers of financial products and consumers who frequently have a limited understanding of products and markets. The KIID provides information that enables consumers to compare similar products. But firms must ensure that consumers are provided suitable products for comparison purposes. Firms need to be aware that consumers may still find it

difficult to evaluate disclosures on complex products' features.

Blair's reference to suitability and the duties that firms owe to consumers goes beyond compliance with regulatory requirements but is consistent with the FCA's new supervisory approach. From April 2013 the FCA will consider firms' business models, requiring firms to demonstrate that they are considering consumer's needs when designing their marketing strategies.

ESMA ramps up consumer protection

At the ESMA Investor Day in Paris on 12 December 2012, Steven Maijor, ESMA Chairman, *discussed* how ESMA is working to enhance investor protection (a core ESMA responsibility), set standards and provide technical advice to the EC.

While Maijor observed that the MiFID II proposals will further strengthen investor protection, he believes that in the meantime existing protections can be reinforced if MiFID I rules are fully implemented, effectively supervised and consistently enforced.

Maijor supports banning inducements, particularly when used in discretionary portfolio management and independent advisory services. ESMA will use all of its powers to regulate inducements, which are a

factor in many unsuitable product sales.

ESMA is not against complex financial products and recognises that in some instances complex features may render a product more suitable to an investor. ESMA's current initiatives to regulate complex products stem from their sale through mainstream channels, which created unnecessary risks for some retail investors.

Maijor foresees a growing international role for ESMA. Recent G20 regulatory initiatives require enhanced co-ordination between regional and national legislators, regulators and standard setters.

EBA holds first 'Consumer Protection Day'

The EBA held its first Day on 'Consumer Protection' on 25 October 2012, and published the outcomes from the day on *17 December 2012*. The event drew 135 participants spanning regulators, consumer groups, academia and industry. The EBA organised the event around three key consumer protection topics.

Consumer indebtedness, including the causes and role of financial literacy, formed the first panel topic. The EBA expects to consult on guidelines for responsible lending and the treatment of borrowers in difficulties during the second half of 2013.

The second panel considered retail sales of complex financial products. The debate focused on the interaction between innovation and regulation, and competition. The EBA and ESMA plan to publish a joint warning on contracts for differences and a good practice note on ETFs.

The final topic was consumer trends in retail banking. This session considered the role of regulation, consumer representation and culture. The EBA will be collecting and analysing consumer trends (as per the 2011 consumer trends report) and plans to publish the 2012 report in early in 2013.

Corporate governance

Raising the heat on financial institutions' corporate governance

The EP's resolution on *Corporate Governance in Financial Institutions* was published in the Official Journal on 7 December 2012. The resolution is the EP's response to the EC's June 2010 *green* paper on corporate governance and was adopted in May 2011.

The resolution calls for:

- financial institutions to establish effective governance systems, with adequate risk management, compliance, internal audit functions, strategies, policies, processes and procedures

- financial institutions to implement fit and proper persons criteria and processes for senior officers and all material risk takers (and for national regulators to ensure compliance with these criteria)
- economically significant financial institutions to establish risk committees or equivalent arrangements at board level and at parent company board level for all economically significant financial groups.
- the EC to develop legislation requiring boards of large financial institutions to subject to regular external evaluation
- financial institutions to publish the number of staff receiving total remuneration greater than EUR1 million
- the EC to develop legislation requiring those authorised to manage investments on behalf of third parties in the EU to state publicly whether adhere to a stewardship code.

The EP also encourages institutional shareholders to take a more active role.

Dodd-Frank Act

Extraterritoriality guidance tops no-action letters and guidance

The CFTC published 21 *Dodd-Frank title VII related no-action and interpretive letters and additional guidance*.

The no-action letters address:

- calculations
- chief compliance officer requirements
- reporting
- external business conduct
- reporting
- registration

Relevant for non-US firms are:

- *U.S. Bank Wholly Owned by Foreign Entity May Calculate De Minimis Threshold Without Including Activity From Its Foreign Affiliates (12/62)*
- *U.S. Bank Wholly Owned by Foreign Entity May Calculate De Minimis Threshold Without Including Activity From Its Foreign Affiliates*

See our *Certain foreign-owned US banks may avoid registration under swap dealer aggregation rules*.

Also, the CFTC published on 21 December 2012 additional guidance on the cross-border application of the Title VII rules. See our *Cross Border clarity – the CFTC provides guidance and additional time for the industry to address cross border swaps*.

The CFTC also published an updated *FAQ on swap entities* on 10 December 2012.

EU regulators question Dodd-Frank extraterritoriality

Steven Maijoor, ESMA Chairman, issued a *written statement on the Dodd-Frank Act* to the Agriculture Committee of the U.S. House of Representatives on 13 December 2012. Maijoor outlines ESMA's role in drafting secondary legislation, drawing a parallel with the CFTC's role.

He summarised the efforts of international regulatory authorities aimed at achieving regulatory convergence and at recognizing different but equivalent regulatory approaches. This work has identified a number of "conflicting, duplicative and inconsistent" requirements in approaches to derivatives regulation and international regulators have agreed to work together to resolve inconsistencies.

However, he raised specific concerns about how the Dodd-Frank Title VII rules treat foreign firms operating in

the US, which the CFTC seems unwilling to address. Maijoor is particularly worried about the end-2012 deadline for the registration of non-US swap dealers under the Dodd-Frank Act:

- Non-US swap dealers must register in the US before the CFTC has completed the full range of Dodd-Frank Act rules applicable to these entities
- Registration will give US supervisors and the US Department of Justice direct access to the books and records of registered firms. This requirement is inconsistent with some jurisdictions' privacy laws and contradicts established international practice.
- International discussions on convergence and regulatory recognition are ongoing. Requiring registration before regulators have completed international agreements may undermine international cooperation.

The statement, published on the ESMA website, demonstrates that ESMA is willing to stand up to international pressure when US extraterritorial regulatory impacts could damage European markets and firms.

More Title VII extensions announced

The CFTC announced on 18 December 2012 that it was extending certain external business conduct and transactional requirements due to come into force on 1 January 2013. The *Interim Final Rule regarding Conduct and Documentation Requirements* extends the compliance date for documentation provisions, portfolio reconciliation, and swap trading relationship documentation for swap dealers and major swap participants.

The interim rule will come into force on the date of publication in the Federal Register, but the CFTC will consider any comments received it receives within 30 days of publication. See our [*CFTC delivers holiday gift to Wall Street -- Delays EBC and Documentation Requirements*](#) for more information.

First list of clearing mandatory contracts

The CFTC issued its *Final Rule regarding Clearing Determinations* on 13 December 2012. The clearing obligation comes into effect on 11 February 2013.

Recording rules hit execution venues

The CFTC also published a Final Rule adopting its *Final Rule Adopting Regulations for Recording of Swaps Transactions*. This rule requires CFTC registrants who are members of

designated contract markets or swap execution facilities to record all oral and written swap transaction communications and archive for five years. The rule comes into effect on 19 February 2013.

SEC amends clearing submission procedures

The SEC published its *Amendment to the Final Rule on Procedures for Reviewing Clearing Submissions* under the Dodd-Frank Act, which came into effect on 10 December 2012.

More of our Dodd-Frank Title VII analysis

- [*Proposed US/UK resolution strategy – more questions than answers: We are a long way from a global resolution regime*](#)
- [*Is Your Counterparty Documented? ISDA Protocol adherence slower than expected*](#)

Enforcement***New AML rules for EU e-money providers***

The Joint Committee of the ESAs (JCESA) published a *report on the application of AML/CTF obligations to, and the AML/CTF supervision of e-money issuers, agents and distributors in Europe* on 7 December 2012.

The report describes e-money as a comparatively new retail payment product, though its use is growing

rapidly. The strong demand for new payment solutions, particularly with regards to online purchase of goods and services, is driving its growth. E-money does not constitute a deposit; therefore e-money issuers do not need to be authorised as credit institutions.

The report includes:

- an overview of Member States' implementation of EU AML and CTF requirements in relation to the issuance, distribution and redemption of electronic money
- a description of Member States' approaches to AML and CTF supervision of e-money issuers, their agents and distributors
- identification of differences in the Member State implementation legislation which could affect the integrity of the AML/CTF regime

The report reveals that significant differences exist in the national implementation of the 2nd E-Money Directive (2nd EMD) and in the application of AML/CTF legislation to e-money issuers, their agents and distributors.

These differences are caused by inadequate or ambiguous provisions in the 2nd EMD and the 3rd AML Directive), including issues such as the:

- definition of the point in time where e-money is issued
- definition of e-money agents and distributors
- application of passporting rules and guidelines to e-money entities
- distribution of powers between home and host AML/CTF supervisors.

The EC recommends that the 2nd EMD and 3rd AML Directive are amended to remove these inconsistencies.

Financial stability***European financial system stabilising***

The ESRB released its second *risk dashboard* on 20 December 2012. The dashboard seeks to draw conclusions on data monitoring for systemic risk, macroeconomic risk, credit risk, liquidity and funding risk, market risk, and solvency and profitability risk.

Since the last update, systemic risk measures have fallen from their peaks, in line with a positive market response to policy measures. Risk measures are at levels comparable to those in early 2001-2003, following the burst of the dot-com bubble in the US.

Since the last update:

- banks have continued their deleveraging process, albeit at a slower pace than the prior period

- banks' earnings outlook remains generally weak with profitability continuing to fall
- overall credit standards in the eurozone continue to tighten
- the insurance sector appears resilient to the adverse macroeconomic environment.

The dashboard provides a useful snapshot of the current state of the European financial system. It should help to identify and measure systemic risk in the EU financial system and provide important information for the ESRB's discussions on risks and vulnerabilities.

Market infrastructure

EC endorses first EMIR technical standards

On 19 December 2012 the EC endorsed *the first batch of EMIR technical standards*, a milestone toward the legislative completion. The technical standards include details for:

- derivative counterparties: indirect clearing arrangements, the clearing obligation procedure, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP.

- CCPs: requirements for CCPs, as well as the capital, retained earnings and reserves of a CCP and CCP record keeping requirements.
- TRs: minimum details of data to be reported to TRs, the details of TR registration applications, data that TRs must publish and make available and operational standards for aggregating, comparing and accessing the data.

While the majority of the technical standards were endorsed by the EC without modification, the EC rejected the technical standards for CCP colleges (which will approve CCP authorisation applications). However, the EC advises that the rejection of this set does not jeopardise compliance dates in the remainder of the technical standards.

On 21 December the ITS portion of these technical standards were published in the Official Journal:

- *transaction reporting format and frequency*
- *CCP record keeping*
- *TR registration requirements*

The EC requested that the ITS come into force when the corresponding EMIR RTS come into force. The RTS will now pass to the Council and EP for endorsement and are expected to come into force in late March 2013.

First guidelines on CCP interoperability

ESMA published draft *guidelines for establishing and assessing interoperability arrangements between central counterparties (CCPs)* 20 December 2012. Supervisors will use the Guidelines when reviewing CCP applications for interlinking CCP arrangements.

EMIR requires ESMA to ensure that national competent authorities' (NCAs) assessments of interoperability arrangements are consistent, efficient and effective. ESMA can only approve interoperability arrangements after the relevant CCPs have been authorised for at least three years under national regimes, EMIR or equivalent third country regimes. Therefore, it will only be able to assess existing CCPs 3-4 years from now, after the NCAs have made the relevant equivalence assessments.

In making their assessments, NCAs should consider:

- legal risk: the rights and obligations of each CCP should be clearly stated, and the arrangements should contain coherent, enforceable legal provisions
- fair and open access: a request for interoperability from another CCP can be rejected only on risk grounds

- risk identification, monitoring and management of arrangements: to ensure that risk is prudently managed
- deposit of collateral: to ensure availability of collateral in all circumstances
- co-operation between NCAs: to adequately supervise interlinking CCP arrangements.

The consultation closes on **31 January 2013**. ESMA intends to issue the final guidelines by 31 March 2012. CCPs can apply to NCAs for EMIR authorisation from the date that the relevant RTS governing authorisation come into force, around March 2013.

Other regulatory

Ross gives ESMA 2013 outlook

ESMA Executive Director Verena Ross spoke on *ESMA's role in markets reform* on 4 December 2012. She gave an overview of ESMA's progress, its priorities for 2013 and some insight into its work to develop trading and market infrastructure rules.

On EMIR, Ross noted that ESMA has delayed the final batch of consultations on technical standards on collateral for non-cleared OTC trades to ensure international consistency. The Basel Committee's International Working Group on Margins is currently

proposing a two-way system for margins on uncleared derivative transactions, under which the obligation to exchange collateral lies with both counterparties, or 'universal two-way margining'. ESMA supports this approach and encourages the buy-side community to also support this system, because it would improve the management of credit risk. In addition, ESMA is developing a set of communications to raise understanding of EMIR, including the development of a dedicated EMIR webpage and a set of Frequently Asked Questions.

Discussing the MiFID II proposals, Ross encouraged the buy-side to give its views on high-frequency trading; ESMA's previous attempts to get the buy-side input on this topic have not been particularly successful. Ross said that technological innovation has a positive impact on market efficiency but that trading systems (and firms) need also to effectively contribute to fair and orderly trading. Ross also reassured stakeholders in that, in extending the transparency framework to non-equities, ESMA will review each asset class to ensure that transparency does not harm liquidity.

ESMA's guidelines on ETFs are now close to completion: ESMA has drafted rules that recognise the horizontal nature of many activities. For example, the new ETF guidelines strengthen

rules on securities lending, rather than limiting the rules to ETFs. Ross noted that these guidelines are relevant to the debate on shadow banking.

On AIFMD, Ross said that ESMA will finalise the remuneration guidelines at the beginning of next year. ESMA plans to publish a discussion paper in February on the types of AIFMs which will be followed shortly by a consultation on draft rules. Ross said ESMA is making progress on negotiating MoUs with non-EU national authorities, and is treating these as a top priority for ESMA.

CRA draft guidelines shine light on new regime

ESMA published draft *Guidelines and recommendations on the scope of the CRA Regulation* on 20 December 2012.

The guidelines seek to clarify requirements relating to:

- registration
- the scope of regulated credit rating activities and exemptions, including the status of private credit ratings
- establishing branches outside the EU
- best practices for disclosure relating to credit scoring firms and export credit agencies
- the scope of CRA based enforcement powers.

The consultation closes on **20 February 2013**.

In a separate development, ESMA published *Guidelines on cooperation including delegation between ESMA, the competent authorities and the sectoral competent authorities under Regulation (EU) No 513/2011 on credit rating agencies*. The Guidelines, which came into force on 6 October 2011, were published on 17 December 2012 (dated 10 January 2012). No explanation was given for the delay in publication.

The Guidelines set out procedures under which ESMA may delegate certain CRA supervisory duties to national supervisors and procedures on carrying out joint investigations.

ESMA stakeholder group reviews accomplishments

The ESMA Securities and Markets Stakeholder Group (MSG) published its *Annual Activity Report 2011-2012*. The MSG, which was initiated under the ESMA's founding regulation, was established in April 2011 and consists of representatives from stock exchanges, firms, associations and academia.

This first full Annual Report summarises the MSG's achievements since inception. The Group has produced 14 public opinions and delivered advice, reports and a number of informal feedback documents to ESMA.

The MSG Chair has also initiated contact with the heads of the EIOPA and EBA stakeholder groups to work toward consistency in their respective advice, particularly on issues involving investor protection and SME financing.

In addition to its advisory work, the group has started work on a number of initiatives outside of ESMA's Annual Work Programme. It set up working groups to examine the impact of regulation on SMEs' access to capital markets, investor protection issues and CRA issues.

The report includes the *2013 Work Programme*. The group envisages that the bulk of its work will be advising ESMA on implementing key legislative proposals, the creation of an EU single rule book and supervisory issues.

Pensions

EIOPA consults on national pension reporting ITS

EIOPA published *draft ITS on reporting of national provisions of prudential nature relevant to the field of occupational pension schemes* on 10 December 2012. The consultation closes on **10 March 2013** and the final report is due by **30 June 2013**. EIOPA expects to submit the draft ITS to the EC by **1 January 2014**.

RRPs

ECB gets behind EU Recovery and Resolution regime

The ECB published its Opinion of 29 November 2012 on a proposal for a directive establishing a framework for recovery and resolution of credit institutions and investment firms on 5 December 2012.

The ECB fully supports the development of a common recovery and resolution framework for EU banks and large investment firms as outlined in the EC's June 2012 RRP proposal.

The ECB suggests that a resolution framework needs to promote not only financial stability across EU financial markets but must also ensure the functioning of the single market. Within the single market, a set of common resolution tools is essential. The ECB is particularly keen on requirements for robust RRP for banks and investment firms, as well as the use of a bridge bank, bail-in debt, sale of business and other asset separation tools.

The ECB believes the proposed RRP directive is a “very important step towards an integrated resolution framework” for the EU. It will form another key facet of the EU ‘banking union’ and should be “adopted rapidly”.

The ECB wants to press ahead with the next steps to form an EU resolution scheme. It urged the EC to present a separate proposal for an independent European Resolution Mechanism, including the foundations of a common European Resolution Fund financed by EU financial institutions.

Moving toward harmonised FMI disclosures

CPSS and IOSCO published their final Principles for financial market infrastructures: Disclosure framework and assessment methodology on 18 December 2012. Global standards on FMI disclosure should make it easier for authorities, investors and customers to understand FMI business and risk profiles.

The disclosure framework outlines the form and content of an FMI's disclosure of its activities, risk profile and risk management practices.

International assessors (principally the IMF and World Bank) will use the assessment methodology to evaluate the 24 principles and five responsibilities set out in the Principles for financial market infrastructures. It will also act as a reference for national supervisors when assessing their own FMI oversight and supervision functions.

Shadow banking

Capital rules on securitisation

The Basel Committee issued a consultation paper on Revisions to the Securitisation Framework (BCBS236) on 18 December 2012. The proposed changes to the framework are intended to make capital requirements more prudent and risk sensitive, mitigate reliance on external credit ratings and reduce cliff effects (i.e. a change to a factor used to assign regulatory capital requirements that causes a significant increase in capital requirements).

Key proposals include:

- introducing new hierarchies of approaches in the securitisation framework
- enhancing the current ratings-based approaches and the supervisory formula approach
- introducing new approaches, such as a simplified formula approach and different applications of the concentration ratio based approach
- extending the 20% risk-weight floor in the standardised approach securitisation framework to banks that use internal-ratings based approaches.

This consultation follows on from a fundamental review of the Basel securitisation framework that the Basel

Committee has undertaken since it completed the Basel 2.5 reforms in 2009.

The Basel Committee will consider responses to the consultation and conduct a quantitative impact study before deciding on next steps. The consultation closes on

15 March 2013.

SSM

SSM takes a leap forward

EU finance ministers agreed their approach to SSM proposals in the early hours of 12 December 2012. The EC proposals are set out under two draft regulations: one conferring supervisory tasks on the ECB, the other modifying voting rights under regulation 1093/2010 establishing the EBA.

The ECB will be responsible for directly supervising all eurozone banks with assets of more than €30 billion, estimated to be around 180 banks representing 90% of eurozone bank assets. However the ECB will have the legal right to step in to supervise any credit institution in the eurozone.

The UK and other non-eurozone countries won a major concession on agreeing “double majority” voting rights at the EBA. This provision ensures that EBA decisions must be approved by a majority of both

eurozone and non-eurozone countries to take effect. While non-eurozone countries are free to participate in the SSM, it's unlikely that many will take part at this stage.

The SSM should be up and running by March 2014, giving the ECB some time to mobilise its supervisory infrastructure, recruit personnel and establish its modus operandi. Ministers agreed in December that in the interim the ECB should be able take over direct supervision of any failing bank in the eurozone.

Although the Council only needs only the EP's consent to adopt the regulation conferring supervisory tasks on the ECB, it has agreed to adopt the two proposals as a 'package' and so the trilogue negotiations are key. All parties want the negotiations to be completed promptly and the Irish Presidency has made this a priority. However, the EP's proposed modifications to the EBA Regulation are substantial, so the trilogue negotiations may be not be as straightforward as some may hope.

Moving towards EMU 2.0

The Council's conclusions on completing European monetary union, issued on 14 December 2012, set the following priorities for the Irish Presidency in 2013:

- adopting CRD IV as soon as possible, to provide the 'single rule

book' underpinning the new SSM approach

- adopting the RRD and Deposit Guarantee Schemes proposals
- issuing a proposal for a European Resolution Mechanism
- designing an operational framework to enable the ESM to directly recapitalise banks
- developing proposals for bank structural reforms building on Liikanen's High Level Expert Group recommendations.

In addition to financial services initiatives, the Council set out views on corporate governance, safeguarding the Single Market as a whole and ensuring democratic legitimacy.

The Council's priorities suggest that other pieces of legislation in various stages of negotiation, such as the 'retail package' tabled last July, may be delayed until these priorities are addressed.

Accounting¹

IASB

IASB maps out future work programme

The IASB published *Feedback Statement: Agenda Consultation 2011*. In July 2011, the IASB launched its first agenda consultation on its future workplan, which led to a *feedback statement* published on 18 December 2012. The feedback statement outlines three IASB initiatives to address the responses. See our *Straight away* 106 publication.

Eliminating the inconsistencies between IFRS 10 and IAS 28

The IASB issued an ED on 13 December 2012 proposing amendments to IFRS 10 'Consolidated financial statements' and IAS 28 (2011) 'Investments in associates and joint ventures'. The ED eliminates some of the existing inconsistency between the consolidation and joint arrangements standards. The ED amendments will only apply when an investor sells or contributes assets to its associate or joint venture.

¹ This section includes accounting developments with a direct or potential impact on the financial services industry only.

The comment period closes on **23 April 2013**. See our publication *Straight Away* 103.

Revenue measurement and recognition issues agreed

This IASB and the FASB boards' timeline indicates that they will issue a final *IFRS - Revenue Recognition* standard in the first half of 2013, with an effective date no earlier than 2015.

The IASB and FASB agreed in December on rules which:

- allocate the transaction price to separate performance obligations
- apply the proposed model to bundled arrangements
- constrain the cumulative amount of revenue recognised on licences and accounting for contract acquisition costs.

The boards' decisions are tentative and subject to change. Other issues for re-deliberation include scope, disclosures, transition and certain industry specific matters. See *Straight away* 105 for further details.

Methods of depreciation and amortisation (IAS 16 and IAS 38) confirmed

The IASB published '*Clarification of Acceptable Methods of Depreciation and Amortisation - Proposed amendments to IAS 16 and IAS 38*'

ED/2012/5. The ED clarifies that a revenue-based method should not be used to calculate the charge for depreciation or amortisation. The consultation closes on 2 April 2013. See our [press release](#) and [Straight away 102](#) for further details.

Guidance on fair value measurement of unquoted equity instruments

The IASB published information to assist preparers in applying IFRS 13, 'Fair value measurement', when measuring the fair value of unquoted equity instruments within the scope of IFRS 9, 'Financial instruments', or IAS 39, 'Financial instruments: Recognition and measurement'.

The material is for information only and is non-binding, but it will help investors measure unquoted equity instruments at fair value. See our [Straight Away 107](#).

Accounting for acquisitions of interests in joint operations (IFRS 11)

The IASB published an ED addressing accounting for the acquisition of an interest in a joint operation that is a business. The ED clarifies that an acquisition that meets the IFRS 3 business definition is not a business combination, because the acquiring party does not obtain control. However, the ED proposes that business combination accounting should be applied. See our [Straight Away 104](#).

Year-end accounting reminders

Read about reporting requirements, topics issues, new standards and interpretations in effect for the accounting year end 31 December 2012.

Year-end accounting reminders - IFRS

Year-end accounting reminders – UK GAAP

Practical guide to IFRS 10 - Investment entities: Exception to consolidation

Many funds and similar entities will be exempt from consolidating controlled investees under amendments to IFRS 10, 'Consolidated financial statements'. This exemption comes as a result of amendments to, IFRS 12, 'Disclosure of interests in other entities' and IAS 27, 'Separate financial statements', on 31 October 2012. These amendments particularly benefit funds, as those that qualify will be able to apply fair value to controlled investments, rather than having to consolidate them. However, the amendments do not apply to the consolidated accounts of a non-investment parent of an investment subsidiary.

The amendments apply to annual periods beginning on or after **1 January 2014**, but earlier application is permitted. See our [practical guide](#).

Practical guide to IFRS 9 - Limited amendments to the IFRS 9 classification and measurement model

In November 2012 the IASB published an ED proposing limited amendments to IFRS 9 'Financial Instruments (2010)'. Our [practical guide](#) summarises the proposals and their impact on the current IFRS 9 financial instruments classification and measurement model.

Preserving SME's reduced disclosure regime

The ESAs published their [response to the IASB's request for information on its Comprehensive Review of IFRS for small and medium sized enterprises](#) (SMEs) on 12 December 2012. The IFRS rules allow SMEs that are 'financial institutions and other entities that hold assets for a broad range of stakeholders to disclose less than the full IFRS rules require. In their response, the ESAs urged the IASB not to increase requirements for SMEs.

Audit

Internal guidance and FAQs on the audit tendering provision of the Code

Guidance has been issued to the assurance practice on implementing the transitional arrangements suggested by the FRC for the new audit tendering provision of the UK Corporate Governance Code. A number of FAQs

are also dealt with. The [guidance and FAQ](#) responses are available on [inform](#). This material is for internal use.

As a reminder, two practical guides on the new [tendering provision](#) and also to the Code changes to [board and audit committee reporting](#) are available on [Inform](#). These are designed for both internal and external use.

Asset Management

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Asset Management



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Regulation

Alternative investment

Social enterprise and venture capital funds on EU horizon

The Council and EP announced on 12 December 2012 that they had reached political agreement on the European Social Entrepreneurship Funds Regulation and the European Venture Capital Funds Regulation.

EU legislators are introducing these structures to facilitate investment in venture capital and social undertakings, aims of the Europe 2020 strategy. The regulations create investment requirements for these two new types of funds. While such funds must maintain assets under management below €500m to remain outside the AIFMD scope, the funds will be eligible for European passports to facilitate EU distribution.

The regulations are expected to come into force on 22 July 2013, the same date by which Member States must implement AIFMD.

UCITS

New repo guidelines for UCITS

ESMA published guidelines on repurchase and reverse repurchase

agreements for UCITS funds on 4 December 2012.

ESMA consulted in July 2012 on UCITS' use of repo arrangements and proposed restricting the amount of UCITS' assets which could be sold under non-recallable repo or reverse repo agreements. ESMA has moved away from this idea and instead is requiring all assets sold under repo agreements to be recallable within seven days. UCITS will also have to structure reverse repo arrangements to allow cash to be recalled on either an accrued or mark-to-market basis, which gives fund managers the ability to unwind positions.

ESMA will amalgamate these guidelines with its July 2012 guidelines on ETFs and other UCITS issues. After the official translations of the guidelines are published, Member State regulators will have two months to comply with the guidelines or explain why not. Some regulators have indicated that they may not comply with these guidelines at this stage but will wait to see if new repo legislation is introduced under UCITS VI.

UCITS guidelines come into force

ESMA published the official translations of its guidelines for UCITS

on 18 December 2012. The majority of these guidelines were finalised in July 2012, but ESMA delayed publishing the official translations until the guidelines on repos and reverse repos for UCITS were finalised earlier in December (see separate article).

Competent authorities have two months from the date of publication to declare whether they will comply with the guidelines or explain why they are not going to comply. It will be interesting to see if any competent authorities decide not to comply with the guidelines with many similar themes emerging in the wider-reaching UCITS VI consultation.

Once a competent authority declares that they comply with the guidelines, the transitional arrangements will start. UCITS in that jurisdiction have up to a year to comply with the guidelines.

Insurance

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Insurance



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Regulation

Consumer protection

EIOPA to focus on consumer protection in 2013

Gabriel Bernardino, EIOPA Chairman, *spoke* at the EIOPA Consumer Strategy Day in December, outlining EIOPA's 2013 strategic objectives. Priorities include raising consumer awareness of consumer rights and obligations and working toward more harmonisation of EU consumer protection regimes.

EIOPA also wants to concentrate on key consumer trends, develop industry training standards and promote cross-sectoral regulatory consistency and enforcement.

Enforcement

EIOPA enforcement processes made clear

EIOPA published its *Procedures for warnings, temporary restrictions and prohibitions* on 6 December 2012. These procedures came into force immediately when adopted in November, to support EIOPA's strategic objectives in respect of crisis management, financial stability and consumer protection.

If a financial activity threatens EIOPA's objective 'to contribute to the stability and effectiveness of the financial system or the orderly functioning and integrity of financial markets' EIOPA may issue a:

- warning (not suspending the activity)
- temporary prohibition (banning certain financial activities for a defined period)
- temporary restriction (permitting the financial activity to continue for a defined duration, with restrictions and/or specific conditions).

EIOPA may take these actions against insurers, intermediaries, national supervisors or, in the case of warnings, issue them to consumers.

Other regulatory

Changes to policies in packaged bank Macroeconomic uncertainty tops concerns in stability report

EIOPA published its *Financial Stability Report* on 12 December 2012. The bi-annual report discusses the state of financial stability in relation to the insurance, reinsurance and occupational pension fund sectors in the EU/EEA as of 29 October 2012.

Macroeconomic uncertainty continues to be the main challenge for the European insurance and occupational pensions industries. In addition, a realistic timetable for Solvency II implementation is urgently needed to aid European financial stability.

EIOPA also published their quarterly *Risk Dashboard for December 2012*. The findings do not show any risk increases. The major risk for insurers continues to be macroeconomic risk, including political risk and weak worldwide growth outlook.

Regulatory reform

EU and US supervisors continue dialogue

The EU/US Insurance Dialogue Project, comprised of representatives from the EC, EIOPA, the US National Association of Insurance Commissioners (NAIC) and the Federal Insurance Office of the US Department of the Treasury (FIO), seeks to foster mutual understanding and to enhance cooperation between the two regions.

The project Steering Committee agreed in December on seven common objectives and underlying initiatives to be pursued over the next five years. The Committee plans to develop a detailed project plan in early 2013. See *EU/US*

Dialogue Project: The way forward and *Updated EU-US Dialogue Project Technical Committee Report* for details.

RRPs

RRP rules for insurers challenged

EIOPA published its *response* to the *EC consultation* which proposed extending the RRP framework rules for banks to non-bank financial institutions. EIOPA identified issues that policy makers should consider when applying an RRP framework to insurers, including:

- policyholder protection, as well as financial stability
- the broad economic implications of an insurer's failure (including insurers that are not systemically important)
- aligning RRP objectives to Solvency II supervisory objectives
- designating a resolution authority in each Member State and more consideration of the resolution process, including funding
- dropping the 'no creditor worse off than in liquidation' requirement (NCWO), which would be complicated to apply to insurers and

may not provide adequate protection to policyholders.

The EC consultation period closed on 28 December 2012.

Solvency II

Solvency II delay remains unconfirmed

The recently announced delays to Omnibus II mean that Solvency II's 1 January 2014 implementation date is likely to be postponed. The EU has yet to make a formal announcement, but a recently published *letter* from European Commissioner Barnier to the EIOPA Chair, Gabriel Bernadino, noted that the policy setters are 'continuing to discuss the date of application for Solvency II'.

Market speculation often cites 2016 as a possible implementation date, but a revised date has not been fixed. Commissioner Barnier urges EU legislators to publish a joint statement with a clear, realistic timetable when legislators agree on the revised date.

Our *two page summary* discusses how insurers may respond to the delay.

EIOPA to conduct long-term guarantees assessment

The main issue behind the Omnibus II/Solvency II delays is legislators'

failure to agree how to treat products with long-term guarantees (LTG). EU legislators asked EIOPA to perform a long-term guarantees assessment (LTGA) and EIOPA issued *a press release* in December with key dates:

- launch of exercise 28 January 2013
- submission of results by participating insurers 31 March 2013
- publication of report June 2013.

Paul Clarke, our global Solvency II leader *commented* on the LTGA:

- Reactions from the insurance industry to the outcome of the assessment will be mixed. Whilst all insurers should welcome an agreed calibration model as it finally brings closure to the major outstanding Solvency II issue, the impact of model will vary from insurer to insurer, leading to winners and inevitably losers.

The LTGA findings should help legislators to finalise the Omnibus II rules. However, given that the June 2013 submission of the report, the vote in the EP plenary, currently scheduled for 10 June, is likely to be deferred again.

EIOPA presses ahead with Pillar 2

EIOPA issued an *opinion* and *press release* on 20 December 2012, setting out guidance for insurers and Member State supervisors on Solvency II Pillar 2 supervisory measures to be adhered to from 1 January 2014. EIOPA believes that, given the expectation of a further deferral of the regime launch, there is a risk of bilateral approaches being adopted by national supervisors in the interim which are inconsistent. It plans to publish specific guidelines to national supervisors on these issues in Q1 2013.

Pillar 2 requirements stipulate that insurers should have effective governance and risk management systems, including a forward-looking assessment of the insurer's own risks (based on the ORSA principles). Risk-management systems should include strategies, processes and reporting procedures to identify, measure, monitor, manage and report an insurer's risks on a continuous basis. Firms should manage risks at individual and aggregated level and address their interdependencies.

National supervisors should evaluate insurers' governance systems and how firms assess their risks. Supervisors

should also form views on insurers who plan to use internal models, assessing their degree of readiness to make internal model applications, and keep up with changes to the internal model framework. These requirements should be applied in a manner which is proportionate to the nature, scale and complexity of the insurer's business.

It remains to be seen how national supervisors will respond to EIOPA's guidelines (which will be adopted on a 'comply or explain' basis). There are questions as to whether all national supervisors are empowered to apply the rules at this stage.

EIOPA's opinion demonstrates that insurers cannot just 'switch off' their Solvency II preparations now that an implementation delay seems certain. The corporate governance requirements will apply from 2014 and others may apply earlier as well.

Accounting²

IASB

IASB Insurance Contracts Project: IFRS 4, phase II

The IASB is working with the FASB to develop a harmonised IFRS for insurance contracts. However, differences between the IASB and FASB's decisions mean that full convergence between their standards is unlikely. For more information see our [webpage](#) and also the IASB's high level summary of the project [status](#).

The IASB met on 14 December 2012 to continue their discussions on the proposed Insurance Contracts Standard. The discussion focussed on residual margin: an industry proposal for a 'floating' residual margin was narrowly rejected. But the IASB clarified points about unlocking the residual margin. It also confirmed that the constraint on recognising revenue which was proposed in the revenue

project should not be applied to the allocation of the residual margin.

The IASB also tentatively decided that the proposed financial instrument impairment model would not be applied to reinsurance assets.

See our [summary of the meeting](#).

² This section includes accounting developments with a direct or potential on the financial services industry only. For a complete update on accounting developments in the UK visit http://www.pwc.co.uk/eng/services/ifrs_services.html

Monthly Calendar

Open consultations

Closing date for responses	Paper	Institution
14/01/13	<u>Consultative document strengthening oversight and regulation of shadow banking: a policy framework for strengthening oversight and regulation of shadow banking entities</u>	FSB
14/01/13	<u>Consultative document strengthening oversight and regulation of shadow banking: an integrated overview of policy recommendations</u>	FSB
14/01/13	<u>Consultative document strengthening oversight and regulation of shadow banking: a policy framework for addressing shadow banking risks in securities lending and repos</u>	FSB
31/01/13	<u>Consultation paper: guidelines for establishing efficient, consistent and effective assessments of interoperability arrangements</u>	ESMA
01/02/13	<u>Consultation paper: guidelines on key concepts of the AIFMD</u>	ESMA
01/02/13	<u>Consultation paper: draft regulatory technical standards on types of AIFMs</u>	ESMA
20/02/13	<u>Consultation paper: guidelines and recommendations on the scope of the CRA Regulation</u>	ESMA
10/03/13	<u>Consultation Paper on Draft Implementing Technical Standards on reporting of national provisions of prudential nature relevant to the field of occupational pension schemes</u>	EIOPA
15/03/13	<u>Consultative document: revisions to the Basel Securitisation Framework</u>	BIS

Closing date for responses	Paper	Institution
31/03/13	<i>Standard on risk management for Takaful (Islamic insurance) undertakings</i>	IFSB

Forthcoming publications in 2013

Date	Topic	Type	Institution
Capital and Liquidity			
Q1 – Q2 2013	CRR/CRD IV	76 regulatory technical standards, 32 implementing technical standards and 20 guidelines	EBA
Q1 2013	Review of Financial Conglomerates Directive	Legislative proposals	EC
TBC 2013	Revision of Financial Conglomerates Directive (FICOD II)	Legislative proposals	EC
Consumer protection			
Q1 2013	An EU framework for collective redress	Legislative proposals	EC
Q1 2013	Investor Guarantee schemes- revision	Legislative proposals	EC
Q1 2013	Bank accounts	Legislative proposals	EC
Financial crime, security and market abuse			
Q1 2013	Financial message data transfer from the EU to the USA for the purposes of the Terrorist Finance Tracking Program	Report	EC
Q4 2013	Market Abuse Review	Technical advice	ESMA
TBC 2013	Third Anti-Money Laundering Directive	Legislative proposals	EC
Insurance			
Q3 2013	Institutions for Occupational Retirement Provision	Legislative proposals	EC

Date	Topic	Type	Institution
Q4 2013	Technical standards for Omnibus II	Technical standards	ESMA
Securities and markets			
Q1 2013	Securities Law Directive	Legislative proposals	EC
Q1 2013	Limitation period and further procedures for fining credit rating agencies	Regulation	EC
Q1 2013	Revision of the Transparency Directive	Discussion papers	ESMA
Q1 2013	Close-out netting	Legislative proposals	EC
Q1 2013	OTC Derivatives, CCP Requirements, Trade Repositories and CCP Interoperability (EMIR)	Guidelines	ESMA
Q1 2013	Guidelines on the enforcement of EMIR provisions on OTC derivatives	Guidelines	ESMA
Q1 2013	Joint technical standards on Article 11 of EMIR (exchange of collateral)	Technical standards	ESAs
Q2 2013	Guidelines on MiFID remuneration	Guidelines	ESMA
Q4 2013	Technical standards following the revision of MiFID (MiFID II and MiFIR)	Technical standards	ESMA
TBD 2013	Credit Rating Agencies III Regulation	Technical advice	ESMA
Products and investments			
Q1 2013	European Social Entrepreneurship Funds	Technical advice	ESMA
Q1 2013	European Venture Capital Funds	Technical advice	ESMA
Q2 2013	Technical advice on the revised Prospectus Directive	Technical advice	ESMA
Q3 2013	Technical standards on the revised Transparency Directive: notification requirements and update and maintenance of Q&A	Technical standards	ESMA

Date	Topic	Type	Institution
TBD 2013	Packaged Retail Investment Products	Technical standards	ESMA
TBD 2013	Undertakings For The Collective Investment Of Transferable Securities V	Technical advice	ESMA
TBD 2013	Markets in Financial Instruments Directive II	Technical advice	ESMA
TBD 2013	Markets in Financial Instruments Directive II	Guidelines	ESMA
Recovery and resolution			
Q1 2013	Rescue and restructuring of financial institutions in Europe	Guidelines	EC
TBD 2013	EU framework for recovery and resolution plans	Technical advice	EBA
Solvency II			
Q1 2013	Draft Level 2 delegated acts	Level 2 text	EC
TBD 2013	Solvency Level 3 measures	Level 3 text	EIOPA
Supervision, governance and reporting			
Q1 2013	Corporate reporting	Guidelines/recommendations	ESMA
Q1 2013	EU corporate governance and company law	Action plan	EC
Q1 2013	Storage of regulated information at ESMA	Discussion paper	ESMA
Q1 2013	Supervisory convergence	Discussion paper	ESMA
Q1 2013	Revision of Enforcement Standards	Consultation paper	ESMA
Q1 2013	Remuneration and supervisory co-operation arrangements	Guidelines/recommendations	ESMA

Main sources: ESMA 2013 work programme; EIOPA 2013 work programme; EBA 2013 work programme

PwC Insights

Banking

Transaction Banking Compass

Transaction banking is evolving from a stand-alone activity to one that's a valuable and strategic component of banking relationships in key customer segments. But certain challenges — like the financial crises and regulatory reform — impact it. We set out the issues you need to know to ensure effective and secure servicing of customer transactions in your organisation.

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Asset Management

The impact of AIFMD

The Level 2 regulation provides the long awaited detail on many AIFMD element, which fund managers and service providers need before they can design and fully implement change plans. AIFMs and depositaries now need to move forward and make the appropriate changes.

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Real Estate Investors key tax issues at year end 2012

This is an overview for investors and fund managers of year end to-dos and important issues in real estate taxation in 39 national tax systems. It also highlights what needs to be considered in international tax planning and in structuring real estate investments.

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Insurance

Solvency II – it's not a case of if, but when

Despite continued delays, Brussels remains deeply committed to the introduction of Solvency II. In this short video, Insurance Day Editor Richard Banks discusses the key challenges facing the industry with PwC Partner Jim Bichard and PwC Director Tim Edwards, including the:

- differing responses by European Regulators to the delay
- likelihood that a delay will create clear winners and losers
- human impact of delays.

Watch it [here](#).

Getting to grips with Pillar 3

The implementation date for Solvency II looks set to be postponed. But the reporting and disclosure requirements

are unlikely to undergo any material changes.

Firms may be tested on their reporting capabilities and forced to make significant interim disclosures ahead of the EU-wide launch. It is important not to lose momentum on the preparations for Pillar 3, especially as some local supervisors are set to implement this part Solvency II early.

This paper outlines the issues insurers will need to consider and the next steps towards implementation. We explore the common misconceptions relating to delays, it is easy to under-estimate some of the key strategic and implementation challenges.

Read more [here](#)

Find out more about all issues affecting the insurance industry:

<http://www.pwc.com/insurance>

Glossary

2EMD	The Second E-money Directive 2009/110/EC
ABC	anti-bribery and corruption
ABI	Association of British Insurers
ABS	asset backed security
AIF	alternative investment fund
AIFM	alternative investment fund manager
AIFMD	Alternative Investment Fund Managers Directive 2011/61/EU
AIMA	Alternative Investment Management Association
AMICE	Association of Mutual Insurers and Insurance Cooperatives
AML	anti-money laundering
AML3	3rd Anti-Money Laundering Directive 2005/60/EC
ASB	UK Accounting Standards Board
Basel Committee	Basel Committee of Banking Supervisors (of the BIS)
Basel II	Basel II: International Convergence of Capital Measurement and Capital Standards: a Revised Framework
Basel III	Basel III: International Regulatory Framework for Banks
BBA	British Bankers' Association
BIBA	British Insurance Brokers Association
BIS	Bank for International Settlements
BoE	Bank of England

CASS	FSA Client Assets sourcebook
CCD	Consumer Credit Directive 2008/48/EC
CCPs	central counterparties
CDS	credit default swaps
CEBS	Committee of European Banking Supervisors (predecessor of EBA)
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors (predecessor of EIOPA)
CESR	Committee of European Securities Regulators (predecessor of ESMA)
Co-legislators	Ordinary procedure for adopting EU law requires agreement between the Council and the European Parliament (who are the 'co-legislators')
CFPB	Consumer Financial Protection Bureau (US)
CFTC	Commodities Futures Trading Commission (US)
CGFS	Committee on the Global Financial System (of the BIS)
CIS	collective investment schemes
ComFrame	Common Framework for the Supervision of Internationally Active Insurance Groups
Council	Generic term representing all ten configurations of the Council of the European Union
CPI	Consumer Price Index
CPSS	Committee on Payment and Settlement Systems (of the BIS)
CRA1	Regulation on Credit Rating Agencies (EC) No 1060/2009

CRA2	Regulation amending the Credit Rating Agencies Regulation (EU) No 513/2011
CRA3	proposal to amend the Credit Rating Agencies Regulation and directives related to credit rating agencies COM(2011) 746 final
CRAs	credit rating agencies
CRD	‘Capital Requirements Directive’: collectively refers to Directive 2006/48/EC and Directive 2006/49/EC
CRD II	Amending Directive 2009/111/EC
CRD III	Amending Directive 2010/76/EU
CRD IV	Proposal for a Directive COM(2011) 453 final amending CRD
CRR	Capital Requirements Regulations 2006 (S.I. 2006/3221)
CTF	counter terrorist financing
DFBIS	Department for Business, Innovation and Skills
DG MARKT	Internal Market and Services Directorate General of the European Commission
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act (US)
D-SIBs	domestically systemically important banks
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
ECP	European cooperation mechanism
ED	exposure draft
ECJ	European Court of Justice

ECOFIN	Economic and Financial Affairs Council (configuration of the Council of the European Union dealing with financial and fiscal and competition issues)
ECON	Economic and Monetary Affairs Committee of the European Parliament
EEA	European Economic Area
EFAMA	European Fund and Investment Management Association
EIOPA	European Insurance and Occupations Pension Authority
EMIR	Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (EC) No 648/2012
EP	European Parliament
ESA	European Supervisory Authority (ie generic term for EBA, EIOPA and ESMA)
ESCB	European System of Central Banks
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EURIBOR	Euro Interbank Offered Rate
Eurosystem	System of central banks in the euro area, including the ECB
FASB	Financial Accounting Standards Board (US)
FATCA	Foreign Account Tax Compliance Act (US)
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FDIC	Federal Deposit Insurance Corporation (US)
FiCOD	Financial Conglomerates Directive 2002/87/EC

FiCOD1	Amending Directive 2011/89/EU of 16 November 2011
FiCOD2	Proposal to overhaul the financial conglomerates regime (expected 2013)
FMI	financial market infrastructure
FOS	Financial Ombudsman Service
FPC	Financial Policy Committee
FRC	Financial Reporting Council
FSA	Financial Services Authority
FSB	Financial Stability Board
FS Act 2012	Financial Services Act 2012
FS Reform Bill 2012	Financial Services (Bank Reform) Bill 2012
FSCS	Financial Services Compensation Scheme
FSI	Financial Stability Institute (of the BIS)
FSMA	Financial Services and Markets Act 2000
FSOC	Financial Stability Oversight Council
FTT	financial transaction tax
G30	Group of 30
GAAP	Generally Accepted Accounting Principles
G-SIBs	globally systemically important banks
G-SIFIs	globally systemically important financial institutions
G-SIIs	globally systemically important insurers
HMRC	Her Majesty's Revenue & Customs
HMT	Her Majesty's Treasury
IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board

ICB	Independent Commission on Banking
ICOBS	Insurance: Conduct of Business Sourcebook
IFRS	International Financial Reporting Standards
IIF	Institute for International Finance
IMA	Investment Management Association
IMD	Insurance Mediation Directive 2002/92/EC
IMD2	Proposal for a Directive on insurance mediation (recast) COM(2012) 360/2
IMF	International Monetary Fund
IORP	Institutions for Occupational Retirement Provision Directive 2003/43/EC
IOSCO	International Organisations of Securities Commissions
ISDA	International Swaps and Derivatives Association
ITS	implementing technical standards
JCESA	Joint Committee of the European Supervisory Authorities
JMLSG	Joint Money Laundering Steering Committee
JURI	Legal Affairs Committee of the European Parliament
LEI	legal entity identifier
LIBOR	London Interbank Offered Rate
LTG	long-term guarantee
LTGA	Long-term guarantee assessment
MAD	Market Abuse Directive 2003/6/EC
MAD II	Proposed Directive on Criminal Sanctions for Insider Dealing and Market Manipulation (COM(2011)654 final)
MAR	Proposed Regulation on Market Abuse (EC) (recast) (COM(2011) 651 final)
MCR	minimum capital requirement

Member States	countries which are members of the European Union
MiFID	Markets in Financial Instruments Directive 2004/39/EC
MiFID II	Proposed Markets in Financial Instruments Directive (recast) (COM(2011) 656 final)
MiFIR	Proposed Markets in Financial Instruments Regulation (EC) (COM(2011) 652 final)
MMR	Mortgage Market Review
MoJ	Ministry of Justice
NAV	net asset value
OCC	Office of the Comptroller of the Currency (US)
OECD	Organisation for Economic Cooperation and Development
Official Journal	Official Journal of the European Union
Omnibus I	Directive 2010/78/EU amending 11 existing Directives to reflect Lisbon Treaty and new supervisory architecture
Omnibus II	Second Directive amending existing legislation to reflect Lisbon Treaty and new supervisory infrastructure (COM(2011) 0008 final) – amends the Prospectus Directive (Directive 2003/71/EC) and Solvency II (Directive 2009/138/EC)
ORSA	own risk solvency assessment
OTC	over-the-counter
PRA	Prudential Regulation Authority
Presidency	Member State which takes the leadership for negotiations in the Council: rotates on 6 monthly basis
PRIPs	Packed Retail Investment Products
PRIPs Regulation	Proposal for a Regulation on key information documents for investment products COM(2012) 352/3
RAO	Financial Services and Markets Act 2000 (Regulated Activities Order) 2001

RDR	Retail Distribution Review
RRPs	recovery and resolution plans
RTS	regulatory technical standards
SCR	solvency capital requirement (under Solvency II)
SEC	Securities and Exchange Commission (US)
SFD	Settlement Finality Directive 98/26/EC
SFO	Serious Fraud Office
SIPP	Self-invested personal pension scheme
SOCA	Serious Organised Crime Agency
Solvency II	Directive 2009/138/EC
SSAP	statements of standard accounting practice
SSR	Short Selling Regulation EU 236/2012
SUP	FSA Supervision source
T2S	TARGET2-Securities
TR	trade repository
TSC	Treasury Select Committee
UCITS	Undertakings for Collective Investments in Transferable Securities
UCITS IV	UCITS Directive 2009/65/EC

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