

January 2009



Information Bulletin



European Trust & Fiduciary Services

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Foreword



Tim Gandy

As we welcome you to our first edition of 2009, the gloom surrounding the global markets continues to deepen with the problems in the banking sector continuing to spread into the wider economy and any sightings of green shoots of recovery generally greeted with disbelief.

Nevertheless, fears of a complete meltdown of the banking system appear to be receding even if the crisis in the supply of credit has still to be resolved. Restrictions on short selling are gradually being eased with the UK leading the way when the FSA this month lifted its ban on short selling financial stocks although reporting requirements still remain in place. However, that apart, consumer and market confidence are close to all time lows and the environment for managing and promoting authorized investment funds is at its least benign for many decades.

Public perception of the integrity of investment vehicles has not been helped by the Madoff affair where the

consequences are still reverberating throughout the financial community. Happily the impact on authorized funds appears to have been limited and restricted to a couple of locations. We shall be following the investigations of the regulators very closely to see what lessons can be learned.

Against this background, all the European regulators and industry bodies continue to work diligently on all those issues which may threaten the return of confidence and in this edition of our Information Bulletin we provide updates on progress in relation to such issues as fair value pricing, suspension of dealing, risk management, retail distribution and credit rating agencies.

To conclude on a positive note and for those of you who are interested in distributing cross border, the European Parliament has approved the inclusion of the Management Company Passport in an amendment to the Commission's UCITS IV proposals.

As always, if you have any comments or require clarification on any of the subjects we have covered, please feel free to revert via your usual Trust and Fiduciary contact or alternatively any of those named at the end of the Bulletin.

A handwritten signature in black ink, appearing to read 'Tim', with a stylized flourish underneath.

Tim Gandy
Head of Trust and Fiduciary Services

The main aim of this Bulletin is to provide information on various topics relating to the administration / operation of Collective Investment Schemes ("CISs") after the "point of sale". Other topics may be included, where relevant, if they relate to the regulatory "corporate" requirements of an operator of a CIS. We have not set out to recommend any specific actions that arise from the topics covered. However, in some cases, appropriate general suggestions may be offered.

This document is for the information of JPMorgan clients only and is designed to make you aware of our views regarding recent regulatory changes. It is not intended as a substitute for your own due diligence as to what action should be taken as a result of the regulatory changes described herein. JPMorgan has taken reasonable care in forming its views, however, it cannot be responsible for inaccuracies or misrepresentations in the information furnished hereby.

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EXECUTIVE SUMMARY

PAN EUROPE

Credit Rating Agencies

The Commission has made a proposal to introduce a supervisory regime over CRAs to address conflicts of interest, transparency and quality of rating methodologies. (A2)

In a joint publication, three of the asset management industry trade associations have published guidelines to address over reliance on ratings. (A15)

Tax Evasion

The Commission has proposed changes to the Savings Taxation Directive to close some existing loopholes in relation to the taxation of interest payments. (A3)

Hedge Funds

Progress continues towards an appropriate supervisory regime with the launch of a public consultation by the Commission. The deadline for responses is **31st January** to be followed by a high-level conference in Brussels in late February. (A5)

UCITS IV

The EU Parliament has approved the proposed changes to the Directive and these now include proposals covering the Management Company Passport. (A6)

OTC Derivatives

The ECB has met with stakeholders to explore centralised clearing arrangements for OTC derivatives with the aim of reducing counterparty risk and increasing market transparency. (A8)

The CEO of ISDA has also lent support to a centralised solution, emphasising the continuing role of OTCs in managing risk. (A14)

Fair Value Measurement

CESR has been consulting on improving the effectiveness of the process in illiquid markets and has issued a feedback statement on best practice. (A10)

Short Selling

CESR has published an update on measures being taken by its members followed by a call for evidence on their effectiveness and impact on the markets. Interested parties were invited to submit their views by **20th January**. (A11)

Transparency – Non-Equity Markets

CESR has launched a consultation on the role of trade transparency as a means of improving the orderly conduct of markets in corporate bonds, structured finance products and credit derivatives. (A12)

Documentation – Retail Investment Products

The SFC in Hong Kong has written to all retail fund managers who are operating in its market with guidance on its updated standards on disclosure. (A16)

Suspension of Dealing

The FSA has updated the Rules in order to extend the 28 day limit and also provide guidance on the treatment of redemption requests. In a specific instance, HMRC has also confirmed that ISA eligibility would be unaffected. (B3)

Stress Testing

The FSA has issued a CP setting out its expectations of banks and investment firms in testing their business models. (B5)

Short Selling

The FSA has removed its ban on short selling although the reporting arrangements remain in place, albeit in a modified form. The response to continuation of reporting requirements has not been universally positive, with many a number of industry groups arguing that the price of transparency is continuing downward selling pressure. (B6)

Islamic Financial Products

HM Treasury and the FSA continue with their assessment of the legislative framework required to allowing the marketing of financial instruments that are compatible with Islamic law. Interested parties have until March to submit their comments in response to their joint Consultation Paper. (B7)

Retail Distribution Review

Following a lengthy consultation process, the FSA has issued its Feedback Statement which focuses on 3 fundamental areas where change is required:

- clarity of information for consumers
- raising of professional standards
- conflicts of interest in relation to remuneration practices. (B8)

Consumer Responsibility

The FSA has issued a Discussion Paper with its views on establishing a balance between providers, distributors and consumers, inviting comments by **19th June**. (B10)

CIS Taxation Measures

The Chancellor's pre-budget report included an update on various aspects of taxation in relation to collective investment schemes and various changes which are in the pipeline. (B13)

Charity Funds – SDRT Exemption

HMRC is updating its guidance regarding SDRT exemption when purchasing chargeable securities. (B14)

Government/Industry Working groups

HM Treasury has announced the formation of two working groups to promote the long term strength of the UK's insurance and asset management sectors. Both groups have been tasked with reporting back to the Chancellor in the summer. (B16)

Risk Management, FSA Perspectives

In a speech by Verena Ross, Risk & Strategy Director, she highlights recent lessons and refers to the conclusions of the Senior Supervisors Group of the international securities regulators. (B19)

In another speech by Thomas Huertas, Director – Banking Sector, he concentrates on the risk models and need for comprehensive governance arrangements to capture all risks successfully. (B21)

Credit Ratings

As referred to in the Pan European section, the IMA has joined other European industry bodies in issuing guidelines on the use of ratings issued by the various credit rating agencies. (B22, A15)

IMA Fund Sector Definitions

The IMA has issued updates on its rules for the property, absolute return and equity income sectors. (B23)

Fair Value Pricing

DATA and the IMA have issued an update to their Guidance on FVP reflecting recent lessons and current concerns. (B24)

LUXEMBOURG

Accounting Standards

The CSSF has published emergency measures taken in accounting to mitigate the consequences of the recent turbulence in the financial markets. (C1)

Short Selling

The CSSF has issued a circular clarifying their requirements. (C2)

Double Taxation Agreement with Hong Kong

The Parliament has ratified the treaty with Hong Kong. (C3)

Abolition of Capital Duty

This has now been abolished completely with effect from 1st January. (C4)

Madoff

ALFI and the CSSF have published their initial assessment following the suspension of several funds and also the exposure of a number of credit institutions. Further conclusions have been promised. (C5)

IRELAND

Islamic Investment

The Financial Regulator ("FR") has announced the formation of a new specialist team to reflect the growing interest in Shari'ah compliant investment funds. (D1)

Minimum Activity Rules

In response to difficulties in trading conditions in the Asian markets, the FR has confirmed that its current stance has not changed but has indicated the possibility of formal consultation with the industry. (D2)

Liquidity – Non UCITS Funds

The FR has confirmed that it is relaxing its requirements in relation to assets allocated to a side pocket, partial suspension and partial redemption arrangements. (D3)

Money Market Funds

It appears that the FR will in future require confirmation that new funds will not require liquidity support. (D4)

Madoff

The FR has confirmed that a number of funds have been suspended, both UCITS and non UCITS, and are working closely with providers to defend the interests of investors. (D5)

GERMANY

Short Selling

The BaFin has extended an absolute bar until **31st March**. (E1)

VAT on Portfolio Management

The Ministry of Finance has issued a letter clarifying a number of issues but, in particular, that VAT exemption is only allowed if assets are managed in accordance with the Investment Act. (E2)

Taxation of Investment Fund Units

A decree issued by the Ministry of Finance has clarified the position in relation to the taxation of profits arising from the sale or redemption of units under the withholding tax regime. (E3)

FRANCE

Marketing of Financial Instruments

To strengthen investor protection, the Ministry of Economy, Industry and Employment has published conduct of business rules governing the relationship between promoters and distributors (the equivalent of the TCF initiative in the UK). (F1)

Short Selling

The AMF has decided to retain the measures it introduced last September with no indication of when they might be further reviewed. (F2)

Side Pockets

The AMF has issued a Q & A document covering the creation of side pockets in relation to UCITS. (F3)

BELGIUM

Short Selling

The CBFA has extended the measures they introduced in September until 20th March. (G1)

Eligible Assets

The CBFA has issued a circular clarifying the implementation of CESR's Guidelines into Belgium law. (G2)

JERSEY

No developments to report.

SWITZERLAND

Short Selling

The requirements of the Swiss Federal Banking Commission are reiterated. There is no indication of an early review. (I1)

Withholding Tax

The Federal Council has expanded the scope of its reporting requirements to include collective investment schemes. (I2)

Financial Market Supervision Act

Under this Act, the Federal Council has created the new Swiss Financial Market Supervisory Authority ("FINMA") with effect from **1st January 2009**. (I3, I4)

Custody of Securities

Parliament has passed the Act on Indirectly Held Securities modernising 72 year old regulations to reflect the fact that securities are now rarely held in physical form. (I5)

GENERAL MARKET AWARENESS

This section contains miscellaneous items of interest which will mainly be of interest to Operations Managers.



A PAN – EUROPE



1 Publication of Regulated Markets under ISD / MiFID

- 1.1 On 4 November 2008, the European Commission ("the Commission") published an updated version of its consolidated list of regulated markets in Member States. This annotated presentation implements the relevant requirements of the Investment Services Directive ("ISD") (Council Directive 93/22/EEC).
- 1.2 Article 47 of Directive 2004/39/EC on Markets in Financial Instruments (MiFID), requires that each Member State maintains an updated list of regulated markets authorised by it. This information should be communicated to other Member States and the Commission. Under the same Article, the Commission is required to publish a list of regulated markets, notified to it, on a yearly basis in the Official Journal of the European Union.

The updated list of regulated markets can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:280:0005:0011:EN:PDF>

2 Regulation of Credit Rating Agencies

- 2.1 On 12 November 2008, the Commission adopted a proposal for a Regulation on credit rating agencies ("CRAs"). The proposal is part of a package of proposals dealing with the financial crisis and adds to the Commission's proposals on Solvency II, Capital Requirements Directive, Deposit Guarantee Schemes and accounting.
- 2.2 The proposal introduces a registration procedure for

CRAs to enable European supervisors to control the activities of rating agencies.

CRAs will have to comply with rigorous rules to make sure that:

- ratings are not affected by conflicts of interest;
- they remain vigilant on the quality of the rating methodology and the ratings; and
- they act in a transparent manner.

The proposal also includes an effective supervisory regime over CRAs including the following. CRAs:

- may not provide advisory services;
- will not be allowed to rate financial instruments if they do not have sufficient quality information to base their ratings on;
- must disclose the models, methodologies and key assumptions on which they base their ratings;
- will be obliged to publish an annual transparency report;
- will have to create an internal function to review the quality of their ratings;
- should have at least three independent directors on their boards whose remuneration cannot depend on the business performance of the rating agency. The directors will be appointed as a single term of office which can be no longer than five years. They can only be dismissed in case of professional misconduct. At least one of them should be an expert in securitization and structured finance.

The proposal is available at:

http://ec.europa.eu/internal_market/securities/docs/agencies/proposal_en.pdf

3 Proposals to eliminate Tax Evasion

- 3.1 We refer to the Savings Taxation Directive of 1 July 2005 ("the Directive"). The purpose of the Directive is to promote exchange of information between Member States and thereby enable them to apply their own taxation rules to interest payments which their residents receive from paying agents in other Member States. Belgium, Luxembourg and Austria, instead of exchanging information have opted for a tax levy.
- 3.2 On 13 November 2008, the Commission proposed changes with a view to closing existing loopholes and eliminating tax evasion. The proposal seeks to improve the Directive in order to ensure that the taxation of interest payments is channelled through intermediate tax-exempted structures. It also proposes to extend the scope of the Directive to interest obtained through investments in some innovative financial products as well as in certain life insurance products.
- 3.3 The proposed changes include the following:
 - Paying agents in the EU shall apply the provisions of



the Directive at the time of the payment to the intermediate structure, as if this payment was directly made to the individual.

- Concerning payments of interest to certain intermediaries established within the EU, including some non-charitable trusts and foundations, those structures will be always obliged to act as "paying agent upon receipt". ["Paying agent upon receipt" includes all entities and legal arrangements (trust, foundations, etc) which are not taxed on their income under the general rules for direct taxation in their Member State of residence / establishment (an indicative list of those entities and legal arrangements will form Annex III of the Directive)].
- The scope of the Directive will be extended to income from:
 - securities which are equivalent to debt claims;
 - life insurance contracts whose performance is strictly linked to income from debt claims or equivalent income and have less than 5% risk coverage.
- The revisions seek to ensure a level playing field between all investment funds or schemes (UCITS or non-UCITS), independently of their legal form.

The press release can be found at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1697&format=HTML&aged=0&language=EN&guiLanguage=en>

4 EU Commission study on Private Placement

- 4.1 In our September 2008 Bulletin, we noted developments concerning the publication of an impact assessment by the Commission regarding the need for developing a private placement regime for qualified investors. The consultation and analysis provided no conclusive evidence on a number of issues regarding the appropriate limits of such a regime. Based on the fact that the Commission was not in a position to recommend a clear course of action, it was proposed instead that the envisaged communication on private placement be postponed, pending further investigation and research on the unanswered questions.
- 4.2 On 22 November 2008, the Commission issued a public tender for a study of national private placement regimes for financial products in the EU and in major markets outside the EU. The paper will analyse the economics of private placement and the regulations governing it in these various countries and regions. It will also examine, in detail, obstacles to cross border private placements within the EU and the costs incurred by this.
- 4.3 The deadline for receipt of tenders is 31 January 2009. The results should be expected by the end of 2009 / beginning of 2010 and will be presented at a workshop or

a conference.

The tender can be found at:

http://ted.europa.eu/Exec?DataFlow=N_one_doc_access.dfl&Template=TED/N_one_result_detail_curr.htm&docnumber=302454-2008&docId=302454-2008&StatLang=EN#

5 Public consultation on Hedge Funds

- 5.1 On 15 November 2008, the leaders of the G20 nations decided that, by 31 March 2009, private sector bodies that have developed best practices for private pools of capital and / or hedge funds should bring forward proposals for a set of unified best practices. As a result of this decision, Commissioner McCreevy announced on 1 December 2008 a wide ranging public consultation on Hedge Funds.
- 5.2 The Commission will focus on several issues, including the following:
 - The definition of hedge funds and the dealings with hedge funds domiciled in "off-shore" jurisdictions.
 - The purpose of any legislation or oversight.
 - Adequate transparency towards regulators or to the market.
 - Treatment of short selling: ban on "naked" short selling or more freedom?
 - Determination of capital requirements for hedge funds or tighter controls on banks that lend to them.
 - Decision on the best approach for the risk management practices, between regulatory intervention or the dissemination of sound principles.
 - Control of the risks to the financial markets of continued reliance on the existing regulatory framework surrounding hedge funds and banks.

The speech of the Commissioner can be found at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/665&format=HTML&aged=0&language=EN&guiLanguage=enhttp://europa.eu/rapid/setLanguage.do?language=en>

- 5.3 On 18 December 2008, the Commission launched this public consultation on hedge funds. This consultation will make an important contribution to EU and international reflections on whether the approach to the regulation and supervision of hedge funds should be reassessed in light of the financial crisis.
- 5.4 The consultation documents cover:
 - **Systemic risks**
Whether existing systems of oversight are sufficient to allow regulators to monitor and react to risks originating in the hedge fund sector.
 - **Market integrity and efficiency**
Whether and under what circumstances the activities of hedge funds pose a threat to the efficiency and integrity of financial markets.



- **Risk Management**
Whether public authorities should concern themselves more with the way in which hedge funds manage the risks to which they and their investors are exposed, value their asset portfolios and manage any potential conflicts of interest.
- **Transparency towards investors and investor protection**
Whether hedge fund investors are adequately protected and receive the information required for sound investment decisions.

5.5 The deadline for responses to this consultation paper is 31 January 2009. The results of the consultation will be discussed at a high-level conference to be held in Brussels late February 2009, and will serve as the basis for EU input into the parallel reflections on hedge funds at the international level by the G20.

The consultation is available at:

http://ec.europa.eu/internal_market/consultations/docs/hedgefunds/consultation_paper_en.pdf

6 UCITS IV update

- 6.1 On 2 December 2008, the Economic and Monetary Affairs Committee in the EU Parliament adopted the general orientations of the amendments to the UCITS directive (UCITS IV). On the same day, Ecofin, the EU Council on Economics and Financial Affairs gave its support to UCITS IV.
- 6.2 On 13 January 2009, the EU Parliament approved the proposed reform, including the provision for the "Management Company Passport". This vote completes the legislative procedure.
- 6.3 The proposed UCITS IV Directive contains the six following measures:
- The **Management Company Passport** allowing for cross-border management of investment funds whilst centralizing administrative and management functions. The passport was not part of the original proposal.
 - The reduction in time for **notification procedures** for funds wishing to distribute in other EU countries.
 - The **Key Investor Information** replacing the lengthy and complicated Simplified Prospectus.
 - A new framework for cross border **fund mergers**.
 - A new framework for **master-feeder** structures.
 - The modernization of provisions on **supervisory cooperation**.
- 6.4 In terms of next steps, the UCITS IV Directive still needs to be approved by the Council, but the informal agreement already reached in December 2008 means this is now a formality. Member States will need to enact national legislation to apply the main changes by 1 July

2011. In the meantime, the transposition measures will be prepared as well as the adaptation of national legislation of Member States.

Further details on UCITS IV developments can be obtained from your local Trust & Fiduciary team.

7 Disclosure and transparency for Private Equity

- 7.1 On 11 December 2008, the EU Commissioner for Internal Market and Services gave a speech on the latest developments in the EU debate on private equity.
- 7.2 The types of issue that the Commission wants to focus on shortly include:
- Coverage of codes: for example, very few private equity investments in the UK comply with relevant disclosure and transparency rules.
 - Monitoring and mechanisms for promoting compliance: most of the standards are voluntary in nature and it is therefore difficult to determine the level of compliance with these standards in the absence of a credible enforcement mechanism.
 - Consistency across Member States: the EU private equity market is characterised by a series of different industry codes which differ significantly in their content.

The Commission aims to undertake a thorough and critical review. Policy makers and regulators will want to see evidence that existing codes are influencing behaviour and avoiding undesirable outcomes.

The speech can be found at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/701&format=HTML&aged=0&language=EN&guiLanguage=en>

8 Establishment of Central Counterparties for Credit Default Swaps

- 8.1 On 3 November 2008, the European Central Bank ("ECB") hosted a meeting with stakeholders on establishing central counterparties for credit default swaps ("CDSs").
- 8.2 The stakeholders agree on the importance of reducing counterparty risk and of enhancing transparency in OTC derivatives markets, especially in those parts of the market that are of systemic importance (e.g. credit derivatives, including CDS). There are a number of initiatives aiming to achieve these goals through the introduction of centralised clearing solutions for OTC derivatives.



8.3 The Eurosystem (the central banking system of the euro area) sees the introduction of central counterparties ("CCPs") for OTC derivatives as an appropriate solution for the following reasons:

- reduces counterparty risk;
- increases market integrity, transparency and the availability of information;
- standardises the criteria for evaluation of exposures; and
- frees up collateral.

The ECB press release can be found at:

<http://www.ecb.eu/press/pr/date/2008/html/pr081103.en.html>

9 Impact and functioning of MiFID

9.1 On 3 November 2008, the Committee of European Securities Regulators ("CESR") published a statement on the assessment of the impact and functioning of the Markets in Financial Instruments Directive ("MiFID").

9.2 One year after MiFID's implementation, CESR has started the assessment. As part of this, CESR published two Calls for Evidence – one on the impact that MiFID has had on secondary markets and the second one on the scope of MiFID's transaction reporting obligations. CESR also announced that it has updated its transaction reporting exchange mechanism ("TREM") improving further the exchange of information amongst supervisors.

The CESR press release can be found at:

<http://www.cesr.eu/popup2.php?id=5371>

10 Fair Value Measurement and related Disclosures of Financial Instruments in illiquid markets

10.1 In our November 2008 Bulletin, we noted developments about CESR's consultation on fair value measurement and related disclosures of financial instruments in illiquid markets together with CESR's statement published on 3 October 2008.

10.2 On 19 November 2008, CESR published a feedback statement. It acknowledges that the competence of setting / interpreting standards and issuing general interpretation of existing standards lies with the International Accounting Standards Board ("IASB") / International Financial Reporting Interpretations Committee ("IFRIC"). CESR's statement should not be understood as constituting guidance or recommendations on IFRS – that function remains within current International Financial Reporting Standards ("IFRS").

CESR Members must ensure that issuers fulfil all information obligations under the requirements of the Transparency Directive and the Market Abuse Directive.

Finally, CESR stresses that the feedback statement is not enforceable, but should be viewed as an input to help improve issuers' practices regarding measurement and related disclosures of financial instruments in illiquid markets.

10.3 CESR highlights that EU preparers, auditors and other stakeholders should consider the educational guidance published by the IASB when preparing, auditing, reviewing or enforcing financial statements. CESR will monitor the reaction by IASB to a letter sent by the Commission. CESR will also continue to monitor the outcome of work that is currently being carried out by the IASB and other organisations on these issues. It will also monitor other activities regarding measurement and disclosures linked to fair value accounting for financial instruments.

The CESR feedback statement press release can be found at:

<http://www.cesr.eu/popup2.php?id=5378>

11 Short-selling Measures update

11.1 In our November 2008 Bulletin, we noted developments about CESR's publication of measures adopted by its members on short-selling of securities.

11.2 On 5 December 2008, CESR published an updated version containing the recent measures taken by its members on short-selling of securities. This document will be updated on a continuous basis and the latest is available at:

http://www.cesr.eu/index.php?page=home_details&id=317

11.3 On 19 December 2008, CESR released a call for evidence to obtain the views of stakeholders on the regulation of short selling. CESR is particularly interested in views on coordination and convergence amongst its members and, in particular, what CESR should consider in its further work over the short, medium and long term. Interested parties were invited to submit their views until 20 January 2009.

12 Non-equity Markets Transparency

12.1 On 19 December 2008, CESR published a consultation paper on the transparency of non-equity markets. Given the recent market crisis, the consultation seeks to gather views that will assist CESR in analyzing the role of trade



transparency on markets for corporate bonds, structured finance products and credit derivatives.

- 12.2 For corporate bonds, CESR's objective is to review whether its conclusions on trade transparency in bond markets, published in August 2007, remain appropriate in light of the recent market turmoil.

Regarding structured finance products and credit derivatives, CESR seeks to consider to what extent post-trade information plays a role to:

- support price formation;
- reinforce valuation practices; and
- provide supplementary information

about the scale of credit risk transfers for Asset Backed Securities, Collateral Debt Obligations, Asset Backed Commercial Papers and Credit Default Swaps in EU secondary markets.

- 12.3 All contributions shall be submitted via CESR's website (www.cesr.eu) by 19 February 2009.

The consultation can be found at:

http://www.cesr.eu/index.php?page=consultation_details&id=127

13 Commonly Agreed Positions regarding Q&A on MiFID

- 13.1 On 19 December 2008, CESR published a second update to its Questions and Answers ("Q&A") document on the Markets in Financial Instruments Directive (MiFID).

- 13.2 The Q&A provides market participants with responses in a quick and efficient manner to questions that are posed to CESR by participants, CESR Members or the public generally. The main purpose of the MiFID Q&A is to address issues of practical application, for which a formal consultation process is considered to be unnecessary.

The updated Q&A list can be found at:

<http://www.cesr.eu/popup2.php?id=5436>

14 OTC Derivatives infrastructure

- 14.1 On 14 November 2008, the International Swaps and Derivatives Association ("ISDA") commented on the President's Working Group on Financial Markets ("PWG") series of initiatives to strengthen oversight and the infrastructure of the over-the-counter derivatives market:

- 14.2 ISDA is committed to working with regulators and the industry to ensure the OTC derivative markets continue to play their important role in allowing companies and

investors to manage risks. ISDA endorses the PWG's call for the adoption of best practices with respect to risk management for OTC derivative activities, including public reporting, liquidity management, senior management oversight and counterparty credit risk management. This also includes the use of legally enforceable netting and collateral agreements between counterparties where possible. ISDA has facilitated the use of netting, as well as rigorous collateral management practices, since its founding and will work with its members to ensure continued wide-spread adoption and adherence to these best practices.

- 14.3 On 8 December 2008, the CEO of ISDA testified to the strength that the OTC derivatives industry infrastructure has demonstrated during the recent financial markets turmoil. The CEO said that CDSs are an efficient means of hedging risk or adjusting positions. They remain an accurate indicator of credit quality, are highly liquid, and have been the best way to manage or express a view on credit risk in troubled times when cash and securities markets have "seized up".

- 14.4 One result of the industry's efforts is that central counterparty clearing of CDSs in the US was expected to commence operations before the end of 2008. The CEO emphasized the Commission's belief in the need for a "European Clearing solution", regardless of what is done in the US. He also stated that the current turmoil has exposed the need for market participants to increase the speed with which they implement operational improvements and commit to examining what further improvements might be necessary.

The ISDA press releases can be found at:

<http://www.isda.org/>

15 Asset Management Guidelines to address over-reliance on Credit Ratings

- 15.1 On 11 December 2008, the European Fund and Asset Management Association ("EFAMA"), the European Securitisation Forum ("ESF") and the Investment Management Association ("IMA") published the "Asset Management Industry Guidelines to address over-reliance upon ratings" (the Guidelines). These provide guidance for asset managers on the responsible use of ratings for securitisation, structured finance and structured credit products.

- 15.2 The Guidelines provide valuable information which may play a proper role in any investment processes. They also encourage asset managers to address any weaknesses in the investment processes which come from over-reliance upon credit ratings.



The press release and the guidelines can be found at:

http://www.efama.org/images/stories/081211_press_release_by_esf_efama_ima_on_credit_assessment_guidelines_final.pdf

http://www.efama.org/images/stories/08-4104_081211_efama_esf_ima_credit_assessment_guidelines_final.pdf

A summary of the UK position is contained in Section B.22.

16 Issuers and Managers of Authorised Retail Investment Products

16.1 On 3 October 2008, the Securities and Futures Commission in Hong Kong ("SFC") issued a Circular to issuers and managers of retail investment products to ensure that offering documents continue to be up-to-date and contain sufficient information necessary for investors to make an informed investment decision given the public concern over the offering and selling of retail products in the aftermath of the collapse of Lehman Brothers Holdings Inc.

16.2 Retail investment product issuers should ensure that in their marketing materials, there are upfront, prominent and adequate warnings of all the risks associated with their products. Going forward, issuers seeking SFC authorisations are urged to conduct a careful review of their applications to ensure that they and related offering documents contain clear upfront explanations of the product and risks with sufficient prominence and clarity.

16.3 On 5 December 2008, SFC issued a letter to each retail fund investment group to give further guidance on the disclosure required.

The SFC Circular is available at:

<http://www.sfc.hk/sfcRegulatoryHandbook/EN/displayFileServlet?docno=H522>



B UK

1 PS 08 / 11: Financial Services Compensation Scheme ("FSCS") Funding – Tariff Changes

- 1.1 In this policy statement, the FSA provides a summary of the feedback it received on CP 08 / 08. The proposed changes impacted the investment fund management and investment fund intermediation sub-classes. The FSA notes that respondents generally accepted the tariff change proposals and the policy statement reflects this.
- 1.2 The investment fund management sub-class tariff revisions will be phased in. For 2009 / 10, the tariff measure will be net income, moving to an eligible income basis in 2010 / 11. However, firms will be able to continue to use the interim tariff basis and provide net income reporting if this proves more cost-effective than calculating eligible income.
- 1.3 The Policy Statement is available via the FSA website at http://www.fsa.gov.uk/pubs/policy/ps08_11.pdf
- 1.4 The FSA provides some additional comments in the statement on wider proposals related to the 2008 banking crisis. It intends to consult on more general changes to the compensation framework and FSCS, in line with the Banking Bill, early next year.
- 1.5 In a separate, but related announcement, the FSA issued a rule change in November to enable merged building societies to continue to be treated separately for FSCS purposes.

2 Policy Statement 08 / 13: Penalties and Enforcement Procedures

- 2.1 In PS 08 / 13, the FSA summarises comments received following CP 08 / 10. The consultation contained three main proposals:
 - To improve transparency by introducing a new chapter to Enforcement Guide ("EG") setting out how the FSA would utilise its enforcement powers under legislation other than the Financial Services and Markets Act ("FSMA").
 - To introduce provisions into EG allowing the FSA to grant leniency to offenders who provide evidence against accomplices.
 - To remove restrictions on the use of Own Initiative Variations of Permissions ("OIVoPs"), allowing more non-fundamental OIVoPs to be issued.
- 2.2 Most respondents supported the first two proposals, but there was strong opposition to the proposals in relation to OIVoPs.

- 2.3 However, the FSA has chosen to proceed with its proposals, but will provide more clarity on the use of OIVoPs. The full Policy Statement is available via the FSA website at:
http://www.fsa.gov.uk/pubs/policy/ps08_13.pdf



3 Handbook Notice 83: Suspension of Unit Dealings

- 3.1 The FSA issued its latest monthly Handbook Notice ("HBN 83") in December. The COLL rules governing suspension of unit dealings will be amended in line with the proposals in CP 08 / 07, whereby the 28 day limit on periods of suspension will be removed. The reasons for the ongoing suspension should be reviewed by the Authorised Fund Manager ("AFM") and Depositary at least every 28 days, with the FSA informed of the results of the review. This is considered an efficiency change rather than a practical one, as previously, the AFM could have suspended the scheme immediately following expiry of the previous period of suspension.
- 3.2 The FSA has also provided additional guidance on how unit dealing requests should be treated during and immediately after a period of suspension. Effectively, unit holders should be able to withdraw requests during a suspension period, or have their request executed at the first opportunity once dealing resumes. However, the FSA has not provided guidance on how new redemption requests should be treated during a period of suspension, where there is insufficient realised liquidity to meet current requests, leaving this to a future consultation. The new rules entered into force on 6 January 2009. HBN 83 is available via the FSA website at:
http://www.fsa.gov.uk/pubs/handbook/hb_notice83.pdf
- 3.3 The FSA's final rule text is available through LI 2008 / 69 at:
http://fsahandbook.info/FSA/handbook/LI/2008/2008_69.pdf
- 3.4 HM Revenue & Customs ("HMRC") has advised that if the FSA allows a fund to remain suspended for a period



greater than 28 days, shares in that fund would retain ISA eligible status. This decision applied to a specific (property) fund and situation and we await HMRC confirmation that this would also apply generally. Further details are available via ISA Bulletin 7 at: <http://www.hmrc.gov.uk/isa/bulletin7-2008.htm>

4 Consultation Paper 08 / 19: Retail Banking Conduct of Business

- 4.1 In CP 08 / 19, the FSA proposes a new framework for regulating retail banking conduct of business, following a review of the existing arrangements. Whilst not directly relevant to CIS Operators, we believe some aspects of these proposals might be of general interest.
- 4.2 A new Banking COBS ("BCOBS") Sourcebook will replace the existing industry Banking Code and the current Conduct of Business ("COB") rules applicable to deposit taking. Monitoring and enforcement would be carried out by the FSA under its standard risk-based approach.
- 4.3 At present, responsibility for regulating retail banking is split between the FSA and Office of Fair Trading ("OFT"). However, the FSA has not made rules apart from where required under European law, and the sector is essentially self-regulated through the Banking Code and the Banking Code Standards Board ("BCSB"). A Memorandum of Understanding is in place between the FSA and BCSB.
- 4.4 However, the FSA has reviewed the current arrangements in light of its forthcoming role as competent authority under the Payment Services Directive ("PSD"), which introduces COB standards for most retail bank accounts. The PSD takes effect in November 2009, and will result in a regulatory anomaly with some retail services regulated by the BCSB, and others by the FSA. The FSA has also identified some perceived weaknesses in the Banking Code in relation to its Treating Customers Fairly ("TCF") initiative.
- 4.5 The proposed BCOBS Sourcebook would set out high level rules applicable to retail banking services beyond the scope of the PSD. Existing COBS rules applicable to deposit-taking, and currently largely monitored by the BCSB, will also be moved to the new Sourcebook. In the CP, the FSA states that its policy intention is for consumer protection in BCOBS to broadly replicate the coverage of the Banking Codes and PSD.
- 4.6 The FSA will take over from the BCSB its current duties in relation to monitoring and enforcement. However, the FSA expects that many elements of the Code will be retained as industry guidance, to support the new high level principles and requirements of BCOBS. The FSA expects to introduce the new framework in November 2009. The consultation is available via the FSA website at: http://www.fsa.gov.uk/pubs/cp/cp08_19.pdf

5 Consultation Paper 08 / 24: Stress and Scenario Testing

- 5.1 In CP 08 / 24, the FSA proposes that banks and some investment firms should conduct "reverse" stress tests to consider the scenarios most likely to cause the failure of a firms' business model. The aim is to identify 'tail risks' (i.e. out of the ordinary) likely to cause counterparties and investors to lose confidence in the firm.
- 5.2 The FSA intends to amend Senior Management Arrangements, Systems and Controls ("SYSC") and its Prudential Sourcebooks to clarify its expectations of firms in this regard. Firms will be encouraged to identify where improvements to current procedures can be introduced ahead of Handbook changes. Only smaller BIPRU-50k firms will be exempt from the proposed requirements.
- 5.3 The full CP is available via the FSA website at: http://www.fsa.gov.uk/pubs/cp/cp08_24.pdf

6 Short Selling of Financial Sector Securities: FSA to Remove Prohibition

- 6.1 The FSA has removed the financial sector shorting ban it introduced via an emergency order in September 2008. At that time the FSA was gravely concerned about the potential for market abuse through short selling due to the prevailing market conditions. The measures were introduced without consultation and were therefore given a "sunset" provision, with the prohibition scheduled to expire on 16 January 2009.
- 6.2 The measures "effectively banned the active creation or increase of net short positions in the stocks of UK financial sector companies and required disclosure to the market of significant short positions in those stocks." However, the FSA believes market conditions have improved since September 2008, and the ban was allowed to expire as planned.
- 6.3 The FSA briefly consulted on this issue in Consultation Paper 09 / 01 ("CP"). Chapter 3 of the CP, and the related Cost Benefit Analysis ("CBA"), examine the role and impact of both the disclosure regime and the ban in detail. The FSA stated that market participants it spoke to saw value in the disclosure regime, noting that it acted as a brake on the market, limiting the potential for large pricing swings and market disorder. As such, the FSA proposed to maintain the disclosure regime, noting that transparency in this regard would minimise the potential for market abuse.
- 6.4 However, in the CP, the FSA noted that removal of the ban would lead to a resumption of short selling activity, and an increase in the daily volume of disclosable transactions. To limit compliance costs, the FSA proposed to modify the disclosure regime and introduce a "step" level whereby firms will only be required to report



significant changes in short positions. Once an initial disclosure has been made at 0.25% of an issue, including any synthetic equivalent, further disclosures would only be required when the position moves by 0.1%, i.e. bands would run from 0.25% to 0.35%, 0.45%, etc.

- 6.5 The FSA does not believe that extending the scope of the regime to include non-financial stocks is necessary, noting that, in general, other market sectors do not share the same level of vulnerability at present. However, it does agree that this issue merits further discussion, and a further Consultation Paper is to be released in late January 2009.
- 6.6 Asset management industry groups provided a lukewarm response to the proposed revision. The IMA, US based ICI and Australian IFSA issued a joint press release supporting the ability of regulators to obtain necessary information, but highlighting that public transparency could lead to downward selling pressure and facilitate the front-running of positions. The three groups would prefer to see delayed reporting of the aggregated net short positions taken on individual stocks.
- 6.7 However, the FSA decided to proceed with its proposals as planned, stating that the overwhelming majority of respondents to the CP were supportive. Revised rules were introduced to the Market Conduct Sourcebook through Policy Statement 09 / 01.
- 6.8 The Consultation is available via the FSA website at: http://www.fsa.gov.uk/pubs/cp/cp09_01.pdf, with PS 09 / 01 at: http://www.fsa.gov.uk/pubs/policy/ps09_01.pdf

7 HM Treasury and FSA issue further consultation on Islamic Financial Products

- 7.1 In this joint consultation, the authorities set out a proposed legislative framework for Islamic financial instruments. The instruments will be classified as "Alternative Finance Investment Bonds" ("AFIBs") which encompasses traditional Sukuk structures and instruments with similar characteristics.
- 7.2 Four policy options have been identified in previous consultations:
- **Option 1:** Create a new specified instrument under the Regulated Activities Order ("RAO"), exempted from the CIS regulations, and using a unique regulatory definition.
 - **Option 2:** As per Option 1, but defining AFIBs by using the existing tax definition.
 - **Option 3:** As per Option 1, but including AFIBs under the existing RAO specified investment - "instruments creating or acknowledging indebtedness".
 - **Option 4:** to do nothing.

- 7.3 The authorities preferred option is Option 1, which would provide a simple solution. There are difficulties in defining AFIBs, as a variety of underlying legal structures are in common use. A characteristics based approach is proposed, encompassing the following key features:

- **Consideration:** the arrangements will provide for one person (the bond holder) to pay a sum of money (capital) to another (the issuer).
- **Identification of assets:** the arrangements will specify the assets used to generate income or gains.
- **Specifications:** the term of the product will be specified, along with arrangements to repay capital and make any other payments during the term.
- **Rate of Return:** the sum of any payments during the life of the product should not exceed an amount which would be considered a reasonable commercial return on a loan of capital.
- **Transferability:** the bond-holder should be able to transfer the rights under arrangements to another person.
- **Mandatory listing**

- 7.4 However, Option 1 may require an update to the systems in use at the FSA. If the projected costs of such an update are established to be material, Option 3 would be considered.

- 7.5 The Consultation examines the impact of each option in detail, and includes draft legislation. Comments are invited until March 2009. The paper is available via the FSA website at: <http://www.fsa.gov.uk/pubs/cp/sukuk.pdf>

8 Feedback Statement 08 / 06: Retail Distribution Review

- 8.1 The FSA launched its Retail Distribution Review ("RDR") in June 2006, aiming to identify and address the root causes of problems within the retail investment market, focusing on the outcomes needed. It covered five key themes:

- the sustainability of the sector;
- the impact of incentives;
- professionalism and reputation;
- consumer access to financial products and services; and
- regulatory barriers and enablers.

- 8.2 The findings of the review and a set of recommendations were issued via Discussion Paper 07 / 01, and an interim report released in April 2008. This Feedback Statement acknowledges the lengthy consultation process and the efforts and contributions of industry and consumers to date. A series of consumer research reports accompany the Feedback Statement.



8.3 The FSA has now decided on the changes it believes are required in the retail marketplace, with three measures considered fundamental. These are to:

- improve the clarity for consumers of the characteristics of different service types and the distinctions between them;
- raise professional standards; and
- reduce the conflicts of interest inherent in remuneration practices and improve transparency of the cost of all advisory services.

8.4 The FSA intends to consult on implementing changes through to 2012, and the Feedback Statement provides details on how the FSA proposals will be developed via an initial consultation.

8.5 On clarity of services, the FSA intends to introduce a regulatory environment that distinguishes between sales services and independent investment advice. Independent advice would be unbiased and unrestricted, based upon a comprehensive analysis of relevant markets. Alongside this, "money guidance" services would assist consumers seeking help on basic questions and advise them where to obtain further assistance.

8.6 Investment advisers would be required to achieve certain benchmark qualifications – QCA level 4 is given as an example – and a Professional Standards Board would be introduced. Firms providing "guided sales" rather than advice would be provided greater certainty about their potential liability when offering such services.

8.7 New requirements would also seek to remove or reduce the influence product providers have over those who advise consumers. Payments for advice would be transparent, with, for example, trail commission funded through deductions from the product or investment.

8.8 The FSA will also consult on simplifying the method whereby capital resources for Personal Investment Firms are calculated, but proposals to introduce a 'long-stop', regarding the time period during which complaints against firms should be raised, have been dropped.

8.9 The FSA will take this work forward under a 'Retail Distribution Implementation Programme' and a Consultation Paper is expected in June 2009. The FSA has not invited comments on the Feedback Statement. For further details please see: http://www.fsa.gov.uk/pubs/discussion/fs08_06.pdf

8.10 In a separate, but related development, the FSA issued a series of fact sheets in December setting out a number of concerns the FSA has identified relating to Distributor-influenced funds. The FSA defines Distributor-influenced funds as funds set up by individual intermediary firms in conjunction with product or fund providers, where the distributor firm takes a more active role than in a wholly independent fund.

8.11 The statement notes that "firms using [such funds] should ensure that they are in the best interests of each client and do not simply increase complexity and costs without providing new services that are suitable for the client". The fact sheets are available via the FSA website at: http://www.fsa.gov.uk/pages/Doing/Regulated/newcob/dist_funds/index.shtml

9 COBS Post implementation Review: Statement on Interim Findings

9.1 In its 2008/09 Business Plan, the FSA committed to conducting a post-implementation review of the COBS Sourcebook which replaced COB in November 2007. This Interim statement sets out high-level interim findings on how the FSA perceives firms have initially responded to the rule changes. COBS was intended to provide a greater emphasis on outcomes, granting firms more flexibility in aligning business models with the relevant regulatory requirements.

9.2 The interim report makes a number of general conclusions:

- Most users of the new Sourcebook find it more accessible, easier to use and navigate.
- The majority of firms interviewed indicated the cost of implementing the changes was minor.
- Many firms have deferred discretionary changes, focusing on TCF and awaiting the outcome of the RDR.

9.3 The FSA did not identify any issues that would justify substantial rule changes, although it will consider clarifying the rules governing scope and application. The Post Implementation Review will continue in 2009, and work will be undertaken to confirm and measure the impact of the new regime on consumer outcomes and the behaviour of firms. Examples of good and bad practice are likely to be published.

9.4 For further details please see: http://www.fsa.gov.uk/pubs/other/COBS_review.pdf

9.5 In a related development, we understand that the FSA has confirmed to the IMA that it was not its intention in the move from COB to COBS to change the manner in which authorised CIS operators disclosed their initial charges. AFMs may continue to disclose their initial charge in confirmation notes either in percentage or cash terms. The FSA is expected to include regulatory text to this effect in a future quarterly consultation.

10 Discussion Paper: Consumer Responsibility

10.1 In this Discussion Paper ("DP"), the FSA sets out its views on the balance of responsibilities between providers, distributors and consumers, and how it



considers consumer responsibility in its decision and policy making. A final chapter sets out its vision for the future retail marketplace.

10.2 The paper starts with an acknowledgment that the FSA cannot impose responsibilities on consumers. However, FSMA requires that the FSA takes into account the general principle that 'consumers should take responsibility for their decisions' when assessing what constitutes an appropriate level of consumer protection.

10.3 The FSA is required to strike a balance between the perception of firms that many 'unhappy transactions' stem from an element of mis-buying, with the views of consumer groups that, in the real world, firms have greater knowledge and power than consumers. The difficulty of finding this balance was highlighted by the FSA's Consumer and Practitioner Panels, which were unable to agree on a description of the responsibilities of firms and consumers in the context of an advised sale of an investment product.

10.4 Common law in the UK suggests that consumers should, in relation to financial services products:

- Act reasonably – for instance not acting in a manner which would contribute to any loss.
- Act in good faith and make a reasonable effort to participate in, and evaluate advice.
- Disclose any necessary information and act in a timely manner.

10.5 The paper notes that consumers often do not act in a completely rational manner when considering financial matters, providing a number of behavioural examples. These are partially resolved in the FSA's view of a future better world, and the following are proposed as next steps:

- The FSA will undertake to reach more consumers to "up skill" their financial understanding.
- Making messages to consumers more explicit, including detailing the consequences of taking no action.
- Increasing transparency by publishing more information on the performance of individual firms, including complaints data.
- Simplifying the range of decisions consumers need to take – offering simpler products for simpler needs.

10.6 The FSA is seeking feedback on the discussion paper, with any comments to be received prior to 19 June 2009. A feedback statement will be issued later in the year. The paper is available via the FSA website at: http://www.fsa.gov.uk/pubs/discussion/dp08_05.pdf

11 FSA issues Update on TCF and December deadline

11.1 In November 2008, the FSA issued an Update on its

approach to TCF and how this will be reflected in its supervisory work. The December 2008 TCF deadline has passed, and firms are expected to demonstrate that they are consistently following TCF principles. In the Update, the FSA advises that TCF assessments will become part of its core supervisory work as of January 2009. However, a planned one-off sample survey of firms will not be carried out.

11.2 Delivery of the TCF outcomes will be assessed using the FSA's Arrow Framework, and for larger firms it will be an integral part of regular assessments. Such assessments will involve a review of the TCF outcomes versus the firms own Management Information ("MI"). The Update includes a sequence detailing how assessments will be structured.

11.3 For further details please see:
http://www.fsa.gov.uk/pubs/other/tcf_deadline.pdf

12 Update to Landsbanki Freezing Order

12.1 HM Treasury has issued a notice to provide additional guidance on the Landsbanki Freezing Order 2008, and has granted a new general licence. In the notice, HM Treasury advises that it has received a number of requests to grant a licence relating to clearance and settlement of trades through exchanges with no central counterparty, where buyers and sellers are matched under local exchange rules.

12.2 Under the general licence, firms will be able to complete settlement of such equity trades, including where this involves delivery of cash or securities to an affected institution. The terms of the licence will cover trades matched before, on, or after the license date. However, trades affected by the Landsbanki London Branch must be settled by payment or delivery of securities into accounts held at the branch or UK based accounts in its name.

12.3 The Notice is available at:
http://www.hm-treasury.gov.uk/d/fin_sanc_landsbanki_notice_gl_15_071108.pdf

13 Pre-Budget report: CIS Taxation Measures

13.1 The Chancellor's pre-budget report ("PBR") included an update on current work intended to revise the tax regime for collective investments schemes ("CISs"). The month following the report saw the release of multiple documents and draft instruments. A summary is provided below:

13.2 The cut in standard rate VAT will impact financial services firms and others with low input tax recovery opportunities. HMRC issued a guidance note clarifying VAT on services which qualify as a 'supply of continuous services' – these



should be charged at the rate in force at the earliest of the dates at which the invoice was issued or payment made. However, invoices issued in advance, and spanning the rate change can be recalculated to reflect the rate in force for the period before and after the change. See <http://www.hmrc.gov.uk/pbr2008/treatment-sales.pdf> for further details.

- 13.3 HM Treasury has issued draft regulations intended to implement the proposals in its July 2008 consultation on **Qualified Investor Schemes** ("QISs"). The regulations will remove the substantial holding rules, in favour of less mechanical diversity of ownership provisions. HMRC has issued draft guidance on the provisions for consultation, available at: <http://www.hmrc.gov.uk/news/ctm48700draft.pdf>.

Comments are invited by 30 January 2009.

- 13.4 The **Property Authorised Investment Fund** ("PAIF") regime will be amended to:

- Reflect master / feeder structures better, with the feeder fund exempt from Schedule 19 SDRT, and the feeder able to receive income net or gross. Draft clauses have now been issued.
- Clarify that where a PAIF is a QIS, only one set of diversity of ownership provisions will be applied.

- 13.5 HM Treasury issued an initial consultation on proposals to provide legislative certainty on the **'trading vs investment'** issue. The consultation and draft legislation includes a 'white list' of transactions which will always be considered to be for investment purposes. These transactions will be 'ring fenced', so that if a fund performs a transaction which is considered trading, the whole fund will not be subject to capital gains tax. Genuine diversity of ownership provisions will apply to ensure the regime is not misused. The consultation is available at: http://www.hm-treasury.gov.uk/consult_tradinginvestment_funds.htm

- 13.6 The PBR did not specifically address HM Treasury's proposals for **Tax Elected Funds** ("TEFs") but a feedback statement on the July 2008 consultation was subsequently issued in December 2008. HM Treasury intends to proceed with the proposals, but notes concerns raised by industry on the operational difficulties which will be created by income streaming. A de-minimis provision for property income could also be applied, which the paper notes would, in particular, enable tracker funds to elect to be a TEF. The statement is available at http://www.hm-treasury.gov.uk/consult_taxelected_funds.htm Draft regulations are expected in early 2009.

- 13.7 HM Treasury issued draft legislation reflecting its proposals to exempt **foreign dividends** from tax when received by medium and large sized companies (including CISs). The proposal applies to portfolio holdings, where the recipient of the dividend owns less

that 10% of the issued capital of the payer. As with the TEF proposals, this development has the potential to impact double taxation treaties. Comments on the foreign dividend exemption are invited by 3 March 2009, and we currently expect the measures will be implemented later in 2009. Further details are available via:

http://www.hm-treasury.gov.uk/consult_foreign_profits.htm

- 13.8 On **Offshore Funds**, HM Treasury has issued a 'further steps' document following its October 2007 discussion paper. A feedback statement and draft regulations were issued earlier in 2008. This latest paper provides updated regulations, including a new definition of an offshore fund. This will be a "characteristics based definition", in summary, applying to any vehicle which: is not UK tax resident; does not grant the participants day-to-day control of scheme property; and permits investors to realise their investment based on scheme NAV or the value of an index. Comments are invited by 11 February 2009. For further details please see: http://www.hm-treasury.gov.uk/pbr_csr07_offshore.htm

- 13.9 An independent review of British **Offshore Financial centres** has also been announced. This will consider matters such as financial supervision, international co-operation and taxation transparency. The review will respect the existing constitutional arrangements in place in the relevant territories. Further details are available via the HM Treasury website at: http://www.hm-treasury.gov.uk/press_130_08.htm

- 13.10 The full pre-budget report is available via: http://www.hm-treasury.gov.uk/prebud_pbr08_index.htm

14 HMRC SDRT Customer Newsletter - Issue No 9: Charity SDRT Exemption

- 14.1 Following requests from market participants, HMRC is to update its guidance on the evidence required to support a SDRT exemption when a charity purchases chargeable securities.

- 14.2 Typically, SDRT exemption is secured by the exchange member or dealer ("the accountable person") acting on behalf of the charity, who will provide a HMRC Charity reference when reporting the transaction to CREST. The accountable person must be able to demonstrate the exemption is properly due, for example by verifying the charity is registered.

- 14.3 With effect from 1 April 2009, a fund or investment manager will be able to enter into an agreement with HMRC to verify the charitable status of its client, with the "accountable person" providing the fund / investment managers reference number in lieu. This will replace the current 'CHIDIRLST' procedure.



14.4 Full details of the procedures to be used are contained within the Newsletter, which is available via the HMRC website at:
http://www.hmrc.gov.uk/so/sdrt/sdrt_news.htm

15 JMLSG updates Money Laundering Guidance

15.1 The Joint Money Laundering Steering Group ("JMLSG") has issued an update to its Guidance, following a consultation issued in August 2008. The final guidance largely reflects the text of the consultation draft. The Guidance has been submitted to HM Treasury for ministerial approval, which is expected shortly. The revised Guidance can be found on the JMLSG website at:
<http://www.jmlsg.org.uk/bba/jsp/polopoly.jsp?d=775&a=14948>

16 HM Treasury launches Asset Management Working Group

16.1 On 11 November 2008, HM Treasury announced the launch of two new government-industry groups designed to focus on the long-term strength of the UK's insurance and asset management sectors.

16.2 The Asset Management group will be co-chaired by the Chancellor and the Chairman of the IMA. Both groups will be required to report back to the Chancellor by Summer 2009, suggesting key issues for industry and policy-makers to address. The press release at http://www.hm-treasury.gov.uk/press_119_08.htm lists members of the respective groups.

16.3 Firms are invited to contact their industry representatives to suggest issues for consideration.

17 Speech: Jamie Symington, Head of Wholesale, FSA, on Market Abuse

17.1 This speech details the FSA's ongoing market abuse programme, and how the regime is being policed during the current market conditions. Although not directly relevant to CIS operation activity, we believe aspects of this speech will be of interest to clients.

17.2 The FSA has previously indicated it intended to make increased use of criminal prosecutions for market abuse, noting that this acts as a more credible deterrent than regulatory actions. In the past year, three such cases have been launched. However, the FSA will continue to remain a selective prosecutor, and cases will be assessed on their own merits. The FSA will also proceed with its policy of granting leniency to cooperative witnesses.

17.3 Other key notes included:

- The current turbulence may limit merger and acquisition activity, which the FSA has identified as a key risk area.
- In a recession, re-financing and profit warnings may provide increased opportunities for the misuse of information.
- The FSA has identified a great disparity in the approach of firms towards market rumours.

17.4 The speech also observes that the FSA has made a significant investment into its transaction surveillance systems, and that it believes the quality of suspicious transaction reports from firms has improved.

17.5 For further information refer to:
http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2008/1106_js.shtml

18 Speech: Sarah Wilson, TCF Director, FSA, on TCF and FSA Assessments

18.1 This speech notes the imminent December 2008 TCF deadline – i.e. firms should be able to demonstrate that they consistently treat their customers fairly – but provides more detail on how the FSA intends to assess how a firm delivers against the TCF Outcomes. The speech notes the FSA will be particularly interested in areas where it has previously identified failings, such as with payment protection insurance mis-selling, high pressure share sales, and unfair arrears management practices.

18.2 Examples of good practice included:

- Consistency between firms own commercial strategies and TCF.
- Firms who are able to demonstrate active senior management involvement in driving change.
- Firms where TCF is written into staff objectives and reward regimes.
- Firms who listen to, and act upon, feedback from customers.

18.3 The full speech is available via the FSA website at:
http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2008/1118_sw.shtml

19 Speech: Verena Ross, Risk & Strategy Director, FSA, on Risk Management

19.1 This speech seeks to offer an insight into the FSA's perspective on risk management, addressing who owns risk, and how it is measured, funded and transferred.

19.2 The speech references a number of recent studies into risk management, noting that firms who fared better in



2007 tended to have a more unified approach to internal communication, with an effective method for senior business and risk managers to discuss emerging issues.

- 19.3 On measurement, key points are drawn from a report issued by the Senior Supervisors Group ("SSG") of international securities regulators:
- Better performing firms tend to use multiple tools and assumptions, and senior management is involved in stress testing exercises.
 - Some firms were able to assess sources of potential risk a year in advance and were able to hedge risk concentration.
 - Firms should supplement VaR with other complementary risk measures.
- 19.4 The SSG also found that firms who managed liquidity more successfully tended to have better communication between departments and corporate treasury on likely funding requirements.
- 19.5 The speech concludes with a practical warning that competition can weaken the standards applied by firms, and obtaining suitable hedges can become difficult or expensive if not done on a timely basis.
- 19.6 The full text is available via the FSA website at: http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2008/1118_vr.shtml

20 Speech: Philip Robinson, Financial Crime & Intelligence Division Director, FSA, on Financial Crime

- 20.1 This speech discusses the risk of tighter economic conditions increasing the level of incidence of certain types of financial crime, noting that banks and investment firms are considered a "big" target. Firms should satisfy themselves that a strong internal control environment exists, with the following questions, drawn from the FSA's Market Watch 25, highlighted:
- **Culture and governance:** for example, are staff required to take a two week break?
 - Are appropriate procedures in use to reconcile and confirm positions or deals?
 - Is management information of good quality and relevant to the business?
 - Are IT security and other staff duties effectively separated?
- 20.2 The Speech also notes that, in a weakened economic climate, members of staff are more vulnerable to corruption and exploitation, and that firms should verify that third parties, for example outsourced staff or cleaning teams, are security screened. For its part, the FSA has stepped up Police checks on those applying for Approved Person status and renewed efforts to highlight to consumers the key fraud techniques they may become a victim of.

21 Speech: Thomas Huertas, Director, Banking Sector, FSA, on Risk Modelling

- 21.1 This speech explores the use of models to capture the risks to which firms are exposed. The Basel Capital Accord relies on regulators around the world utilising firms own risk models to gauge capital requirements. However, the current climate has demonstrated that this may not be sufficient, at least in terms of liquidity risk. Although not directly relevant to CIS operation activity, we believe aspects of this speech will be of interest to clients.
- 21.2 The speech notes that the various businesses of a firm must be fully responsible for the risks incurred in order to generate profits, concluding that a good starting point would be to acknowledge that it is impossible to achieve a year-in / year-out return on equity that substantially exceeds the risk-free rate of return. Non-executive directors should review group risk management structures via Audit or Risk Committees, and be suitably empowered to do so.
- Further details are available via:
http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2008/1208_th.shtml

22 EFAMA, ESF and IMA Issue Guidelines for Asset Managers on use of Credit Ratings

- 22.1 As mentioned in the Pan-European section (A.15), the European Fund and Asset Management Association ("EFAMA"), European Securitisation Forum ("ESF") and the IMA have published "Asset Management Industry Guidelines to Address Over-Reliance upon Ratings". The document briefly touches on the current financial crisis before considering a report by the Financial Stability Forum which concluded that investors should address their over-reliance on ratings.
- 22.2 The Guidelines are intended to address this issue. Key conclusions of the Guidelines include:
- 22.3 When investing in structured credit products ("SCPs"), *asset managers should have regard to their obligation to act professionally and in the best interests of their clients.* Where AFMs do not have the necessary competencies in relation to a type of SCP, they should refrain from investing in the product.
- 22.4 Asset managers should *understand the limitations of credit ratings* and address the risks arising. Ratings should not replace appropriate risk analysis and management. Credit ratings may not assess liquidity, market or volatility risks.
- 22.5 *Asset managers should challenge mandates which appear ill-designed.* Ratings should not be a decisive factor in investment decisions.



22.6 The Guidelines also suggest that AFMs assess their procedures against the above guidelines on a regular basis. This may be event driven, such as where key market factors change, internal personnel change, or otherwise.

22.7 The IMA press release is available at: <http://www.investmentfunds.org.uk/press/2008/20081211-01.pdf>

23 IMA Sector Update

23.1 The IMA has issued updates to its rules and definitions across three sectors:

23.2 A property scheme sector will be introduced with effect from 1 January 2009. Following a consultation issued in June 2008, this will be on the basis of a single sector for all funds. However, firms will be able to self-assign flags to indicate different styles of fund within the sector.

23.3 The absolute return sector was introduced in April 2008, with classification based upon self election. Updated rules will require funds electing into the sector to remain within it for a minimum of 12 months.

23.4 A final definition for funds in the UK Equity Income sector was published by the IMA in January 2008. This included a requirement to aim to achieve a yield on the distributable income in excess of 110% of the FTSE All Share yield. The yield should be calculated by reference to the previous 12 months distributions as a percentage of the mid-market price. Funds failing the definition will be moved to a new UK Equity Income and Growth sector with performance track records maintained.

23.5 Further details are available via the IMA website.

24 DATA / IMA issue updated Fair Value Pricing Guidance

24.1 The COLL 6.3.6 Valuation and Pricing Guidance explains that where an AFM has reasonable grounds to believe that no reliable price exists for a security, or the most recent price available cannot be relied upon, that security should be valued at a price that the AFM considers to be a fair and reasonable price for that investment.

24.2 DATA and the IMA have issued an update to their joint Guidance paper on the use of fair value pricing. The updated paper reflects current market concerns, including reference to valuation in inactive markets, and specific guidance applying to immovable property.

24.3 DATA and IMA members can view the updated Guidance via the website of either institution.

C LUXEMBOURG

1 Emergency arrangements in Accounting in order to mitigate the consequences of the recent Financial Market Crisis

1.1 On 11 November 2008, the Commission de Surveillance du Secteur Financier ("the CSSF") issued the new Circular 08/377 on the emergency measures taken in accounting in order to mitigate the consequences of the recent turbulence in financial markets ("the Circular").

1.2 The purpose of the Circular is to draw attention to the following measures:

- Amendments to IAS 39 (Financial Instruments: Recognition and Measurement) and IFRS 7 (Financial Instruments: Disclosures) accounting standards, adopted by the IASB on 13 October 2008.

On 15 October 2008, the Commission adopted these amendments. The amendments to IAS39 introduce the possibility of reclassifications for companies applying IFRS. Like their American competitors, the companies have the ability to reclassify assets held-for-trading into the held-to-maturity category. The amendments to IFRS 7 introduce additional disclosure requirements linked to these reclassifications in order to ensure full transparency for users of financial statements.

In these circumstances, EU companies applying IFRS standards no longer have to reflect market fluctuation in their financial statements for these kinds of assets.

- Educational guidance on the application of fair value measurement when markets become inactive, published by the IASB on 31 October 2008.

On 5 November 2008, the Commission approved the guidance on the application of fair value measurement when markets become inactive. The IASB's guidance makes clear that transaction prices and broker or pricing service quotes might be inputs when measuring fair value, but may not be conclusive if an active market does not exist. This provides clarification on the need to apply internal "models" to calculate the value of financial instruments for which an active market no longer exists.

1.3 The Commission adopted on 3 November 2008 the consolidated text of all IFRSs in force in the EU. It will enable stakeholders to refer to only one single document. Luxembourg banks applying IFRS may, if they wish, take advantage of all the amendments to IAS39 as from 1 July 2008.

The CSSF Circular can be found at:

http://www.cssf.lu/uploads/media/cssf08_377eng.pdf

2 CESR Guidelines concerning Eligible Assets for investment by UCITS

2.1 In our November 2008 Bulletin, we noted developments about CESR amended guidelines on eligible assets ("the guidelines") to clarify prohibition of physical short-selling by UCITS. The drafting of the relevant sections of the CESR guidelines gave rise to interpretations which are incompatible with the Commission's understanding of the level 1 UCITS Directive. Point 24 of the Guidelines covering "Techniques and Instruments" was amended to delete reference to securities borrowing.

As the UCITS Directive did not contemplate the right for UCITS to engage in physical short selling, the original CESR guidelines have been updated on 2 October 2008.

2.2 On 26 November 2008, the CSSF issued Circular 08/380 drawing the attention of UCITS subject to Part I of the law of 20 December 2002, to the publication of the amended version of CESR's guidelines concerning eligible assets for investment by UCITS ("the Circular").

The Circular can be found at:

http://www.cssf.lu/uploads/media/cssf08_380eng.pdf

3 Luxembourg – Hong Kong Favourable Tax Agreement ratified

3.1 On 10 December 2008, the Luxembourg Parliament ratified the double tax treaty ("DTT") with Hong Kong. This DTT had already been ratified by the Hong Kong Authorities in February 2008.

3.2 The DTT will have retroactive effect as of 1 January 2008 for Luxembourg and as of 1 April 2008 for Hong Kong, once the ratification procedures in both countries have been completed and the respective notifications have been exchanged.

4 Abolition of Capital Duty

The capital duty which had already been reduced to 0.5% in 2008 is abolished completely from 1 January 2009. This measure maintains the attractiveness of Luxembourg's financial centre for foreign investments.

5 Madoff affair

5.1 Both the Association of the Luxembourg Fund Industry ("ALFI") and the CSSF published press releases on the

Madoff affair and its consequences for the Luxembourg investment fund industry.

- 5.2 On 22 December 2008, ALFI advised that several Luxembourg fund units had been obliged to suspend NAV calculation, subscription and redemptions. ALFI promised to give its members additional insight as soon as it is available.
- 5.3 On the same date, the CSSF mentioned that Luxembourg credit institutions have been impacted by this case to a limited extent, with direct and indirect exposures. The CSSF issued a second press release on 2 January 2009 for the purpose of stressing that the Luxembourg law applicable to local depositaries in their role of safekeepers of investment funds' assets reflects the provisions of the UCITS Directive. The CSSF considers that the provisions laid down in Luxembourg law offer an appropriate framework in order to ensure an adequate protection in accordance with the EU standards. The CSSF does not limit its analysis to depositaries, but also to all the other parties involved with the funds that act with the diligence imposed by Luxembourg law.



The CSSF and the ALFI press releases can be found at:

http://www.cssf.lu/uploads/media/press_release_madoff2.pdf

http://www.cssf.lu/uploads/media/communique_madoff_uk.pdf

http://www.alfi.lu/fileadmin/files/Member%20Services/NEWSFLASH/2009_01_02/Press_release_20081222_B_L_Madoff_Investment_Securities.pdf



D IRELAND

1 Financial Regulator establishes specific Authorisation Team for Shari'ah funds

- 1.1 In November 2008, the Irish Financial Regulator ('FR') confirmed that, within their Funds Authorisation department, it has established a new team who will specialise in the authorisation of Shari'ah funds. The FR hopes that this will 'ensure efficiency and consistency when processing such applications.'
- 1.2 Shari'ah compliant investment funds are recognised as a major growth area for all European locations. The Islamic investment equity funds market is one of the fastest growing sectors within the Islamic financial system. Currently, there are approximately 100 Islamic equity funds worldwide. The total assets managed through these funds currently exceed US\$5 billion and is growing by 12-15% per annum (source: Institute of Islamic Banking and Insurance). Key features of Shari'ah funds include the appointment of a Shari'ah Board which provides guidance to the Board of Directors and the Investment Manager on matters of Shari'ah law and Shari'ah compliant investments. Shari'ah funds cannot invest in interest-bearing instruments and cannot engage in speculative transactions.
- 1.3 The establishment of the specialist area within the FR, together with its commitment to engage proactively with regulators in the Middle East and North Africa area, in anticipation of promoters in those areas seeking to establish Shari'ah funds in Ireland, is a welcome development and opportunity as we look ahead to 2009.

2 Financial Regulator engages in discussion on Minimum Activities

- 2.1 In early December 2008, the FR confirmed that it has not changed its approach to assessing proposals and granting derogations from its minimum activity rules. This confirmation arose during the course of discussions between the industry body, the Irish Funds Industry Association ("IFIA"), and the FR on difficulties faced by Irish service providers regarding funds trading in the Asian market. The FR confirmed that it would consider, on a case by case basis and subject to certain conditions, derogations from the rule which states that the calculation of the NAV, dealing price and income and expense accruals must be undertaken in Ireland. The FR further confirmed that it will undertake an internal review of all such derogation requests and grants thereof in anticipation of a formal consultation with the industry on the matter.

3. Financial Regulator responds to liquidity issues affecting Non-UCITS funds.

- 3.1 In early December 2008, following extensive discussions with the industry, the FR confirmed changes to its existing policies with regard to non UCITS funds, in light of the difficult market environment.
- 3.2 The FR will no longer impose a limit on level of assets which a Qualifying Investor Fund ("QIF") or Professional Investor Fund ("PIF") can allocate to a side pocket / partial suspension / partial redemption arrangement. A QIF or PIF may avail itself of reduced redemption gate provisions; previously, redemption gates were subject to a minimum of 10% of NAV for monthly dealing funds and 25% of NAV for quarterly dealing funds. A QIF or PIF may also disapply the limit on compulsory redemptions. All of these options may also be availed of by non UCITS retail funds. However, in specie redemptions must comply with the FR's existing policy of obtaining individual consent for in specie redemptions representing less than 5% of NAV.
- 3.3 The FR will not require prior notification of actions taken - notifications after the event shall be sufficient. The Board of Directors and the Trustee must confirm to the FR that the action taken is in accordance with the rules of the fund and takes account of the interests of all investors. Although the approval of investors is not required, they must be informed of all action taken. However, where amendments are required to the fund rules, normal procedures apply.



4 Money Market Fund Promotion Requirements

- 4.1 It has been brought to our attention that the FR now requires confirmation from promoters of new money market funds that the promoter does not envisage that the fund will require liquidity support. In addition, the Prospectus must include a risk warning drawing the investor's attention to the difference between investment in a money market fund and a deposit.



5 Impact of Madoff Case

- 5.1 The FR has confirmed that a number of Irish authorised funds, both UCITS and non UCITS, have exposure to the alleged Bernard Madoff fraud. A number of funds have suspended dealings with investors. The FR is working closely with the Board of Directors of all funds affected to ensure that the interests of the investors are protected and defended in accordance with EU and Irish law.



E GERMANY

1 Short Selling - extension of the provisions of the General Decrees of the Federal Financial Supervisory Authority ("BaFin") of 19 and 21 September 2008

The provisions under items 1 and 2 of the General Decree of BaFin dated 19 September 2008 and the provision under item 1 of the General Decree of BaFin dated 21 September 2008 shall continue to apply until 31 March 2009.

This means that the General Decree of 19 September 2008 which prohibits naked short transactions (uncovered transactions) remains in force.



2 VAT on Portfolio Management

In its Decree dated December 9, 2008, the Federal Ministry of Finance ("BMF") commented on the decision of the Federal Fiscal Court dated October 11, 2007, on the VAT treatment of portfolio management services.

In a letter, the BMF addresses issues such as the content of the service offered, the determination of the place of performance and the application for the tax free treatment of portfolio management provided by banks.

Portfolio management is considered as a uniform performance and is taxable. The VAT exemption, pursuant to Sec. 4 No. 8 lit. h) VAT Act, is only applicable if investment assets are actually managed according to the Investment Act.

3 Taxation of Investment Fund Units

Prior to the 2nd and 3rd reading of the Jahressteuergesetz 2009 in the Bundestag on November 28, 2008, a need for a correction of the provision on the temporal scope of application in Sec. 18 (2) sentence 2 of the Investment Tax Act arose.

This refers to the taxation of profits from the redemption or sale of investment fund units under the withholding tax

regime (Sec. 8 (5) Investment Tax Act). The necessary correction could not be considered in the final version of this law.

A decree by the Federal Ministry of Finance dated December 5, 2008, therefore clarifies that this correction is to be applied in anticipation of the legal amendment correcting the Act. This correction will be made at the beginning of 2009 in the so-called Employee Capital Participation Act.



F FRANCE

1 Marketing of Financial Instruments

- 1.1 On 6 December 2008, the Ministry of Economy, Industry and Employment published, in the Official Gazette, Ordinance 2008-1271 on conduct of business rules applicable to marketing of financial instruments ("the Ordinance").
- 1.2 The Ordinance aims to strengthen the protection of investors by providing rules on conduct of business and agreements governing the relationship between promoters and distributors, as regards the marketing of financial instruments, as well as investment and life insurance products. To this end, the Ordinance provides the possibility for the Minister of Economy to approve the codes of conduct and the existence of agreements between producers and distributors in the field of information and promotional communication.

The French version of the Ordinance can be found at:

http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=20081206&numTexte=21&pageDebut=18612&pageFin=18613



2 Short-selling Measures

- 2.1 In our November 2008 Bulletin, we noted developments about the decision of the Autorité des marchés financiers ("AMF") to prohibit unsecured transactions and transparency of short positions in financial sector securities
- 2.2 On 19 December 2008, the AMF decided to maintain the measures it introduced on 19 September, which govern the short-selling of financial sector securities. In light of the current market conditions, the Board has no reason to modify the measures, which remain unchanged:
 - the list of companies concerned remains the same to the one published on 22 September;
 - the contents of the Q&A issued on 23 September are still valid.

The press release can be found at:

http://www.amf-france.org/documents/general/8606_1.pdf

3 "Questions and Answers" document on the creation of Side Pockets

- 3.1 On 22 December 2008, the AMF published a "Questions and Answers" document in relation to the split of UCITS for the creation of side pockets.
- 3.2 The use of side pockets is intended to cope with an exceptional situation affecting some of the UCITS assets. Prior to the creation of a side pocket, it is recommended for the UCITS or the management company to contact the AMF in order to prepare the declaration process as well as the information addressed to the shareholders.

The French version of the "Q&A" document can be found at:

http://www.amf-france.org/documents/general/8607_1.pdf



G BELGIUM

1 Extension of measures regarding Short Selling of Securities

- 1.1 In our November 2008 Bulletin, we noted developments about the Royal Decree, adopted on 23 September 2008, imposing restrictions on short selling of securities.
- 1.2 On 19 December 2008, the Banking, Finance and Insurance Commission ("the CBFA") informed that as a result of the ongoing turmoil on the financial markets, the temporary measures regarding short selling are extended until 20 March 2009. The developments in other Member States in this regard have been taken into account as well. The content of the measures has not changed. In summary:
- Anyone who sells shares in financial institutions must be in possession of these shares.
 - A net short derivative position must be covered by a position in the underlying security.
 - Financial intermediaries must ascertain that transactions comply with these rules.
 - The obligations to disclose significant short positions continue to apply.

The relevant Royal Decree and the list of Questions and Answers are available at:

http://www.cbfa.be/fr/fm/mm/wg/pdf/rd_23-09-2008.pdf
<http://www.cbfa.be/fr/fm/mm/faq/faq1.asp>



2 CESR Guidelines concerning Eligible Assets for investment by UCITS

- 2.1 In our November 2008 Bulletin, we noted developments about the Royal Decree of 4 March 2005, which was amended on 1 October 2008. The amended Royal Decree implements the Commission Directive 2007/16/EC on the clarification of definitions related to eligible assets for UCITS ("the Directive") into Belgian Law.

- 2.2 On 16 December 2008, the CBFA issued Circular 2008/26 relating to the CESR recommendations complementing the provisions of the Directive on eligible assets ("the Circular"). Each Belgian UCITS has to comply with both the respective provisions on eligible assets of the amended Royal Decree and CESR's Guidelines. The Circular includes a matrix on the concordance between the amended articles of the Royal Decree on one side and the technical provisions of the CESR's Guidelines on the other side. The Circular also includes the specific level 3 recommendations on hedge fund indices.

The Dutch and French versions of the Circular can be found at:

http://www.cbfa.be/nl/cs/icb/circ/pdf/cbfa_2008_26.pdf
http://www.cbfa.be/fr/cs/icb/circ/pdf/cbfa_2008_26.pdf



H JERSEY

There have been no significant developments to report since the November 2008 Bulletin.





I SWITZERLAND

1 SFBC emphasizes ban regarding naked short sales

- 1.1 In September 2008, the Swiss Federal Banking Commission ("SFBC") pointed out that naked short sales are not permitted and are not compatible with the requirements of the SFBC Circular, "Rules on Oversight regarding Market Behaviour", specifically when they are intended to cause market distortions or used to manipulate the market. Such short sales are prohibited for nostro transactions and for clients. Banks must ensure that when clients sell securities they are able to deliver the securities on settlement. The SFBC will intervene in the event of any such violations.

Further details may be obtained from the FINMA website:
<http://www.finma.ch>

2 Reporting procedure for withholding tax

- 2.1 As of 1 January 2009, the Swiss Federal Council will expand the scope of the reporting procedure to include collective investment schemes and public authorities and organizations, and the restriction on cash dividends is to be lifted.
- 2.2 Swiss parent companies, collective investment schemes and public authorities and organizations are, in future, to be able to use the reporting procedure for all forms of distributions (including appropriate subsidiaries). Moreover, collective investment schemes are to be able to make distributions using the reporting procedure provided their investors are exclusively domestic tax-exempt institutions which provide occupational pension plans and restricted pension cover.
- 2.3 These measures will lead to a clear reduction in money flows in the delivery and refunding of withholding tax.

Source: Official compilation of Swiss federal legislation (AS), page 5073
http://www.admin.ch/ch/d/as/2008/index0_45.html

3. Financial Market Supervision Act

- 3.1 In mid-October 2008, the Swiss Federal Council passed the implementing decrees for the Financial Market Supervision Act ("FINMAG") and passed this law into force in full from 1 January 2009. The new Swiss Financial Market Supervisory Authority ("FINMA") can thus start operations as planned at the beginning of 2009.
- 3.2 In addition to the FINMAG, two implementing ordinances will also come into force on 1 January 2009:
- The ordinance on the charging of fees and

duties by FINMA will pass on the costs of supervision in accordance with the "user pays" principle as much as possible, avoiding cross-subsidies between the individual supervisory segments. The fees and duties will be largely based on the previously applicable fee schedules in the areas covered by the Swiss Federal Banking Commission ("SFBC"), the Federal Office of Private Insurance ("FOPI") and the Anti-Money Laundering Control Authority ("MLCA").

- The ordinance on financial market auditing covers the provisions on auditing in the financial market sector.

4. CISO-FINMA

- 4.1 The entry into force of the FINMAG also entails a raft of name changes. From 1 January 2009, the erstwhile SFBC Ordinance on Collective Investment Schemes ("CISO-SFBC") will be known as the FINMA Ordinance on Collective Investment Schemes, or CISO-FINMA for short.

5. Act on Securities held with an Intermediary

- 5.1 The regulations on the custody and administration of securities are to be modernized. Both houses of the Swiss Parliament passed the Act on Indirectly Held Securities in their autumn sessions. This revision takes into account the fact that securities now scarcely exist in physical form any longer. The new act replaces 72-year-old regulations that had long since become outdated in the Information Technology era.



J GENERAL MARKET AWARENESS

1 Anti-fraud measures in Zimbabwe

JPM has advised clients trading in Zimbabwe that the Reserve Bank has introduced new rules designed to curb fraudulent activity on the ZSE. The penalties for breaching the new rules are severe: bank CEO's can face prosecution for failing to report suspicious transactions, and institutions can be blacklisted with all accounts frozen for trade fails.

2 Trade Confirmation Issues in India

The Indian regulator SEBI has extended, until 31 March 2009, the transition period for compliance with new rules prohibiting local banks from providing credit to foreign investors. The previous transition period was due to end on 12 December 2008, and local banks had not yet established if the market practice of confirming trades based upon a booked FX would breach the new rules. JPMorgan is monitoring developments – clients can find further details via Newsflash 2008 / 01730.

3 FOL Stocks following Dematerialisation in Japan

Listed securities in Japan were to be dematerialised on January 5th 2009. A number of Japanese stocks are subject to foreign ownership limits ("FOL"). This will continue to be the case following dematerialisation. If an FOL is breached, entitlements (e.g. dividends) will be paid based upon grandfathered holdings.

4 Product Update: Hong Kong

The Securities and Futures Commission ("SFC") issued an amended set of guidelines exempting open-ended collective investment schemes ("CISs"), offered to the public and listed locally as corporations, from disclosure of interest requirements. Currently, most of the exchange traded funds ("ETFs") listed in Hong Kong are in trust form which are not subject to the disclosure requirements. Like trust form ETF's, corporate form ETF's are also open-ended in nature and it was determined that both should enjoy the same disclosure treatment. Disclosure of interests covers areas such as substantial shareholders, directors and shadow directors and chief executives of a listed corporation.

5 Product Update: Czech Republic

UNIVYC, the settlement and clearing house in the Czech Republic, announced two additional settlement cycles ('Afternoon DVP cycle' and 'Afternoon DFP cycle'). As of December 1, 2008, J.P. Morgan will offer clients the

benefit of an additional instruction deadline for both against payment and free of payment transactions. Clients should update their records accordingly.

6 Product Update: Thailand

The Stock Exchange of Thailand ("SET") announced that, effective 1 July 2008, the purchase of securities of the SET Turnover List would require investors to pre-fund a full cash deposit of the value of the trade to the broker prior to trade execution on the exchange effective immediately.

Foreign institutional investors can set up a standing instruction with their brokers to declare that they will have sufficient funds in their THB NRBS cash account on settlement date when they are trading stocks on the SET Turnover List. Clients should contact their brokers for clarification on the approach they will adopt.

7 Product Update: Austria

The new Austrian Investment Fund Guidelines have been finalized, and the Ministry of Finance indicated that these guidelines should be introduced with immediate effect. Clients with collective investment funds distributed in Austria may be impacted by these changes.

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