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Being better informed

FS regulatory, accounting and audit bulletin

PwC FS Regulatory
Centre of Excellence

April 2012

In this issue:

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Introduction

Welcome to the April 2012 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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The G20 has shadow banking regulation high on its agenda, and EU regulators are now following through on this commitment. The EC recently published a *green paper* on shadow banking which is discussed in our feature article. Regulators remain uneasy about shadow banking activities. While they offer alternatives to traditional bank lending (by providing other forms of credit intermediation) their scale, lack of transparency and ephemeral nature makes achieving effective regulation difficult.

Engaging in a full debate on this issue now is important - we need to find ways of preserving consumer choice and financial innovation while monitoring systemic risk and ensuring effective regulation.

In March we saw steady progress on implementing major European legislative reforms on market infrastructure, including EMIR and MiFID II. The EP and Council reached agreement on EMIR, which will require mandatory reporting and clearing of OTC derivative contracts and establish central counterparty and trade repository regulatory regimes. Also, ECON published reports in March on the EC's draft text of the MiFID II directive and regulation (MiFIR), refining the original proposals. The EC's long-awaited proposal on securities settlement and central securities depositaries also emerged in March.

In the UK, the FSA published its last annual *business plan and budget* prior to launch of the PRA and the FCA next year, confirming fee increases for most types of firms and financial intermediaries. Taken with the FSCS's £60m interim levy on investment intermediaries to pay for recent firm failures, it is shaping up to be another expensive year for UK financial institutions.

Regulatory reform moved another step forward as the FSA split its operational functions into PRA and FCA supervisory units on 2 April. Firms should now begin to experience the new supervisory approaches of the PRA and FCA over the coming months. For retail businesses, the FSA's annual *Retail Risk Conduct Outlook* offers firms insights as to the areas where supervisors are likely to focus their attention this coming year.

March saw us complete a very busy 1st quarter on the regulatory developments front, so we have highlighted a number of other important developments for you in the pages that follow. To stay up to speed on the emerging EU agenda, please join us as a subscriber for our weekly *European Financial Regulation Updates*.

Laura

How to read this bulletin?

Each sector section can be read as a standalone bulletin. Developments that are relevant to more than one sector are included in each sector's section.

We recommend you go directly to the FS sector / topic of your interest by clicking in the *active links* within the table of contents.

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Feature: Regulators open debate on shadow banking

At an international level, the G20 has made substantial progress in driving forward regulatory change in the banking system. With that well underway the focus is now turning to shadow banking. At the *November 2010 Seoul Summit*, the G20 Leaders highlighted 'strengthening regulation and supervision of shadow banking' and asked the FSB, in collaboration with other international regulators, to develop recommendations to strengthen the oversight and regulation of the shadow banking system.

In October 2011, the FSB presented a number of recommendations for effective monitoring and supervision of shadow banking. While the FSB stressed the difficulties and complexity associated with this task and that many unknowns still existed, it outlined a general roadmap that supervisors could follow.

First, supervision requires careful analysis of trends in non-bank credit intermediation (which are unique to each national financial system) that have the potential to pose systemic risk. To minimise the source of risk inherent in off-balance sheet activities, the FSB recommends that supervisors pay close attention to a series of connected risk factors, such as liquidity transformation, leverage and imperfect credit risk. Moreover, to ensure the definition of shadow banking is sufficiently wide, the supervisor needs to assess the potential impact that the severe distress or failure of certain shadow banking entities/activities might pose to the overall financial system by looking at other factors, such as the interconnectedness between the shadow banking system and the regular banking system.

Building on this work and on the invitation of *G20 Cannes Summit* in November 2011 to develop its work further, the FSB initiated five work-streams tasked with analysing the issues in more detail and developing effective policy recommendations.

In this year's *Cass Lecture* on 14 March 2012, Lord Adair Turner, FSA Chairman, (who chairs the FSB's Standing Committee for Supervisory and Regulatory Cooperation) provided important insights into the FSB's evolving understanding of the risks posed by shadow banking. The FSB is due to present its proposals for shadow banking system reform to the G20 leaders by the end of the year. Against this background, on 19 March 2012, the EC launched a *Green Paper* looking at the EU's approach, taking the initial step towards a regional regulatory regime.

The FSB defined shadow banking in their April 2011 paper: Shadow Banking: Scoping the Issues as entailing 'credit intermediation which occurs outside or partially outside the banking system, but which involves leverage and maturity transformation'. This is only the start. As Lord Turner's comments illustrate, the major issue is not just the activities of shadow banks themselves but the interconnectivity between shadow banking activities and traditional banking, and the links to the real economy. According to Lord Turner, the FSB's proposals will need to be forward looking, anticipating future developments when markets begin to pick up because 'on some measures shadow banking is now a shadow of its former self'. Global regulators cannot be complacent as future shadow banking activity is not likely to adopt the 'specific forms' seen in the last crisis.

His comments flag some of the potential challenges in conceiving effective international proposals and then percolating these down into 'future proof' regional regimes. He noted that shadow banking activity was not nearly as prolific in the EU as it was in the United States prior to the financial crisis. However, this 'did not insulate the European banking system from shadow banking losses and risks, for key parts of the European banking system were involved in the shadow bank intermediation of credit flow from US savers to US borrowers'.

Essentially, he stressed shadow banking has to be understood as involving both new forms of non-bank interaction linking the financial system and the real economy, and involving far more complex links within the financial system, including between banks and non-bank institutions. Lord Turner believes that the future regime will need to focus on 'the fundamental drivers of instability across the whole financial system', not just at a regional level.

The EC's paper reflects these concerns. It suggests that shadow banking is based on two intertwined pillars. The first pillar relates to entities outside the traditional banking system which engaged in one of the following: accepting funds (deposit-like activities); performing maturity and/or liquidity transformation; undergoing credit risk transfer; and using financial leverage.

The second pillar relates to activities that provide funding to non-bank entities (securitisation, securities lending and repos). The EC has drafted a non-exhaustive list of entities and activities which relate to shadow banking, including: special purpose entities, money market funds, some investment funds (such as ETFs), non-bank entities providing credit or credit guarantees and securitisation. The EC says that monitoring has improved in recent years, but there is still a pressing need to fill data gaps showing the interconnectedness between banks and the shadow banking system on a global basis. Regulators may require more disclosure and transparency from non-bank entities.

The EC paper suggests that any new supervisory regime needs to be integrated with the macroprudential framework to understand the hidden credit intermediation chains and its systemic importance. Shadow banking rules may also extend the scope and nature of prudential regulation.

There are no developed shadow banking proposals at this stage. However, the EC does believe that a specific approach to each kind of entity and/or activity must be adopted. It The EC suggests that this could be done through indirect regulation, appropriate extension or revision of existing regulation or new regulation specifically directed at shadow banking entities and activities.

Some regulatory measures, such as a series of amendments to the CRD, improvements to IFRS, Solvency II, MiFID II, AIFMD and UCITS IV already address some of the issues. However, these proposals do not address all shadow banking issues or are designed to address evolving nature of shadow banking.

The consultation closes on 1 June 2012. The EC has also organised a public hearing on shadow banking in Brussels on 27 April 2012. Input to the green paper and feedback from the public hearing will inform a 'wide-ranging' consultation later in the year - which may lead to legislative proposals in 2013.

In parallel, the FSB is expected to release a consultation paper in the next few weeks and this deserves equal attention. Market participants from all sectors should consider these two consultations together. These proposals represent the first stage toward bringing non-bank activities under a regulatory regime and are likely to have far reaching consequences.

Depending on how shadow banking is defined, the shadow banking system is potentially enormous—equivalent to about half of total global bank assets—and hence a very important source of liquidity for the real economy. Many businesses have been heavily reliant on non-bank sources of credit, since bank lending has been hard to come by since the financial crisis.

Regulators need to be careful not to entirely stifle this market. Doing so could cut off valuable lending sources, forcing some businesses to turn to the 'dark' shadow banking system - areas which may be beyond their regulatory reach. Any new regulations should be designed to support the appropriate development of non-bank credit, while ensuring that the financial system is safe and affords adequate protection for those who avail of its services.

Cross Sector Announcements

In this section:

Regulation

Consumer protection

EC reports on consumer protection cooperation

On 20 March 2012, the EC has published a *report on the application of Regulation (EC) 2006/2004 of the EP and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws*.

This Regulation established a CPC Network enabling Member States to work closely together to swiftly and effectively stop commercial practices breaching consumer laws where the consumers and traders are from different countries.

The Regulation's cooperation mechanisms only apply to the enforcement of the legal acts listed in its annex, i.e. for the financial sector:

- the *Directive 2002/65/EC on distance marketing of consumer financial services*
- the *Directive 87/102/EC on consumer credit* replaced by the *Directive 2008/48/EC on credit agreements for consumers*.

The EC's assessment of the past two years shows that the CPC Network has entered a phase of consolidation and stabilisation of its activities. However, it found that shortcomings persist and that the Network has yet to reach its full potential.

This report is part of a wider EU initiative to strengthen consumer protection, which includes the *EC's consultation on retail bank accounts*, the *consumer rights Directive*, or the *report on financial literacy and education initiatives by competent authorities*.

House of Commons reports on debt management

Reports showing consumer worries about high levels of personal debt prompted an enquiry by the House of Commons Business, Innovations and Skills Committee (the BIS Committee) into debt management. On 7 March 2012 the BIS Committee published a *report* focussing on practices undertaken by payday loan (short-term loans which fall due on paydays) and debt management companies.

The enquiry took evidence on the many criticisms of the current consumer credit regime. The BIS Committee's main recommendations include:

Regulation of consumer debt:

- charging higher licensing fees for higher-risk credit businesses
- creating fast-track procedures to suspend credit licences
- giving the regulator the power to ban harmful consumer credit products.

Payday loans:

- limiting the practice of rolling over loans
- developing databases to capture payday lending and requiring payday lenders to record all loan transactions on such a database
- outlawing companies that accessing funds without prior agreement and agree with industry to move away from continuous payment authority process
- banning APR as measurement of cost and basis of comparison of payday loans.

Debt Management Companies:

- phasing out up-front fees
- making the costs of commercial debt advice more transparent
- reforming the industry code
- increasing audit standards for Debt Management Companies' client accounts
- improving the way that debt advice is advertised over the internet.

Money Advice Service:

- The role that the Money Advice Service (MAS) will play in relation to other debt advice organisations needed clarification. There is also a concern that MAS may undermine existing public debt advisory services (e.g. Citizen's Advice), while failing to utilise its own unique position. Further, the Committee expressed concern over the MAS Chief Executive's salary package.

The draft Financial Services Bill 2012 proposes to transfer consumer credit regulation from the OFT to the FCA. This report notes that the government has yet to set out a model for FCA's regulation of consumer credit, but the BIS Committee's detailed recommendations should assist the government in forming proposals to strengthen consumer credit standards and regulation.

FSCP raises concerns over amendments to Unfair Commercial Practices Directive

The Unfair Commercial Practices Directive 2005/29/EC (UCPD) aims to clarify consumer rights and harmonise Member State rules on unfair commercial practices.

Implemented in the UK in 2008, UCPD provides a common definition for unfair commercial practices, and in particular bans practices deemed misleading and aggressive, but allows Member State regulators to introduce more strict rules for financial services products under a minimum harmonisation provision.

A report reviewing the application of UCPD, focussing on issues including the effectiveness and fairness of allowing Member State regulators to gold-plate the UCPD requirements, will be published in 2012.

The FSCP published a *statement of its concerns* on 27 March 2012 that the changes would significantly reduce UK financial services consumer protection. However, the statement notes that FSA has undertaken to FSCP that FSA is lobbying the EC to retain local flexibility.

CRAs

EC approves RTS on CRAs

On 30 March 2012, the EC endorsed the delegated regulations relating to the regulatory technical standards (RTS) on *Information for registration and certification of credit rating agencies (CRAs)* and the *Content and format of ratings data periodic reporting to be submitted to the ESMA by CRAs* relating to the Regulation on Credit Rating Agencies (Regulation 1060/2009).

The first RTS sets out the information that a CRA must provide when it applies for registration or certification and standards for the assessment of its systemic importance. The second RTS looks at the structure, format, method and period of reporting of CRAs to ESMA's central repository (CEREP).

National authorities and ESMA followed the guidance on registration requirements that was produced by ESMA's predecessor, the Committee of European Securities Regulators (CESR) in June 2010. This guidance was adopted but some additional measures were included, such as fitness and appropriateness tests for senior management and other important personnel at CRAs. The RTS addressing periodic reporting builds on a CESR Guidance paper from August 2010 but sets out precise standards for the ratings data which CRAs have to report.

These approved RTS have now been forwarded to the Council and the EP for approval. We expect that they will be approved and published in the Official Journal in the next 3-4 months.

ESMA issues first report card on CRAs

ESMA carried out its first on-site examination of the three largest credit rating agencies (CRAs) to assess compliance with the new EU-wide CRA Regulation (Regulation No 1060/2009) over the last few months, with mixed results.

In its 22 March 2012 *Report on the Supervision of Credit Rating Agencies*, ESMA found that Fitch, Moody's and Standard & Poors made progress during the registration process last year to putting in place rigorous policies and procedures, allocating detailed roles and responsibility to their staff and formalising their activities to fully comply with the new regime.

However, ESMA noted that certain 'core elements' of their rating processes were not 'appropriately or systemically' documented, in particular the outcome of voting within the rating committee (RC) and documenting why the RC supported or departed from the initial analyst recommendations. Records that reflect these decisions are critical to assist the regulator's assessment of whether an RC decision was taken in compliance with the Regulation.

ESMA is also concerned by the short length RC members have to review the documentation discussed at RC meetings. The regulator also flagged high staff turnover within these committees and amongst analysts, particularly given the need for specialist skills for many complex asset types.

ESMA found that CRAs' disclosures were generally good, but not user friendly. The regulator did identify instances where the methodologies underlying credit rating decisions were contained in multiple documents published at different times, and so were not easy to identify on the CRAs' websites. Improving the accessibility and coordination of this information will greatly aid market participants, particularly as they perform more internal credit analysis and look to benchmark their findings.

ESMA approves international CRA regimes

Regulatory frameworks for CRAs in the United States, Canada, Hong Kong and Singapore are all in line with European rules (*EU Regulation (EC) No 1060/2009*), according to a *press release* from ESMA. EU banks and other financial institutions can continue to use credit ratings issued by CRAs established in these countries after the 30 April 2012 deadline. As the big three CRAs (Fitch, Moody's, Standard and Poors) are US firms, this confirmation was critical for market participants.

Last December ESMA endorsed credit ratings issued by CRAs established in Australia. ESMA is currently working to finalise assessments on the regimes in Argentina, Mexico and Brazil and hopes to conclude the necessary co-operation agreements as soon as possible. However, ESMA cannot guarantee that its assessments will be finalised before 30 April 2012. Firms which use ratings issued by CRAs based in those countries may have to consider interim solutions.

Regulators in the EU are moving to reduce the reliance on external credit ratings to reduce systemic risk, making financial institutions more responsible for undertaking their own due diligence and encouraging them to improve their internal risk management capabilities. In parallel with increased CRA supervision, the EU is strengthening prudential regimes for both insurers (Solvency II) and banks (CRD IV) to limit firms' reliance on external credit ratings, and are considering similar measures for asset managers.

ESMA's most recent decisions avoids a potential headache for market participants, but long-termer many participants will have to develop internal capabilities to enable them to reduce the use credit agency ratings.

Crisis management

EU develops crisis management framework

Michel Barnier, EU Commissioner responsible for internal market and services, provided details on the forthcoming EU crisis management and resolution framework in a *speech* on 2 April 2012.

The new framework will give authorities a common and effective set of powers to deal with banking crises at the earliest possible stage. The framework will include:

- preparatory and preventative measures: including requirements for firms to prepare recovery and resolution plans
- powers to take remedial action early on in the process: such as replacing management, implementing a recovery plan or requiring firms to divest businesses that pose excessive risks to its financial soundness
- resolution tools: such as powers to effect the takeover of a failing bank or firm by a sound institution, or to transfer all or part of its business to a temporary bridge bank.

The framework is designed to mitigate the need for taxpayer bail-out. The EC's suggested approach would force losses on certain types of creditors through debt write-down. In a *draft discussion paper* released on 30 March 2012, the EC's DG Internal Market proposed that debt write-down tools should be designed so that resolution authorities have the power to write-off shareholder equity. The paper also proposes that the authorities be given the power to either write-off subordinated liabilities or convert them into an equity claim. This paper will be used to inform discussions with key stakeholders, including EU governments, central banks, and the EP on the technical design of debt write-down tools.

The development of pan European resolution scheme should be coordinated with legislative proposals to amend insolvency law. The EC published a consultation paper, *The Future of European Insolvency Law*, on 30 March 2012 which represents the first stage in a long process of bringing common insolvency rules and standards to the EU. The consultation is not directed towards financial institutions but is influenced by the 2008 banking crisis.

In particular, the EC seeks views on:

- creating proportionate rules for restructuring of smaller businesses, such as SMEs and sole traders
- examining the appropriateness of the debtor's 'centre of main interest' principle in determining which country has principal jurisdiction over the debtor's insolvency
- making specific provision for the insolvency of a multi-national corporate group, for example by giving greater priority to insolvency proceedings opened over the parent company of a group
- widening the scope of the insolvency regulation to include mechanisms for restructuring the debts of distressed companies before a firm becomes formally insolvent (similar to banking proposals)
- creating a register of all insolvency proceedings opened within the EU.

The consultation on the future of insolvency law closes on **21 June 2012**. The EC is not seeking public comment on debt write-downs, but stakeholders concerned about these measures should submit their views to national authorities or the EC before proposals are released in May/June of this year.

Financial crime

ECON addresses criminal sanctions and market abuse

On 26 March 2012 ECON published two draft reports on the EC's proposals to revise the MAD: a *Draft Report on the proposal for a directive on criminal sanctions for insider dealing and market manipulation* dated 26 March 2012, and a *Draft Report on the proposal for a regulation on insider dealing and market manipulation* (MAR) dated 20 March 2012.

In the first draft report, ECON supports EC's proposals on criminal sanctions. However, given the importance of tackling market abuse and the EU's commitment to a tougher and more robust regime, ECON proposes implementing these measures in 12 months instead of 24 months and would like the EC to report back to the EP and Council on their implementation within 2 years of the directive coming into force (instead of 4 years after).

In the second draft report, ECON also supports EC's proposals, but proposes a number of amendments to improve the market abuse framework, including; clarifying the definition of inside information; introducing the concept of a 'trading window' and prohibiting managers from trading on their own account during certain periods; removing the threshold for reporting of managers' transactions over 20,000 Euros; and strengthening protections for whistleblowers.

Following the publication of these draft reports, we expect ECON to vote on these measures in July 2012, before the EP starts its plenary session to consider the proposals in October 2012.

EC harmonises rules on proceeds of crime

The EC published a *Proposal for a Directive on the freezing and confiscation of crime proceeds in the EU* (POC Directive) on 12 March 2012, and a *press release*, *memo* outlining the background and key aspects of the proposal and a detailed *impact assessment.*

The initiative aims 'to hamper criminal activities and deter criminality by showing that crime does not pay'. In 2009, the UN estimated criminal proceeds to be approximately $2.1 trillion, of which less than 1% was frozen and confiscated. In 2006, criminal proceeds in the UK were estimated to be £15 billion, of which £125 million recovered. The EC proposal notes that existing EU legislation proved to be 'inadequate, unevenly implemented and under-used' amongst Member States.

The proposed POC Directive will simplify existing rules and address gaps in the treatment of criminal proceeds. The scope of confiscation rights will be significantly extended to assets:

- from criminal activities not directly linked to a specific crime
- which are transferred to third parties
- where no conviction can be secured (e.g. where the suspect is dead or has fled and therefore cannot be convicted).

Authorities will also have rights for precautionary freezing, a temporary freeze while awaiting confirmation by a court.

The new rules are expected to considerably improve existing tools and to assist authorities in identifying, tracing, freezing, confiscating and redistributing assets.

EC confronts Cybercrime

On 28 March 2012 the EC has adopted a *Communication on a European Cybercrime Centre*, to be established within the EU law enforcement agency, Europol.

The EC already announced its intention to establish a European Cybercrime Centre in the *EU Internal Security Strategy in Action*, on 22 November 2010. The strategic priority given to tackling cybercrime is also reflected in the strategic and operational targets in the fight against cybercrime that have been agreed between Member States, the Council, the EC and Europol.

The Centre will be the European focal point in fighting cybercrime and will focus on illegal online activities carried out by organised crime groups, particularly those generating large criminal profits, such as online fraud involving credit cards and bank credentials. The EU experts will also work on preventing cybercrimes affecting e-banking and online booking activities, thus increasing e-consumers trust.

A focus of the Centre will be to protect social network profiles from e-crime infiltration and will help the fight against online identity theft. It will also focus on cybercrimes which cause serious harm to their victims, such as online child sexual exploitation and cyber-attacks affecting critical infrastructure and information systems in the Union.

This Communication is part of a series of measures that seek to protect citizens from online crimes and complements legislative proposals such as the *Directive on attacks against information systems*, the text of which is currently debated in the European Parliament or the *Directive on combating the sexual exploitation of children online and child pornography*, adopted in 2011.

The Centre is expected to start operations in January of next year. For the Centre to be established, the EC's proposal now needs to be adopted by the budgetary authority of Europol.

A total of 19 additional functionalities are now covered. However, not all revised pre-existing cases of limited pre-trade transparency were considered by ESMA as MiFID-compliant. In particular, two pre-existing functionalities were added to the list as 'non-MiFID compliant' systems.

ESMA expects a timely adjustment of these non-MiFID compliant systems in order to ensure future compliance. ESMA will monitor such adjustments on an on-going basis and also continue to assess the compliance of new waivers in the future.

In addition, the document includes a new entry about a proposal for a reference price system considered as non-MiFID compliant (i.e. not being an operating functionality). ESMA will continue to regularly update this document.

EC publishes revised third country equivalence list

The EC published a revised *Member States list of equivalent third countries* supporting the rules under the Third Anti-Money Laundering Directive 2005/60/EC (the AMLD III).

The new list, which includes 12 countries that are currently considered to have AML/CFT systems equivalent to the EU, was agreed on 8 February 2012. The list is regularly assessed and updated in accordance with the *Member States Common Understanding for recognition of third countries' equivalence*.

Under the AMLD III, Member States are required to inform one another, the ESAs and the EC when they consider that a country outside of the EU (a third country) meets EU AML/CFT standards. However, this list does not override the need for firms subject to the AMLD III rules to operate a risk-based approach and to apply enhanced measures when dealing with high-risk situations in an equivalent jurisdiction.

SOCA's new strategic priorities

The Serious Organised Crime Agency (SOCA) published its list of *strategic priorities* for 2012, which are set by the Home Office in accordance with the Serious Organised Crime and Police Act 2005. The revised list of priorities focuses on enforcement and safeguarding in the following areas:

- cyber crime
- fraud
- drugs
- firearms
- organised immigration crime.

The document also explains how SOCA's objectives are delivered and its other statutory and support functions. SOCA will support the creation of the new National Crime Agency (NCA) that will be in place in 2013. To find out more about SOCA and its work, visit *http://www.soca.gov.uk/*

HMT issues advisory notice on anti-money laundering controls

HMT published a *statement on Money Laundering controls in overseas jurisdictions* on 5 March 2012. This supersedes HMT's previous advice issued on 28 October 2011 and takes into account FATF's update on jurisdictions published on 16 February 2012.

In accordance with the Money Laundering Regulations 2007 and FSA requirements, firms must put in place policies, controls and procedures to counter financial crime. They are also required to apply adequate control measures on a risk-based basis, including enhanced due diligence in higher-risk situations.

HMT affirmed its support for the FATF and calls for firms to exercise vigilance when dealing with the high-risk jurisdictions highlighted by FATF. Jurisdictions include 17 countries with substantial money laundering and terrorist financing risks and 25 countries with strategic deficiencies that are working on action plans.

FSA consults on anti-bribery and corruption systems and controls

On 29 March 2012 the FSA issued guidance consultation on *Anti-bribery and corruption systems and controls: Proposed guidance and amendments to 'Financial Crime: a guide for firms'* (GC12/5), which a*pplies to* all firms subject to FSA financial crime rules, with new guidance and examples of good and poor practices highlighted in the last thematic review.

The consultation closes on 29 April 2012. The FSA is also considering taking further regulatory actions where firms failed to meet requirements. From next year the FCA will continue to focus on anti-bribery and corruption issues across all industry sectors.

On the same day the FSA published findings from its thematic review *Anti-bribery and corruption systems and controls in investment banks.* Despite a long-standing FSA requirement to mitigate financial crime risk and the introduction of the Bribery Act 2010, the majority of the investment banks reviewed failed to maintain adequate systems and controls.

FSA identified several common areas of weakness in investment bank governance arrangements:

- staff displayed limited understanding of the legal and regulatory requirements
- staff did not undertake inadequate risk assessments
- senior management did not provide adequate oversight of relevant activities
- senior management failed to monitor implementation of, and compliance with, relevant policies and procedures.

All firms are advised to take note of the investment bank review; the weaknesses identified reflect the standards of systems and controls which FSA supervisors would expect of all types of regulated firms.

Financial promotions

FSA updates financial promotion and advertising guidance

On 30 March 2012 FSA published finalised guidance *Financial promotions, fund performance, and image advertising/advertising ISAs &*

adverts for investment professionals (FG12/11). FG12/11 advises firm on what to avoid in advertisements and tells firms where they can go to find more information.

The first part of FG12/11 deals with image advertising and past performance for fund managers. While the advertising rules in the Conduct of Business Sourcebook (COBS) are not prescriptive, FSA sets out benchmark guidance for firms. In particular, firms are warned to avoid creating a 'risk sandwich' – a summary risks which is diluted by being preceded and then followed by a summary of benefits.

The FSA also provides finalised guidance in a separate section of FG12/11 on advertising ISAs and advertisements for 'investment professionals'. This section sets out standards for clarity in ISA advertising and guides firms on when and how it is appropriate to use the description 'investment professional'.

FG12/11 concludes with feedback received from guidance consultations 11/02 and 11/03 which FSA issued in February 2012.

Financial stability

ESRB supports national flexibility in macroprudential policy making

On 22 March 2012, the ESRB published a *press release* outlining the areas of discussion at the fifth regular meeting of its general board.

Since its last meeting in December, the ESRB noted signs of stabilisation in the EU economy and a general improvement in banks' balance sheets. However, fragility in certain segments persisted. The provision of credit to the economy in the current environment is important and the ESRB warned that policy measures may be required to counter-balance the impact of bank deleveraging and investor uncertainty about banks' resilience.

In any future regime, such as CRD IV, the ESRB believes that national authorities need to be equipped with the tools necessary for taking early action at the local level to stem build-ups of systemic risk associated with banks. This supports a number of EU countries (Bulgaria, Estonia, Lithuania, Slovakia, Spain, Sweden and the UK) that came out last year calling for greater national flexibility in setting higher standards than those currently proposed in CRD IV, to develop macroprudential policies that will address financial risks and challenges to financial stability.

Market structure

EC moves to harmonise security settlements and regulate CSDs

The EC proposed a draft regulation on 7 March 2012 *Improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC*. This regulation seeks to harmonise the securities settlement period in the EU and to strengthen rules relating to Central Securities Depositaries (CSDs), firms which play a key role in the settlement process

The EC proposes a T+2 settlement period, believing it should be 'as short as possible'. It also proposes rules designed to minimise settlement fails - which could present systemic risk. To this aim the EC suggests:

- encouraging CSDs to incentivise early settlement through an appropriate tariff structure
- requiring the use of pre-matching procedures and early matching
- introducing harmonised operating/cut-off times
- requiring straight-through-processing (STP) technology which allows the entire trade process to be conducted electronically without the need for manual intervention.

These changes will be far-reaching and come at a time when firms are already struggling to prepare for other imminent market infrastructure changes. However, hopefully improving post-trading standards will enhance market stability and address a deficiency in the post-trade infrastructure.

To address comprehensively systemic risk and to manage the expected impact of the Target2-Securities initiative, the EC is also seeking to strengthen CSD rules. CSDs will be subject to an authorisation and supervision regime, to ensure that they conform to high prudential standards.

The EC suggests that CSDs should adopt a low-risk business model, which would limit many their current activities and introduce new conflict of interest standards.

The proposals now pass to the EP and the Council for negotiation and adoption, a process expected to take approximately a year, but could face delays due to the eurozone crisis and major legislative initiatives, such as CRD IV and MiFID II.

ESMA moves EMIR consultation forward

The draft EMIR text requires ESMA to complete more than two dozen regulatory technical standards (RTS) by 30 September 2012, before EMIR comes into force at the end of 2012. While the EMIR text has not yet been approved published in the Official Journal, ESMA is moving forward with its consultation on significant RTS requirements.

On 16 February 2012 ESMA published a discussion paper *Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories* (EMIR DP) on:

- OTC derivatives and in particular the clearing obligation, risk mitigation techniques for contracts not cleared by a CCP and exemptions to certain requirements
- CCP requirements
- trade repositories, in particular the content and format of reporting to them, ESMA registration requirements and information to be made available to the regulators.

ESMA held a public hearing to receive views on the EMIR DP on 6 March 2012 and published an *audio recording* of the hearing on 8 March 2012 ESMA. The EMIR DP consultation period closed on 19 March 2012 and ESMA published *certain responses* on its website on 20 March 2012.

ESMA expects to publish a consultation paper including the text of the draft technical standards in summer 2012.

EBA, ESMA and EIPOPA discuss EMIR capital and collateral requirements

EU regulators published two discussion papers on EMIR regulatory technical standards (RTS) on 6 March 2012. The papers seek to define the various technical aspects of the new clearing regime, whilst also allowing stakeholders to state their views on these critical aspects of the regulation.

The discussion papers are based on the text of the political agreement reached by the European Parliament and the Council, and the EC on 9 February 2012 (the final text still has to be published in the Official Journal of the EU).

The EBA discussion paper, *Draft Regulatory Technical Standards on the capital requirements for CCPs under the draft Regulation on OTC derivatives, CCPs and Trade Repositories (EBA/DP/2012/1)*, seeks stakeholders' views on capital requirements for central counterparties (CCPs). The EBA believes that a CCP's minimum capital should always be at least equal to the higher of the following two amounts:

- the CCP's operational expenses during an appropriate time span for winding-down or restructuring its activities
- the capital requirements for those risks that must be covered by appropriate capital as specified in EMIR.

The EBA believes that risk exposures and capital requirements should be calculated using approaches analogous to those applied to banks under the CRD. Capital held under international risk-based capital standards should be included, to avoid double regulation.

The EBA, ESMA and EIOPA also issued a joint discussion paper, *Discussion Paper on Draft Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the Regulation on OTC derivatives, CCPs and Trade Repositories(JC/DP/2012/1)*, focussing on - essentially the use of collateral and (additional) capital requirements for OTC derivatives which are not subject to mandatory clearing.

The ESAs believe that no additional capital requirements will be imposed on financial counterparties already subject to a prudential regime, such as credit institutions, investment banks, and insurance companies, as current requirements are deemed sufficient to cover the associated risks.

The ESAs noted their intention to take into account international developments, evolving United States clearing rules and recent work by BIS. In early March the BIS published its working paper no. 373: *Collateral* *requirements for mandatory central clearing of over-the-counter derivatives* which looks at current internal practices. BIS research shows that major derivatives dealers already have sufficient unencumbered assets to meet initial margin requirements, although some may need to increase their cash holdings to meet variation margin calls. The paper also indicated that a default fund worth only a small fraction of dealers' equity appears to be sufficient to protect CCPs against almost all potential losses from the default of one or more dealers.

The consultation period for both discussion papers closes on 2 April 2012. A second consultation on the draft text will follow in the summer, prior to ESMA's submission of final RTS to the EC by 30 September 2012.

BoE advises on OTC derivatives clearing criteria

In response to weaknesses exposed by the financial crisis, the G20 countries committed to implementing a comprehensive reform of the OTC derivatives trading market. The reforms will result in significant changes to the trading, clearing and reporting of transactions. The EU will shortly approve final rules for EMIR, which will introduce new clearing and reporting requirements for OTC derivative contracts traded in the EU (or in some circumstances, those traded outside the EU but involving EU counterparties).

The BoE notes that many jurisdictions have not yet fully defined either the nature of the central clearing or which products are in scope. To contribute to this debate, on 23 March 2012 the BoE published a paper *Thoughts on determining central clearing eligibility of OTC derivatives*, Financial Stability Paper No. 14 (Paper 14). The paper explains which criteria are important when determining the eligibility for central clearing of OTC derivative contracts.

The BoE discusses the clearing criteria set out by FSB and IOSCO, as well as the standards set out in February by ESMA. It explains which aspects of standardisation are critical to central clearing, clarifies why liquidity is a key determinant and how liquidity is related to standardisation. Finally, it explains why the systematic risk reduction benefits of central clearing can be achieved only when contracts meet these eligibility criteria.

The BoE believes that a natural boundary for the central clearing obligation may emerge, with less liquid products, or products for which operational process remain bespoke and less-automated, unlikely to be suitable for a central clearing obligation. However, the BoE concludes that authorities' primary concern should be whether mandating a product to be cleared would achieve a net reduction in systematic risk.

FSA consults on regulation of emission dealers

FSA published consultation paper *Regulating bidding for Emissions Allowances under Phase Three of the EU Emissions Trading Scheme* CP12/06 on 16 March 2012. This paper sets out how FSA will authorise and supervise certain firms intending to bid on auction platforms, when this practice becomes a regulated activity.

Currently under the EU Emission Trading Scheme (ETS) a Member State may auction up to 10% of their EU Allowances (EUAs, which now include aviation allowances). From 2013 ETS phase III will require Member States to auction at least 50% of their EU emissions allowances. The UK has opted out of the common European auction platform arrangements which will be created to facilitate this trading in favour of establishing a national auction regime.

In 2011 HMT passed rules which establish Recognised Auction Platforms (RAPs), a new form of FSA recognised and regulated body. HMT is now consulting on legislation that would make bidding on such auction platforms a regulated activity, in certain circumstances. These rules will require FSA to authorise certain firms intending to bid; namely investment firms, credit institutions and a category of firms that are exempt from MiFID.

FSA advises firms on three particular aspects of CP12/06:

- FSA's proposals are subject to any final amendments made to HMT's legislation
- trading on RAPs will be subject to the Market Abuse Regime

- the redress section of CP12/06 is a joint consultation between FSA and FOS.

The consultation closes on 19 April 2012. FSA intends to finalise its proposals in late May 2012 publish a policy statement the same month. While auctions are not anticipated until autumn 2012, the EC may begin auctions on the central platform as soon as July 2012. Therefore HMT and FSA are moving to establish the UK emission trading auction infrastructure as soon as possible this year.

MiFID

ESMA updates tables of MiFID pre-trade transparency waiver assessments

On 26 March 2012, ESMA published an *updated version of the table (ESMA/2011/241) setting out its assessment of applications for waivers from pre-trade transparency requirements under MiFID*, dated 23 March 2012.

Pre-trade transparency is an integral feature of MiFID. However, to ensure the liquidity and efficiency of equity markets, in a limited number of cases waivers allow firms to deviate from MiFID's trade transparency requirements. ESMA has compiled this waiver document to contribute to a level-playing field across the EU for consistent application of such waivers.

This update expands the scope of the document to pre-existing systems; it now includes the vast majority of EU operating systems and functionalities where an order which is sent to a Regulated Market (RM) or a Multilateral Trading Facility (MTF) is not subject to any pre-trade transparency, even an express waiver.

A total of 19 additional functionalities are now covered. However, ESMA did not find that all revised pre-existing cases of limited pre-trade transparency were MiFID-compliant. In particular, two pre-existing functionalities were added to the list as 'non-MiFID compliant' systems.

ESMA expects firms to adjust these non-MiFID compliant systems to ensure future compliance. ESMA will monitor such adjustments on an on-going basis and also continue to assess the compliance of new waivers in the future.

In addition, the document includes a new proposal for a reference price system considered as non-MiFID compliant (i.e. not being an operating functionality). ESMA will continue to regularly update this document.

ECON issues report on proposed MiFID II directive

On 26 March 2012 ECON published a *Draft Report on the proposed MiFID II Directive*, dated 16 March 2012. The Draft Report contains an EP legislative resolution proposal, with an explanatory statement from the ECON rapporteur.

Generally, ECON supports EC's proposals, but proposes some amendments, including:

- introducing a reporting obligation requiring firms to explain why their activity is ancillary to their main business, to ensure exemptions are not misused
- requiring firms to provide more information to clients about their services and order execution, before the advice is given, where third party payments will be paid or where the advice is limited to certain instruments
- taking a new approach to algorithmic trading (which would be broadly defined), which would involve treating distinguishing between different types of high frequency trading, and banning direct electronic access.

Following the publication of this Draft Report, ECON should vote its adoption in July 2012, before the European Parliament starts its plenary session on MiFID II proposals in September 2012.

ECON issues report on proposed MiFIR regulation

On 29 March 2012, ECON published *a Draft Report on the proposed MiFIR Regulation*, dated 16 March 2012. The Draft Report contains an EP legislative resolution proposal, accompanied by an explanatory statement from the ECON rapporteur.

The rapporteur questioned whether the creation of a new category of trading venues like the Organised Trading Facilities (OTF) is the right way to capture organised venues which are not caught by the already existing categories, and proposed limiting the OTF category to non-equities. He also proposed defining "bilateral" and "multilateral" systems more clearly, to achieve a precise distinction between bilateral and multilateral trading and to ensure that market participants are subject to the proper rules.

The rapporteur also believes that the provisions on access to market infrastructure could give rise to problems through liquidity fragmentation, or if interoperability were involved. Supervisors therefore need to be able to intervene to prevent these problems materialising, as was recognised in EMIR.

Lastly, to ensure financial market stability and investor protection, the rapporteur proposed that ESMA or competent authorities should not only monitor financial instruments but additionally investment products which also include structured deposits. They should be able to impose restrictions or prohibitions on a precautionary basis before an investment product or financial instrument is placed on the market. Furthermore, ESMA and competent authorities should also give notice if they intend to ban an investment product or financial instrument on a precautionary basis so that the firm can make changes to it.

Following the publication of this Draft Report, ECON is expected to approve the final report in July 2012, before the EP starts its plenary session on MiFIR proposals in October 2012.

Operating rules and standards

EU publishes SEPA rules

From 1 February 2014 all national credit transfers and the majority of direct debit payment instruments will need to migrate to EU-wide instruments. This follows the publication of the Regulation (EU) 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro. The regulation amends Regulation (EC) No 924/2009 (The SEPA Migration Regulation) and was published in the Official Journal on 30 March 2012.

SEPA Migration Regulation will enable customers to use a single bank account to make euro payments to and from all Member States with no distinction between national and cross-border payments. It will also phase out the need for customers to provide a business identifier code when transferring money in the EU from 1 February 2016 and any remove any multilateral interchange fees (MIFs) from 1 February 2017. It does not apply to personal credit or to debit card payments.

The benefits of SEPA are clear. For consumers, standardised cross-border payments will remove the need to maintain accounts in different countries. For banks and other payment service providers, the new Regulation should result in economies of scale. Further, common standards will make payments more efficient and may offset any profits lost due to the migration. However, firms will need to find other revenue streams to make up for this loss of lucrative cross-border transaction fees.

Short selling regulation picks up steam

Following the publication of *Regulation (EU 236/2012) on short selling and certain aspects of credit default swaps* (CDS) in the Official Journal on 26 March 2012, ESMA released its final report on certain *implementing technical standards* (ITS).

The report sets out various ITS, primarily related to transparency, uncovered short sales and exemptions from disclosure of significant net short positions in shares.

Market participants will not be required to disclose significant net short positions in shares with principal trading venues outside the EU. The consultation paper sets out exemption standards which specify:

- the methods that firms must use for calculating turnover, which will be used to determine the principal trading venue
- the date and period firms should use for the calculation
- the date by which the relevant competent authority must notify ESMA of those shares with principal trading venues outside the EU
- the date from which the list of exempted shares will be effective following ESMA publication.

ESMA has made a number of technical and minor changes from its January 2012 consultation, including:

- widening the scope of the MiFID definition of 'liquid shares'
- requiring national authorities to disclose aggregate information on net short position on non-main national index shares to ESMA on a quarterly basis
- making it clear that confirmation of the shares' availability is required in all cases before a short sale of shares can be undertaken.

The draft ITS will be submitted to the EC by **31 March 2012** which then has three months to decide whether or not to endorse them. Most of the provisions in the ITS will apply in less than 8 months for applicable firms. Firms need to escalate their change strategies now to ensure they are ready when the Regulation takes effect.

FSB publishes early LEI guidance

The G20 tasked the FSB with pushing forward the development of an identification system, or legal entity identifier (LEI), which will provide a consistent method for identifying financial counterparties in various types of reporting. On 7 March 2012, the FSB published a report on *Technical features of the Legal Entity Identifier (LEI)* which indicated that 'significant' strides had been made in identifying the key issues and in developing framework solutions.

However, the FSB's LEI Expert Group has published its view on two technical points to give early guidance to industry and to help with forthcoming proof-of-concepts before the FSB completes its work on its five streams (governance; operational model; scope, confidentiality and access; funding; and implementation and phasing).

First, the LEI Expert Group agreed that a 20-character alphanumeric code is a good basis for the global LEI code. Second, the LEI Expert Group decided that the following 6 data elements will form part of the minimum set of reference data:

- name of the legal entity
- address of the headquarters of the legal entity
- address of legal formation
- date of the first LEI assignment
- date of last update of the LEI
- date of expiry, if applicable.

This quite limited set of the reference data resulted from the first round of regulatory discussions and is subject to amendment when the LEI Expert Group completes its work.

Product rules

IOSCO consults on ETFs regulation

The Standing Committee on Investment Management at IOSCO published *Principles for the Regulation of Exchange Traded Funds* (Consultation Report) on 14 March 2012. The consultation report proposes 15 principles to enhance investor protection in ETFs under the following categories:

- increased information disclosure to investors and regulators
- the marketing and sale of ETFs
- the structuring of ETFs
- broader market issues to consider.

The principles relate only to ETFs that are organised as collective investment schemes, not to other types of exchange-traded products, such as exchange-traded commodities and exchange-traded notes. However, currently there is little standardisation of the classification rules applicable to ETF collective investment schemes. IOSCO recognises that structures may be considered within these principles in one member jurisdiction, yet not classified as a collective investment scheme in others.

The publication of the Consultation Report follows ESMA's publication of proposed guidelines for UCITS ETFs in January 2012. IOSCO covers much of the same ground as ESMA on disclosure and marketing requirements, but the potential issue exists arises with both reports - the principles may leave room for regulatory arbitrage because they only apply to ETFs rather than all exchange-traded products. The consultation closes on **27 June 2012.**

ESMA consults on regulating proxy advisory industry

More European institutional investors (asset managers, mutual and pension funds) are relying on proxy advisors. Proxy advisors analyse the resolutions presented at the general meetings of public companies and advise investors on voting and other actions. While the European market for these services is relatively small compared to the United States, it has been growing significantly in recent years.

Following fact-finding work in 2011, ESMA published a discussion paper on 22 March 2012, An Overview of the Proxy Advisory Industry. Considerations on Possible Policy Options, focussing on the following key issues:

- factors influencing the accuracy, independence and reliability of the proxy advice, such as the potential for conflicts of interest to arise, proxy advisors' methodology and their dialogue with issuers
- the degree of transparency on how proxy advisors manage conflicts of interest, dialogue they have with issuers, how they develop voting recommendations, etc.

ESMA suggests a range of policy options which could be considered, and seeks further input from market participants. These options include: taking no action at the EU-level; encouraging Member States or industry to develop standards; or implanting binding EU legislation.

The consultation period closes on **25 June 2012**. ESMA expects to publish a feedback statement at the end of the year which will summarise the responses received and set-out ESMA's view on whether policy action is needed in this area.

FSA finalises retail structured product guidance

On 23 March 2012, the FSA published their final guidance *Retail product development and governance – structured product review* (FG12/09) following the structured product review of 2011, part of the FSA's effort to more proactively address perceived consumer detriment before it occurs, throughout the value-chain.

Largely unaltered from consultation, the final guidance gives firms developing structured products fairly extensive insight on product governance arrangements. It provides a thorough 'round-up' of regulatory initiatives that could be relevant to product design, offering a significant 'sign-post' for firms.

The FSA covers obligations on firms to:

- identify the target audience and then design products meeting that target audience's needs, rather than merely contributing towards the firm's bottom line
- stress-test new products to ensure they are capable of delivering fair outcomes for the target audience
- ensure a robust product approval process for new products including being clear about what is a 'new' product
- monitoring the progress of a product through to the end of its life cycle.

The guidance highlights examples of good and poor practice that have arisen from the thematic review, and provides a series of actions for firms to consider.

FSA finalises guidance for regulated covered bonds

The FSA published its finalised guidance, *Thematic Overview: Regulated Covered Bond Regime* (FG12/08), on 6 March 2012.

Previously FSA consulted on this guidance in on 16 December 2011 and made several amendments to the UK's regulated covered bond regime at the end of 2011.

FG 12/08 sets out the FSA's minimum expectations of issuers of regulated covered bonds in three areas:

- production and content requirements of management information (MI)
- firms' systems and controls environment for regulated covered bond issues
- the understanding and knowledge required of the senior manager who signs the annual confirmation of compliance.

The FSA has only changed the minimum requirements for MI from its initial proposal. Firms must now produce MI that includes information on the special purpose vehicles (SPV) hedging positions, information on short-term liquidity and whether assets are pledged, re-invested or re-hypothecated. Finally, MI must include an assessment of the credit risk posed by counterparties trading with the covered bond SPV.

Prospectus Directive

ESMA advises on amended Prospectus Directive

ESMA published its technical advice, *ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU* on 1 March 2012. The technical advice follows consultation in December 2011 and addresses two elements of the amended Prospectus Directive: the use of a prospectus in a retail cascade and ESMA's review of the *Prospectus Regulation ((EC) No 809/2004)*.

A retail cascade is an arrangement under which an issue is distributed by a body other than the issuer (such as a financial intermediary). ESMA has shifted its position on the use of prospectuses in retail cascade arrangements. ESMA had proposed that any consent given to financial intermediaries to use a prospectus should be stated in the prospectus along with the names of the financial intermediaries.

However, ESMA is now advising that two approaches could be followed. Under a general consent approach, the prospectus would only need to state that consent has been given for financial intermediaries to use the prospectus. Under the individual consent approach, the issuer could include both the consent and the name of each financial intermediary.

In reviewing the Prospectus Regulation, ESMA has maintained its approach but tailored its advice based on industry feedback. The prospectus will be allowed to omit certain information on indices composed by entity acting with the issuer, so long as that information is available on the website of the entity or issuer and the index has operating rules based on pre-determined criteria.

Also, ESMA is replacing the term 'preliminary statement' with 'financial information' to avoid triggering the requirement to produce a report and more accurately reflect its use. ESMA will provide further clarification on what undertakings the statutory auditor will be required to provide, and to make clear that the auditor does not accept formal responsibility by virtue of giving an undertaking.

The EC will use ESMA's advice to formulate the Level 2 measures under the amended Prospectus Directive, but is not required to take adopt ESMA's advice. ESMA will undertake further consultations: on the equivalence of third country markets, comparative table of the liability regimes applied by Member States in relation to the Prospectus Directive and convertible bonds. It expects to release these consultations in Q2 2012.

RDR

FSA publishes RDR adviser charging rules

The FSA published policy statement *Distribution of retail investments: RDR adviser charging and solvency II disclosures – feedback to CP 11/25 and final adviser charging rules* (PS12/05) on 22 March 2012. This provides firms with final rules on adviser charging and the associated reporting obligations. It also contains some minor disclosure amendments resulting from Solvency II. The guidance remains consistent with FSA's proposals under CP11/25, which the industry has broadly supported.

PS12/05 clarifies the situation relating to the facilitation of advisor charges. FSA confirmed that adviser charges deducted prior to investment, and charges paid by immediate cancellation both constitute facilitated adviser charges. These rules also apply to vertically integrated firms who would be caught unless a consumer wrote two separate cheques – one for the advice and one for the investment.

The rules address the issue of refunding adviser charges upon cancellation, within a facilitated adviser charging model, and whether refunds should be issued net or gross of the adviser charges. Because products under RDR span both HMRC and the Department for Work and Pensions (DWP) legislation, approaches vary.

HMRC rules state that if the legislation allows a firm to choose, then the refund can be made net or gross, but the firm's position should be clear to the client at outset. If the adviser charge is contingent on a product sale, the refund can be net of the adviser charge if the charge was made, or either net or gross if it had not already been made.

The DWP rules insist on gross refunds, so for these pension products the refund also has to be gross. The provider should seek repayment of the adviser charge from the distributor.

Finally, the reporting requirements for Product Sales Data confirmed that the net amount invested in a product should be reported to the FSA.

FSCP publishes research on advice gap

The RDR will result in structural changes to the financial services advice market, in particular the restructuring of advisory fees will price many consumers out of the advice market. Noting the impasse between regulators and providers in meeting this advice 'gap', the FSCP commissioned the *Advice Gap Research* (the Gap Research) to stimulate debate.

The FSCP published the Gap Research on 28 March 2012. The Gap Research analyses the financial advice models and looks at how 'advice' is defined by regulators, providers and consumers. It also analyses the views of providers and stakeholders on the expected impact to the scope, availability and use of advice services following significant policy changes such as the RDR.

The findings include:

- Consumers often confuse non-advised services with regulated advice
- Compounding the 'advice gap', there is a 'savings gap', or lack of consumer engagement.
- Few if any firms surveyed are prepared to provide simplified advice, no commercial firms are providing generic advice, and providers of focussed advice are niche players
- Firms are largely passing over simplified advice to provide either focused advice or, more often, assisted non-advised services, leaving a gap in the market for lower-depth holistic advice
- Advisory businesses are continuing to report reductions in adviser numbers and re-segmentation of their client base to exclude existing clients from pro-active engagement.

The Gap Research concludes that the primary focus of policymakers and consumer bodies is on how consumers can be motivated and equipped to engage with the range of services available on the market. Yet product and service providers are focussing on the cost of engagement and finding that it will not be economically viable to continue serving many existing customers.

RRP

FSA publishes CASS resolution rules

On 26 March 2012 the FSA published its policy statement *The CASS Resolution Pack* (PS12/6) which sets out the final rules for firms that hold client assets arising from investment business. The rules require firms to maintain and be able to retrieve documents and records that would help an insolvency practitioner quickly return client assets following a firm's failure.

FSA has amended certain proposals under CP11/16:

- reducing the time period in which firms request to make corrections to material inaccuracies in the CASS resolution pack (CASS RP) from five days to within 48 hours of submission
- requiring that certain documents and records to be immediately available
- for firms with CASS operational oversight, changing the requirement to submit an annual report to FSA in relation to CASS RP compliance with a requirement to report annually to the firm's governing body, or to provide notice to FSA of non-compliance.
- The FSA clarified that there is no requirement for firms to duplicate or hold the relevant documents and records in hard copy. Firms are permitted to hold CASS RP documents electronically but must have the organisational arrangements in place to enable retrieval within 48 hours.

The CASS RP requirements take effect from **1 October 2012**.

The FSA is undertaking a review of the framework relating to the distribution of client assets. The review may result in fundamental changes to current practices, but the FSA does not expect to change the requirement for firms to maintain a CASS RP. However, the FSA does expect regulation to become more focused on the effective segregation and rapid return of client assets.

Other regulatory

ESA Joint Committee releases 2012 strategy

The Joint Committee of the ESAs published its *medium-term strategy* and *2012 Work Plan* on 23 March 2012. The Joint Committee acts as a forum in which the ESAs cooperate closely to ensure cross-sectoral consistency of work and reach joint positions where appropriate. The strategy document serves to establish the ESAs' work programme and their accountability.

The 2012 Work Plan highlights five areas for 2012 and 2013:

- Risk assessment: taking oversight responsibility for the systemic risk work performed by the ESAs, including delivery of half-yearly policy focused risk reports
- Regulatory work: contributing to the development of technical standards and guidelines and advice to the EC in relation to legislative proposals with cross-sectoral implications (e.g. FICOD, EMIR, and the 3rd AMLD).
- Consumer protection: ensuring a consistent cross-sectoral approach in the development and distribution of retail financial products (especially on PRIPS, MiFID and IMD), working on consumer education and consumer market analysis, and developing high-level principles for new product risk assessments.
- Supervisory practice: assessing the ESA's supervisory practices and risk-based approaches, including developing guidelines and toolkits to promote cross-sectoral consistency in the areas of financial conglomerates supervision, money laundering and accounting.
- Key ESA processes: Aiming to have common policies and procedures.

The 2012 Work Plan sets out a detailed list of deliverables for each of the strategy area, with their priorities, status and deadlines.

SEC and ESMA agree MoU

On 23 March 2012, the US Securities and Exchange Commission (SEC) announced that it has established *a Memorandum of Understanding (MoU) with ESMA for consultation, cooperation and exchange of information related to the supervision of cross-border regulated entities*.

This MoU is part of SEC's long-term strategy to improve the oversight of regulated entities that operate across national borders and will enhance SEC staff's ability to share information about such regulated entities as investment advisers, investment fund managers, broker-dealers, and credit rating agencies.

This information may include routine supervisory information as well as the types of information regulators need to monitor risk concentrations, identify emerging systemic risks, and better understand a globally-active regulated entity's compliance culture. This MoU will also facilitate the ability of the SEC and the ESMA to conduct on-site examinations of registered entities located abroad.

The SEC entered into its first supervisory cooperation MoU in March 2006 with the FSA. Following the recent financial crisis, the SEC has expanded its emphasis on this form of continuous supervisory cooperation in an effort to better identify emerging risks to US capital markets and the international financial system.

As part of this effort, SEC commissioners and staff co-chaired an international task force in 2010 to develop principles for cross-border supervisory cooperation. These principles have since proven to be a useful guideline for structuring MoUs around the type of information to be shared, the mechanisms which regulators can use to share information, and the degree of confidentiality this information should be accorded.

FSA Final Guidance: Simplified Advice

The FSA published their Final Guidance on Simplified Advice (FG12/10) on 29 March 2012, following from its September 2011 consultation on draft guidance.

While simplified advice isn't a glossary defined term, the RDR has led many firms to consider streamlined approaches to advice. Recently the industry has placed pressure on the FSA to provide more clarity on its expectations for such streamlined approaches.

The FSA's final guidance has been amended somewhat following consultation; however, the broad thrust remains the same. The guidance makes clear to firms that in some cases definitions are created at a European level – such as the definition of a personal recommendation under MiFID – and in those instances flexibility is not possible.

The FSA's guidance states that where advice is given on a retail investment product, rules about suitability apply, as do the rules on adviser charging and professional standards.

The guidance continues to focus on the oversight responsibilities of firms in designing such services. It also highlights advisory issues such as the consumer hierarchy of needs, thus leading into a restrictive set of criteria for potentially suitable product sets.

FSA publishes Retail Conduct Risk Outlook

The FSA published its *Retail Conduct Risk Outlook* (FCRO) on 13 March 2012. The FCRO contains 15 broad risk categories which the FSA views as the highest priority conduct risks over the coming 12-18 months:

- Aligning business models to the fair treatment of consumers: such as reward policies in firms and changing business models in the life insurance sector
- Complexity in retail investment products and services: including products that are complex in nature
- Firms' responses to regulatory and/or legislative change: such as business model changes because of RDR
- General insurance: FSA believes general insurance firms may be looking outside their traditional sources of income to remain profitable which may cause conduct issues (through selling products of limited value or payment protection products (PPI))
- Governance of funds in life offices: FSA looks at the risk profiles of life assurance funds and the risks around inadequate disclosure of these risk profiles
- Host authorised corporate directors (ACDs): particularly the risk that host ACDs lack the necessary skills to safeguard investors and oversee delegates
- Inadequate complaints handling: particularly the complaints handling processes in major banks and redress for PPI
- Investment propositions: the FSA focuses on the risks associated with platforms, distributor-influenced funds and discretionary portfolio management
- Investment risk profiling: FSA that firms' customer risk profiling is still not effective
- Investor compensation protection: particularly where investors buy products from firms authorised in another EU Member State, which may not have FSCS-equivalent protection
- Mortgages: analysing risks associated with mortgage product innovation, treatment of mortgage customers in arrears and unfair terms within mortgage contracts
- Pensions and retirement planning: particularly the risks in the SIPP market
- Product bundling: specifically those risks from packaged accounts and bundling investment and deposit products
- Projections: the risks associated with firms giving investors overly optimistic or inaccurate projections of investment returns
- System and controls weaknesses in the network model: reviewing risks associated with this model, particularly with the RDR implementation date approaching.

Although FSA focused on some of these risks in 2011, they have been updated the list to reflect market developments. The FSA removed items such as developing and marketing structured deposits, UCITS IV and tax changes and their implications for financial products from its list of highest priority conduct risks (particularly as UCITS IV has now been implemented in the UK).

FSA's Business Plan forecasts a busy final year

The FSA published its annual *Business Plan 2012/13* on 22 March 2012. The Business Plan highlights five focus areas for the coming financial year:

- delivering regulatory reform
- influencing the international policy agenda
- delivering financial stability
- delivering market confidence
- protecting consumers.

It highlights the key topics within these focus areas against which the FSA will measure its achievements. The Business Plan also provides further insight into the FSA's approach to financial crime, the FSA's operational platform and its budget. The budget was revealed previously by FSA on 2 February in Regulated fees and levies: Rates proposals 2012/13 (CP 12/3) and increased 15.6% on 2011/12. This budget is confirmed in the Business Plan.

The FSA indicates when it expects to publish policy documents on a number of topics**.** We expect the FSA to publish frequent updates throughout 2012 and the start of 2013 to demonstrate their progress against the Business Plan.

FSA publishes PPI guidance consultation

The FSA published a guidance consultation, *Payment protection insurance customer contact letters – fairness, clarity and potential consequences (GC 12/4)*, on 6 March 2012.

GC 12/4 states that firms should analyse customer complaints about the sale of PPI policies. Firms should also review PPI sales records and this may involve contacting customers to enquire if they want the sale of their PPI policy to be reviewed. FSA designates such a contact with a consumer, in writing, to be a PPI customer contact letter (CCL). FSA has issued GC 12/4 because it believes that firms are commencing programmes to contact PPI clients.

The FSA sets out suggested content for CCLs, which are designed to be clear and to treat customers fairly. The FSA also notes that consumers have three years from the date of receipt of the CCL to make a complaint. Firms should ensure that their records contains correct customer data relating to the sale and enable them to track dates associated with transactions.

The consultation closes on **3 April 2012.**

FSA publishes quarterly consultation paper

The FSA published *CP12/5 Quarterly consultation* (CP12/5) on 6 March 2012 to consult on proposed amendments to the FSA Handbook:

- Training and Competence sourcebook (TC): the FSA proposes adding a new qualification to TC for advising on packaged products (which are not broker funds) and friendly society tax-exempt policies.
- Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) and the Supervision Manual (SUP): the FSA proposes amending guidance in BIPRU to make clear that low frequency liquidity reporting firms only need to report monthly or weekly during firm-specific liquidity stress or market liquidity stress. The FSA also proposes requirements for material currency reporting for data items FSA047 and FSA048 and in the templates for data items FSA050 and FSA052 in SUP.
- Securitisations: FSA proposes amending BIRPU to reflect the existing Significant Risk Transfer requirements for securitisations originating in the banking book also apply to securitisations originating in the trading book.
- Conduct of Business sourcebook (COBS): the FSA is consulting again on personal pension disclosure rules to take into account the comments received to CP11/3. The FSA proposes to amend the disclosure rules to apply the same disclosure rules to self-invested personal pension schemes (SIPPs) as all other personal pension schemes. This change may require SIPP-providers to amend the key features illustration (KFI) to include an effect of charges table and reduction in yield information.
- Credit Unions New sourcebook (CREDS) and SUP: the FSA

proposes to amend CREDS and SUP to apply a single regulatory regime to all credit unions. The restrictions on credit unions in Great Britain would be relaxed to conform to the less stringent rules applicable to credit unions in Northern Ireland. In particular, members of credit unions in Great Britain would be able to hold £15,000 or 1.5% of total shares (up from £10,000 or 1.5%) and be able have joint accounts with more than two members.

- Listing Rules (LR) and SUP: the FSA proposes to amend LR and SUP to replace the current definition of a 'substantial shareholder' with a new definition in LR. The new proposals also reflect that the UK Listing Authority (UKLA) will not respond to requests for individual guidance on a 'no names' basis in future.
- Collective Investment Schemes sourcebook (COLL): the FSA proposes to amend COLL to add co-ownership schemes and limited partnership schemes (collectively known as authorised contractual schemes or ACS) as new types of collective investment schemes that the FSA can authorise. This continues the legislative process started by HMT in their *Consultation on contractual schemes for collective investment*.

The consultation in relation to the TC proposals closes on **6 April 2012.** The consultation in relation to all other proposals closes on **6 May 2012.**

FSA publishes Handbook Notice 118

The FSA published *Handbook Notice 118* on 22 March 2012, setting out instruments made by the FSA Board on 21 March 2012 following its earlier consultation. FSA has issued nine instruments (effective dates in brackets):

- Handbook Administration (No 25) Instrument 2012 (FSA 2012/11): correcting certain drafting errors in the Handbook
- Fee Provisions (2012/2013) Instrument 2012 (FSA 2012/12): setting sets the FSA's periodic fees for 2012/13, the FSCS management expense limit and the fee data reporting in the retail mediation activities return (effective 1 April 2012)
- Fees (Miscellaneous Amendments) (No 4) Instrument 2012 (FSA 2012/13): setting the FSA's levies and fees for 2012/13 (effective 1 April 2012)
- Liquidity Standards (Miscellaneous Amendments No 5) Instrument 2012 (FSA 2012/14): requiring firms to test their operational ability to raise funds through central bank facilities (effective 1 April 2012)
- Retail Distribution Review (Adviser Charging No 5) Instrument 2012 (FSA 2012/15): changing the adviser charging regime under RDR (31 December 2012).
- Conduct of Business Sourcebook (Contracting Out) Instrument 2012 (FSA 2012/16): removing references to 'contracting out' of a state second pension with a defined contribution pension scheme (6 April 2012).
- Employers' Liability Insurance: Disclosure by Insurers (No 2) Instrument 2012 (FSA 2012/17) - creating rules to establish and maintain employers' liability registers (ELRs) and to trace office databases to support effective tracing of employers' insurers by claimants (1 April 2012 - see our *Hot Topic* summarising this change
- Credit Unions (Northern Ireland) Instrument 2012 (FSA 2012/18): amending the existing credit union rules to apply them in full to Northern Irish credit unions – see also, the FSA's CP12/5 reviewing the regulatory framework for credit unions (31 March 2012)
- Collective Investment Schemes Sourcebook (Amendment No 6) Instrument 2012 (FSA 2012/19): amending COLL re the syndicated loans that collective investment schemes can invest in and aligning rules on termination and winding-up rules for open-ended investment companies with those for authorised unit trusts (22 March 2012).

The feedback for these policy changes is contained within the Handbook Notice, except for the changes to adviser charging under RDR where feedback is provided in PS12/5.

FSCS confirms £60m interim levy

The FSCS announced on 14 March 2012 that a *£60m interim levy* will be applied to firms acting as investment intermediaries. The FSCS cites the costs of claims relating to MF Global (£27m), Keydata Investments Services Ltd, CF Arch Cru and Wills and Co, among others, as the reason for the levy. FSCS reports that claims relating to these matters are higher than forecasted, resulting in a funding deficit for fiscal year 2011/12.

Mark Neale, FSCS Chief Executive, said: 'We know this will be unwelcome news and sympathise with firms about the unpredictability of compensation costs.' Because the interim levy figures do not reach £100m, the interim levy does not trigger a cross-subsidy from investment managers.

FSCS will announce the 2012/13 annual levy in April 2012 and firms' annual fees will be due in July 2012.

FOS finalises annual plan and budget

Following their annual January consultation, the Financial Ombudsman Service (FOS) published its plan and budget on 27 March 2012, introducing some changes in cost recovery for some firms.

The final FOS budget was set at £191.1 million, to be funded by levies and case fees. The FOS has maintained the case fee at £500 per case (for the fourth or subsequent case) and the levy on all firms at £17.7 million for compulsory jurisdiction.

However, the FOS has introduced a new supplementary case fee for PPI complaints, in light of the number of cases received and impact this has on their resource; the FOS indicated that it may receive up to 130,000 PPI cases this year. The supplementary case fee of £350 is payable when the number of PPI complaints at a firm exceeds 25 in a year, and when a complaint is 'converted'. Industry responses to this proposal were negative. The FOS was fairly dismissive of the issues raised by industry, including a call for a differentiated levy to be temporary and not precedent setting. However, the FOS did agree that the cost of PPI complaints could differ in the next financial year and that it would be appropriate to consult again next year on the supplementary levy amount.

The FOS business plan received broad support from industry. Some firms highlighted the abolition of the two-stage complaints handling process from July 2012, indicating that the FOS might see a small spike in claims at this time.

The FOS consultation on 'modernising their case fee arrangements from 2013' closes on 16 April 2012.

FOS: Lucky the dog wins the day

On 27 March 2012, the FOS published a provisional decision in relation to pet insurance, inviting comment from firms. This consumer complaint related to an intermediary who had white-labelled a pet insurance policy, and then subsequently withdrawn from the market, removing what was perceived to be 'life-time' cover from the dog's owner. The decision on Lucky the dog's insurance coverage has a number of potentially significant ramifications.

The policy was an annually renewable policy, which renewed automatically by direct debit. The policy included any conditions developed by Lucky from outset of the policy, whilst new policies would have excluded pre-existing medical conditions.

The provisional decision considers whether it was possible for the insurance intermediary to withdraw the product, and whether actually they should be required to maintain cover. In the end, the decision was made that the law did not require the continuation of cover. However, the adjudication didn't appear to consider the impact of the Unfair Terms in Consumer Contract Regulations in this case.

The Ombudsman went into some detail considering the marketing statements of the intermediary, and clearly found them lacking. This fundamental lack of clarity of brand, responsibility and in notification of termination of cover resulted in a provisional partial uphold on behalf of the consumer.

The redress in this case is also unusual. Lucky had developed a series of conditions that other replacement policies would not cover (as they would be pre-existing conditions under a replacement policy). In this case, the provisional judgement was that the intermediary should assume liability for the cost of Lucky's treatment for the next three years for any claim that the owner's replacement policy does not cover (and which the original policy would have covered). This liability falls on the intermediary, rather than the original insurer.

Given the nature of other similar products, firms active in the annual renewal insurance market may wish to consider and comment on this judgement.

Given the nature of other similar products, firms active in the annual renewal insurance market may wish to consider and comment on this judgement.

Accounting[1]

Monitoring Group consults on governance

The Monitoring Group which is comprised of global authorities (IOSCO, BCBS, EC, World Bank, FSB, International Forum of Independent Audit Regulators) and the Public Interest Oversight Board, the body responsible for International Federation of Accountants audit standards, issued a wide-ranging *Consultation on Governance* on 28 March 2012.

The consultation poses some general questions on the overall structure of this global audit and accounting governance, including questions on the current organisation, the independence of the standard setters and accountability. The consultation focuses on the role, composition and the funding models of the different bodies involved and the relationships between them. It also gives respondents the opportunity to identify other ideas or suggestions not considered in the consultation that could help strengthen the current structure of governance.

The consultation closes on **28 June 2012** and the Monitoring Group expects to publish final proposals by the end of this year.

UK GAAP

The future of UK GAAP

Firms presently reporting under UK GAAP will all be impacted by the UK Accounting Standards Board (ASB) project on the Future of UK GAAP.

On 30 January 2012, ASB published financial reporting exposure drafts (FREDs) setting out revised proposals for the future of financial reporting in the UK and Republic of Ireland. At the core of these proposals is a single new FRS (the Financial Reporting Statement applicable in the UK and the Republic of Ireland) that will replace the existing suite of FRSs and SSAPs. Details of the proposals are on *ASB's website* and are summarised in PwC's *Straight Away* publication. At the same time the ASB also issued a *discussion paper* on the options for the future of insurance accounting in the UK and Republic of Ireland which is considered in our *Hot Topic* publication. The period for comment on ASB's proposals runs to **30 April 2012** and it is proposed that the new requirements will apply from **1 January 2015** (with early adoption permitted).

In March we published *The future of UK GAAP: Your questions answered*. This tackles some of the questions that have arisen from the publication of the SB's most recent exposure drafts on the future of financial reporting in the UK and Republic of Ireland.

UK GAAP quarterly update

Our *UK GAAP quarterly update* considers reporting requirements as at 31 March 2012. It highlights the topical issues to consider as well as new standards and interpretations that apply as of this date.

IFRS

IFRS news

IFRS news is PwC's monthly newsletter highlighting developments at the IASB. **IFRS news - March 2012** contains:

- Related-party disclosures
- IASB agenda consultation - Call for 'period of calm'
- Viewpoint - PwC's global chief accountant on IFRS Foundation's governance
- IFRS quiz - Contingent consideration

[1] *This section includes accounting developments with a direct or potential impact 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

IFRS quarterly update

PwC's *IFRS quarterly update* considers reporting requirements as at 31 March 2012. It highlights the topical issues to consider (including new issues added since previous versions); the new standards and interpretations that apply at this date; and the new IFRS standards that are published but effective at later dates, and hence have to be disclosed by IFRS reporters.

Practical Guide to new IFRSs 2012

PwC's *practical guide to new IFRS* guides readers through the new IFRS standards and interpretations that come into effect for 2012 year ends. It discusses the four amendments to standards (IFRS 1, IFRS 7, IAS 12 and IAS 1) that are mandatory for the 2012 year-end (subject, in some cases, to EU endorsement) and also the new and amended standards that may be available for early adoption.

Taxation

Chancellor gives carrots and sticks to FS firms in 2012 budget

Broadly, the 2012 Budget appeared to have two key objectives: to make Britain more attractive to business and to clamp down on tax avoidance. Highlights for the financial services sector included:

- Reduction in the rate of corporation tax was accelerated. The rate will now be 24% from April 2012, 23% from April 2013 and 22% from April 2014.
- Increase in bank levy rate, from 0.088% to 0.105% in the case of the full rate. This increase will take effect from 1 January 2013 and will further increase the costs of banks within the scope of the levy.
- Introduction of an 'above the line' credit for research and development from April 2013 (which will be at least 9.1%) to support innovation.
- Consultation on changes to the UK withholding rules relating to tax on interest payments. The proposed changes would affect a number of funding and cash pooling arrangements.
- Consultation on exchange of information between financial institutions and the US IRS to facilitate the US Foreign Account Tax Compliance Act (“FATCA”) regime.
- Introduction of a new tax regime for life insurance companies to be enacted in Finance Act 2012 and effective from 1 January 2013.
- Introduction of measures to prevent avoidance of Stamp Duty Land Tax on the purchase of UK real estate, including a 15% charge for residential property over £2m acquired by companies.
- Introduced of legislation to permit the authorisation of tax transparent funds from summer 2012. Draft regulations will be made under the powers in Finance Bill 2012.

Whilst the 2012 Budget was short on surprises, the tax regime for the financial services sector is still changing and firms are advised to closely monitor developments.

Tax rate reduction in 2012 Budget – impact on period-end accounting

We have published a *Straight Away publication* considering the accounting implications of the tax rate reduction announced in the March 2012 budget.

Banking and Capital Markets

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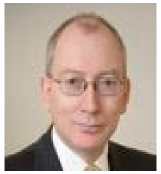

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Regulation

Market structure

FSA and DETI (Northern Ireland) agree credit union cooperation

The FSA published the Memorandum of Understanding (MoU) that it signed with the Department of Enterprise, Trade and Investment in Northern Ireland (DETI) on 2 March 2012 setting out responsibilities for the regulation of Northern Ireland Credit Unions (NICUs).

NICUs are currently registered and regulated by the DETI. In 2010 Northern Ireland and HMT agreed to transfer statutory regulatory powers over NICUs from DETI to the FSA. This transfer took place on 31 March 2012.

The MoU sets outs the following categories for the continuing post-transfer joint working arrangements: information sharing, confidential information, transfer of personal data, requests and referrals, websites, relationship management, access to supervisory and historic records, registration events and investigations.

This MoU builds on arrangements agreed in a letter between FSA and DETI dated 22 September 2011 and no substantive changes were introduced in the MoU. The registration functions will also be transferred to the FSA at a future date.

Product rules

EC promotes basic retail bank accounts

The EC identified a number of obstacles to customer choice and mobility in the financial services in the single market in its 20 March 2012 "Consultation on bank accounts". According to the EC and backed-up by a number of studies (e.g. the *Monti Report*), the most pressing obstacles are the lack of transparency of bank account fees; high switching costs (both in terms of money and time required); and the lack of universal access to basic banking services. The EC believes that about 30 million EU citizens don't have bank accounts.

In July 2011, the EC released a Recommendation outlining principles for a basic payment account. These principles should give customers the right to open and use basic bank accounts. Member States can choose whether or not to act on the Recommendation, but the EC is reviewing the efficacy of measures taken by Member States.

To promote customer choice, it is seeking comments on measures to improve information on bank fees and that fee information is provided to customers. The measures proposed include standardised lists of fees, comparison tools and personalised cost simulations. In 2010, the EC requested that the European Banking Industry Committee (EBIC) develop solutions to assist consumers on bank account fees. However, the EC noted that (as at the end of 2011) this self-regulatory initiative hadn't worked.

The EC is also seeking views on how to make it easier for consumers to switch bank accounts. In particular, the EC is consulting on the common principles for bank account switching published by EBIC in December 2008.

The consultation closes on **12 June 2012**. Given the amount of EC activity in this area, if the voluntary measures it has put forward so far are not acted on by Member States and the banks, we are likely to see more aggressive legislative measures put forward in this area.

Mortgages

HMT announces position on Residential Property Directive

HMT published a *letter* dated 16 December 2011 from Mark Hoban, Financial Secretary to the Treasury discussing the proposed *Residential Property Directive* (RPD) on 2 March 2012. The letter was sent to the House of Lords' European Union Committee (HL EU Committee) responding to its letter of 24 November 2011 stating its concerns about the Residential Property Directive.

Hoban's letter provides an update on UK developments and responds to the HL EU Committee concerns, namely that:

- the RPD would not have averted the problems faced by Northern Rock in 2007 because it focuses on the pre-contractual mortgage process, not on bank funding
- the RPD should focus on mainstream lending, leaving the regulation of niche mortgage

products, such as buy-to-let mortgages, to individual Member States

- FSA intends to align its ongoing Mortgage Market Review (final rules expected before the end of 2012) with the RPD
- HMT is fighting to allow both lenders and intermediaries to advise on mortgages
- HMT has so far been unsuccessful in keeping the UK Key Facts Illustration document in lieu of the European Standard Information Sheet (ESIS) favoured by other Member States
- HMT is sceptical that the RPD will achieve a single mortgage market, and is seeking to ensure its passporting provisions do not undermine consumer protection in the UK.

The EC and EP have yet to agree on RPD, so the final position on these issues is still unknown. However, HMT clearly disagrees with a number of other Member States over significant issues.

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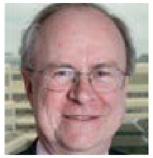

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Regulation

AIFMD

HMT publishes AIFMD policy options

HMT published an informal discussion paper, *Policy options for implementing the Alternative Investment Fund Managers Directive*, on 14 March 2012, seeking UK market participants' views on some key policy issues under AIFMD. This paper follows the release of the FSA consultation in January and an ESMA consultation in February.

HMT's main policy proposals address:

Requirements for exempt AIFs: if assets in an alternative investment fund (AIFs) are below the €100m leveraged/€500m unleveraged thresholds for exemption, HMT proposes options: full authorisation for all alternative investment fund managers (AIFMs), a selective approach where some regulatory requirements would apply to AIFM managing exempt AIF, or a registration only approach (the minimum required under AIFMD). HMT seems to be leaning towards the middle ground - where authorisation would be required but the regulatory requirements would be proportionate to the size of the AIF and the risks posed to investors.

Application of the approved persons regime: the UK's approved persons regime under FSMA 2000 is not mandatory under AIFMD, and does not currently apply to all AIFMs that will fall under AIFMD. Some AIFMD fall outside the approved persons regime, such as internally managed investment trusts, although they are subject to similar requirements under company law or the Prospectus Directive. HMT is exploring whether or not to extend the approved persons regime to all AIFMs, although arguably this would be "gold-plating" AIFMD and might be inconsistent if other Member States don't impose such requirements on AIFMs that passport into the UK. However, it would create a level playing field amongst UK AIFMs.

Marketing AIFs to retail investors: some UK funds that can be marketed to retail investors will fall under AIFMD, including non-UCITS retail schemes, comparable non-UK schemes that have been approved by FSA ('recognised schemes') and some listed companies that are subject to the Prospectus Directive (e.g. investment companies). The Government is considering whether to retain the existing approach or increase the requirements applicable to AIFs marketed to retail investors.

Private placements: AIFMD allows Member States to impose additional requirements on private placements of non-EU AIF (i.e. third country funds) by non-EU AIFM, in addition to those under AIFMD. However, the Government doesn't appear inclined to do so.

Broadly HMT plans to follow a 'copy-out' approach to AIFMD, but wants to hear from market participants on areas where additional measures may be appropriate. The consultation period closes on **4 May 2012.** In parallel, the FSA published a discussion paper covering operational issues on implementing the AIFM Directive in January 2012.

We expect formal consultation on both these discussion papers sometime this summer and a consultation on draft legislation in autumn 2012, as UK authorities prepare local legislation for the July 2013 implementation date of the Directive.

Maijoor reviews progress on AIFMD

Steven Maijoor, ESMA Chair, gave a *speech* discussing ESMA's progress on implementing AIFMD, ESMA's objectives and its resourcing requirements at the European Private Equity and Venture Capital Association (EVCA) Investors' Forum on 15 March 2012.

Regarding progress of AIFMD, Maijoor said that ESMA is currently drafting MoUs to establish cooperation agreements between EU Member States and third countries. Such agreements will be taken forward by ESMA, rather than individual Member States, to ensure consistency and to reduce the burden on individual competent authorities. Maijoor confirmed that ESMA is planning extra resources to manage the data AIFMD data. Maijoor also noted that a consultation paper on remuneration will be forthcoming in Q2 2012.

Maijoor used his speech to reinforce the key objectives of ESMA: to create a single European rule book and to provide a consistent supervisory framework. To achieve these aims he noted that ESMA requires more support:

- ESMA should be funded by the EU alone rather than by competent authorities and the EU. Such a move would allow ESMA to grow and would alleviate the funding burden on competent authorities.
- The legislative process should allow ESMA more time to draft technical advice and standards.

ESMA is often asked to provide advice which must be based on industry consultation, a process that substantially increases the time ESMA requires for policy development. Stakeholders have expressed concern that ESMA has not been given sufficient time or staff to produce regulatory technical standards for complex legislation, such as EMIR and MiFID II.

PwC responds to AIFMD consultations

ESMA published the responses it received to the *Discussion Paper: Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM* on 27 March 2012. These responses look to further clarify the definition of an alternative investment fund manager (AIFM) and alternative investment fund (AIF). Along with many from industry, we responded the consultation (see the *PwC response*). We suggested that ESMA develop criteria to determine what should and should not be considered an AIF, but leave it to each Member State to legally determine what is and is not an AIF. We also suggested that ESMA could adopt the SEC's definition of a family office to help promote a consistent regulatory approach globally. We also responded to the FSA's discussion paper (DP12/1) which sets out FSA's initial policy views on implementing AIFMD in the UK. We focused on several policy areas of concern, particularly the treatment of investment trusts and regulatory reporting under AIFMD. Our response will be made public shortly.

Alternative Investments

IOSCO prepares for second hedge fund survey

IOSCO's Technical Committee published its *updated systemic risk data requirements for hedge funds* on 22 March 2012.The systemic risk data requirements are 10 categories of information that the Technical Committee will put to hedge fund managers in a second IOSCO hedge fund survey, to be completed in September 2012. The first such survey was completed in September 2010 and IOSCO plans to hold one annually in September now on an ongoing basis. This survey is separate from the FSA's semi-annual hedge fund survey.

The 10 categories of information are:

- general firm/advisor and fund information
- performance and investor information for each qualifying fund
- market and product exposure for strategy assets
- geographical focus
- turnover/number of transactions
- trading and clearing
- leverage and risk
- liquidity risk
- counterparty risk
- other information.

IOSCO will use the information gathered from the survey to monitor possible systemic risks that might arise in future from the hedge fund sector.

UCITS

ESMA publishes final structured UCITS guidelines

ESMA published *Guidelines for competent authorities and UCITS management companies* (Guidelines) on 23 March 2012, covering risk measurement and the calculation of global exposure of structured UCITS. The Guidelines supplement the requirements to calculate global exposure of derivative instruments under the UCITS Directive.

They change how UCITS managers should calculate global exposure when using the commitment approach and prospectus disclosures for structured UCITS. These Guidelines were initially published in draft in April 2011. Competent authorities have two months to notify ESMA whether or not they comply or intend to comply with the Guidelines (and so impose them on UCITS management companies).

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Regulation

Solvency II

Solvency II is a fundamental review of the prudential regulatory requirements for the European insurance industry. It will apply to all insurance firms with gross premium income exceeding €5m or gross technical provisions in excess of €25m.

EP votes on Omnibus II, industry considers Solvency II delay

Omnibus II will amend Solvency II to set its implementation date; specify areas of, and timing for, further Solvency II legislation; incorporate new powers given to EIOPA; and make a number of other technical amendments.

On 21 March 2012 ECON voted on Omnibus II. After much debate, ECON approved a version of a 'matching premium', raising the question of whether insurers will be able to adjust the discount rate to reflect the risks on long-term insurance products. However, this may not address all of the industry's concerns about the valuation of annuity liabilities. Whilst the ECON legislation addressed insurers' concerns in a number of areas, the industry response was still cautious. Both the *ABI* and *Insurance Europe* voiced their concerns about how the ECON amendments would impact contracts with long-term guarantees.

Commenting on the ECON vote, Paul Clarke, PwC Global Solvency II Leader, said

"The industry will be keeping a close eye on the finer details as they emerge over the coming weeks. In particular, progress on the discount rate, equivalence, transitional measures and reporting thresholds."

Following this key EP approval of Omnibus II, discussions can now commence with the Council and the EC. These 'trialogue' discussions due to start in April will aim to iron out the differences between ECON's Omnibus II text, the EC's proposals (published in January 2011) and the position that the Council reached in September 2011. After they reach agreement in trialogue, the next step will be a plenary vote on Omnibus II, which will also finalise the Solvency II level 1 text.

After the ECON vote, the industry hoped that trialogue negotiations would resolve matters swiftly and that the plenary vote would be scheduled for 2 July 2012. However, the plenary vote has now been *re-scheduled* for 10 September 2012, and the industry is concerned that this postponement may delay the Solvency II implementation date.

FSA updates Solvency II materials

To assist insurers with their preparations, the FSA published *questions and answers* from their industry briefing on 27 February 2012 and updated their *self-assessment template*.

PwC publishes new Solvency II UK materials

We have produced a series of publications in ***Countdown to Solvency II*** discussing key Solvency II issues and implications. The latest publication in this series *Learning from the early movers*, which considers what insurers who are preparing internal model applications can learn from Lloyd's early mover experience.

Our Solvency II UK web pages are available at *www.pwc.co.uk/solvencyII*

Other EU regulatory

Other EIOPA publications

This month EIOPA published a number of communications from their Chairman, Gabriel Bernardino:

- brief *audio interview* on Solvency II implementation developments
- speech: *How EIOPA is 'taking the lead' in consumer protection*
- speech: *EIOPA – building a European supervisory culture*
- presentation at EC public hearing: *High-level overview of the EIOPA advice on the review of the IORP Directive*
- *Interview* on the new European pension regime
- *Interview* considering issues arising from the IORP Directive and Solvency II.

Follow EIOPA on *Twitter* for further information.

PwC's European financial regulation updates

See PwC's *European financial regulation updates* for further developments. Updates in March 2012 include:

- *FSB update on Legal Entity Identifier (LEI) progress*
- *EC consults on shadow banking*
- *US credit rating agencies approved under new EU regulatory regime.*

Other UK regulatory

FSA finalises employers' liability registers (ELRs) rules

On 22 March 2012, FSA published rule changes (see *Handbook notice 118*). The notice clarifies the requirements regarding directors' statements and auditors' reports over ELRs and makes certain other changes. Our *Hot Topic* publication summaries the requirements and highlights the actions EL insurers should be taking.

Insurers should already have in place systems and controls to enable them to maintain their ELRs in accordance with FSA rules. Now that the FSA have finalised the reporting requirements, insurers may wish to critically reassess the adequacy of these systems and controls. Insurers will also wish to consider the additional processes required to support the directors' statement on ELRs. Insurers should engage with their auditors to discuss the scope and timing of this work. Overall, these requirements are likely to be onerous and time consuming, particularly as firms address them during the first year.

Tucker delivers speech on insurance and financial stability

On 13 March 2012, Paul Tucker, BoE Deputy Governor for Financial Stability and member of the Financial Policy Committee and Monetary Policy Committee, gave a *speech* on the relationship between the insurance industry, financial stability and the proposed new regulatory structure in the UK. He made the case that insurers provide essential services to the economy but noted that certain insurers' activities can affect financial stability, such as:

- shadow banking
- significant securities lending and derivative trading
- capital markets activities, in particular the introduction of complex products such as variable annuities.

Regulators are currently working to understand and minimise the potential detriment of such activities. These measures include:

- FSA recent guidance to insurers on "liquidity swaps"
- FSB and the UK Securities Lending and Repo Committee efforts to create a structure for the securities lending markets.

Tucker went on to discuss the complexities presented by Solvency II and the overlap of FCA and PRA supervision in relation to with-profits policies. He disclosed that PRA and FCA will draft a memorandum of understanding to set out their roles in relation to supervision of these products. Tucker then highlighted that although insurers are not in scope of the recovery and resolution plan requirements imposed on banks, FSA is currently focussing on developing standards for the orderly resolution of insurers.

PS12/04 - FSA drops controversial proposals for with-profits policies

On 7 March 2012 FSA published *PS12/4: Protecting with-profits policyholders*. This policy statement sets out the FSA's response to the feedback received from the industry on the proposals in *CP11/5: Protecting with-profits policyholders*. There was strong resistance to many of the FSA's proposals and concerns that, if implemented, these proposals could threaten the viability of the mutual life insurance sector as a whole and with-profits products written by proprietary insurers. Therefore, the FSA has decided not to proceed with most of the more contentious proposals for the time being. See our *Hot Topic* for more details.

Accounting[2]

IFRS

IASB Insurance Contracts Project

The International Accounting Standards Board (IASB) is working alongside the US Financial Accounting Standards Board (FASB) to develop a harmonised IFRS for insurance contracts. The IASB's updated *work plan* includes details of the project timetable as of 1 February. A review draft or revised ED is now timetabled for the second half of 2012, rather than the first half of the year as previously planned. For more background information see PwC's *webpage* on this project.

On 26 March 2012 IASB published:

- *an updated* high level summary of the project objectives
- *a* high level summary of IASB and FASB's tentative decisions, *showing where those decisions would affect the proposals in the ED*
- *an updated* high level summary of the current status of the Insurance Contracts project.

IASB has published a *podcast* reporting on developments on the insurance contracts project at the 19-23 March 2012 joint IASB/FASB meeting. Our *Insurance Alert* summarises the IASB / FASB's insurance contracts session held in March which focussed on the portfolio definition of unit of account and the disaggregation of investment components. It also summarises the IASB's two education sessions held in March which focussed on the separation of investment components from insurance contracts and recognising changes to the reporting of insurance liability under other comprehensive income (OCI).

We have also published a *project summary as of 7 March 2012*. This summary, based on the IASB Exposure Draft, Insurance Contracts, issued on July 30, 2010, the FASB Discussion Paper, Preliminary Views on Insurance Contracts and attendance at meetings to 7 March 2012, compares the IASB and FASB positions and considers the areas that require re-deliberations.

FASB has also published a *summary of decisions reached as of 7 March 2012* and *minutes of the FASB meeting on 7 March 2012* considering financial instruments with discretionary participation features. The FASB tentatively decided that investment contracts with discretionary participation features should not be included within the scope of the insurance contracts standard unless the contract meets the definition of insurance.

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[4] This section includes accounting developments with a direct or potential impact 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
16/04/2012	*Charging for our work: modernising our case fee arrangements from 2013.*	FOS
19/04/2012	*CP12/6: Regulating bidding for Emissions Allowances under Phase Three of the EU Emissions Trading Scheme*	FSA
26/04/2012	*Large Exposures Regime: Groups of Connected Clients and Connected Counterparties (CP12/01)*	FSA
26/04/2012	*Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules*	FSA
27/04/2012	*Green Paper on Shadow Banking*	EC
30/04/2012	*Financial reporting exposure drafts*	ASB
30/04/2012	*Future of insurance accounting in the UK and Republic of Ireland 2012*	ASB
30/04/2012	*Mini-consultation adaptation to Cross-CSD settlements in T2S*	ECB
04/05/2012	*GC 12/6: Assessing suitability: Replacement business and centralised investment propositions*	FSA
04/05/2012	*Revised implementation proposals for workplace pension reform*	FSA

Closing date for responses	Paper	Institution
04/05/2012	*Policy options for implementing the Alternative Investment Fund Managers Directive*	HMT
14/05/2012	*Consultation on the future of European company law*	EC
18/05/2012	*Principles for the Valuation of Collective Investment Schemes: Consultation Report*	IOSCO
21/05/2012	*Suitability Requirements with respect to the Distribution of Complex Financial Products: Consultation Report*	IOSCO
21/05/2012	*Principles for Ongoing Disclosure for Asset-Backed Securities: Consultation Report*	IOSCO
12/06/2012	*Commission services working document: Consultation on bank accounts*	EC
25/06/2012	*Discussion Paper: An Overview of the Proxy Advisory Industry. Considerations on Possible Policy Options*	ESMA
27/06/2012	*Principles for the Regulation of Exchange Traded Funds: Consultation Report*	IOSCO

Forthcoming publications in 2012

Date	Topic	Type	Institution
Accounting			
Q2 2012	Insurance Contracts Standard – re-exposure / review draft	Consultation paper	IASB
Banking Structure			
Q3 2012	Report from the high-level expert group examining the structural aspects of the EU banking sector	Discussion paper	EC
Capital and Liquidity			
Q2 2012	EBA CRD Common Reporting Application	Consultation paper	FSA
Q1-Q4 2012	CRD IV	76 regulatory technical standards, 32 implementing technical standards and 20 guidelines	EBA
Client Money			
Q2 2012	Client Assets sourcebook	Policy statement	FSA
Financial crime, security and market abuse			
Q4 2012	MAD Review	Technical advice/ guidelines	ESMA
TBC 2012	Securities Law Directive	Legislative proposals	EC
TBC 2012	Third Anti-Money Laundering Directive	Legislative proposals	EC
TBC 2012	Financial Conglomerates Directive (revision)	Legislative proposals	EC
Insurance			
Q2 2012	Revision of the Insurance Mediation Directive (2002/92/EC) (IMD)	Legislative proposals	EC

Date	Topic	Type	Institution
Q3 2012	Institutions for Occupational Retirement Provision	Legislative proposals	EC
Market Infrastructure			
Q2 2012	UK implementation of Amending Directive 2010/73/EU Simplifying the EU Prospectus and Transparency Directives	Policy statement	FSA
Q2 2012	Non-mainstream investments	Consultation	FSA
Q2 2012	PRIPs	Legislative proposals	EC
Q2 2012	UCITS V	Legislative proposals	ESMA
Q3 2012	Implementation of Alternative Investment Fund Managers Directive	Consultation	FSA
Q3 2012	OTC Derivatives, CCP Requirements, Trade Repositories and CCP Interoperability (EMIR)	Technical advice/ standards/ guidelines	ESMA
Q4 2012	AIFMD	Technical standards	ESMA
Q4 2012	CRA III Regulation	Technical advice	ESMA
Q4 2012	MiFID II	Technical advice/ guidelines	ESMA
Q4 2012	MiFID I-financial consumer protection	Guidelines	ESMA
Q4 2012	MiFID I- supervisory convergence	Guidelines	ESMA
Q4 2012	PRIPS	Technical standards	ESMA
Q4 2012	Prospectus Directive	Technical advice	ESMA
Q4 2012	Revision of the Transparency Directive	Discussion papers	ESMA
Q4 2012	Social Investment Funds	Technical advice	ESMA

Date	Topic	Type	Institution
Q4 2012	Venture Capital	Technical advice	ESMA
Q4 2012	UCITS	Technical standards	ESMA
Q4 2012	UCITS V	Technical advice	ESMA
TBC 2012	Investor Guarantee schemes- revision	Legislative proposals	EC
TBC 2012	Closed-out netting	Legislative proposals	EC
Recovery and Resolution			
Q2 2012	Recovery and Resolution Plans	Policy statement	FSA
Q2 2012	EU framework for Recovery and Resolution Plans	Legislative proposals	EC
Q3 2012	EU framework for Recovery and Resolution Plans	Technical advice	EBA
Retail banking			
Q2 2012	Deposit Protection: raising consumer awareness	Policy statement	FSA
Q3 2012	Mortgage Market Review: Proposed package of reforms	Policy statement	FSA
Q3 2012	Packaged bank accounts: New ICOBS rules for the sale of non-investment insurance contracts	Policy statement	FSA
RDR			
Q1 2012	Accredited Bodies	Feedback statement	FSA
Solvency II			
Q1 2012	Draft Level 2 delegated acts published	Level 2 text	EC
Q2 2012	Transposition of Solvency II- Part 1	Feedback statement	FSA

Date	Topic	Type	Institution
Q2 2012	Solvency II and linked long-term insurance business	Policy statement	FSA
Q4 2012	Solvency Level 3 measures finalised	Level 3 text	EC
Supervision, governance and reporting			
Q2 2012	Remuneration- EBA Data Collection	Consultation paper	FSA
Q2 2012	Regulatory fees and levies: Policy Proposals for 2012/13 – PS to CP11/21	Policy statement	FSA
Q3 2012	Corporate reporting	Guidelines/ recommendations	ESMA
Q4 2012	Storage of regulated information at ESMA	Discussion paper	ESMA
Q4 2012	Supervisory convergence	Discussion paper	ESMA
Q4 2012	Revision of Enforcement Standards	Consultation paper	ESMA
Q4 2012	Corporate Governance (proxy advisors, empty voting)	Discussion paper(s)	ESMA
Q4 2012	Remuneration and supervisory co-operation arrangements	Guidelines/ recommendations	ESMA

Main sources: ESMA 2012 work programme; EIOPA 2012 work programme; EBA 2012 work programme; EC 2012 work programme; FSA policy development update (Issue 142)

Education – Conferences and event (April)

Date	Topic	Institution
12/04/2012	CEPS Finance Roundtable: Implementation of Basel III in the EU	CEPS
16/04/2012	Enterprise Risk Management Seminar	BBA
17/04/2012	FATCA half day seminar	ABI
18/04/2012	Introduction to Liquidity Risk	BBA
20/04/2012	Training, Competence and Culture	BBA
23/04/2012	Annual Liquidity Conference	BBA
25/04/2012	FSA Recovery and Resolution Plans Small Banks Workshop	BBA
27/04/2012	Introduction to ICAAP	BBA
27/04/2012	Shadow banking conference	EC
30/04/2012	Dealing with Sanctions Regimes	BBA

Glossary

ABI	Association of British Insurers
AIFMD	Alternative Investment Fund Managers Directive
AMICE	Association of Mutual Insurers and Insurance Cooperatives
ASB	UK Accounting Standards Board
Basel Committee	Basel Committee of Banking Supervisors
BBA	British Bankers' Association
BoE	Bank of England
CEA	European Insurance and Reinsurance Federation
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CFPB	Consumer Financial Protection Bureau
CFTC	Commodities Futures Trading Commission
Council	European Council of Ministers
CRD	Capital Requirements Directive 2006/48/EC
DG MARKT	Internal Market and Services Directorate General
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
EBA	European Banking Authority
EC	European Commission
ECJ	European Court of Justice

ECON	European Parliament Committee on Economic and Monetary Affairs
EEA	European Economic Area
EIOPA	European Insurance and Occupations Pension Authority
EP	European Parliament
EMIR	European Market Infrastructure Regulation COM(2010) 484 final
ESA	European Supervisory Authority
ESMA	European Securities and Markets Authority
ESRB	European Systematic Risk Board
FASB	US Financial Accounting Standards Board
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FDIC	Federal Deposit Insurance Corporation
FOS	Financial Ombudsman Service
FPC	Financial Policy Committee
FSA	Financial Services Authority
FSB	Financial Stability Board
FSCP	Financial Services Consumer Panel
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000

GAAP	Generally Accepted Accounting Principles
HMRC	Her Majesty's Revenue & Customs
HMT	Her Majesty's Treasury
IASB	International Accounting Standards Board
ICB	Independent Commission on Banking
IFRS	International Financial Reporting Standards
IORP	Institutions for Occupational Retirement Provision Directive 2003/43/ EC
IOSCO	International Organisations of Securities Commissions
JMLSG	Joint Money Laundering Steering Committee
Member States	Countries which are members of the European Union
MIFID	Markets in Financial Instruments Directive 2004/39/EC
MoJ	Ministry of Justice
Omnibus II	EC proposed Directive 2011/0006 (COD) amending Solvency II
PRA	Prudential Regulation Authority
RAO	Financial Services and Markets Act 2000 (Regulated Activities Order) 2001
RDR	Retail Distribution Review
SCR	Solvency Capital Requirement
SEC	Securities and Exchange Commission
Solvency II	Taking up Pursuit of Business of Insurance and Reinsurance Directive 2009/138/EC
UCITS	Undertakings for Collective Investments in Transferable Securities

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