

Securities and derivatives: Law-Now alerts, tools and latest news

Law-Now alerts and other tools

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Latest news

Topics covered

[MiFID and securities regulation \(inc market abuse and short selling\)](#)
[Clearing and settlement, moving OTC derivatives onto exchange/central counterparties – regulatory “wholesale products”](#)
[Getting the third pillar to work – active investors and listed company regulation](#)

MiFID and securities regulation (inc market abuse and short selling)

HoC European Scrutiny Committee: Fifty-second Report of Session 2010–12

The report looks at various documents considered by the Committee and, in the “documents not cleared” section of the report, section 14 cites draft European market abuse legislation still under scrutiny and looks forward to receiving information about: the Government’s final evaluation of whether a criminal sanctions regime is essential; and further developments in working group discussion of matters noted by Mark Hoban in earlier correspondence. (2/02/12)
<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xlvii/428xlvii.pdf>

FSA: Speech by David Lawton: MiFID II: a regulator’s viewpoint (30 January 2012)

Text of this speech, given at a BBA conference, follows. He sets out aspects of the overall framework FSA wants to see for market integrity, stability and transparency; investor protection and third party aspects. (31/01/12) [MiFID II: A Regulator’s viewpoint](#)

ESMA: Guidelines on ETFs and other UCITS issues

This consultation paper sets out ESMA's proposals for guidelines on UCITS ETFs, index-tracking UCITS, efficient portfolio management techniques, total return swaps and strategy indices for UCITS. The formal proposals for guidelines are contained in the boxes in Sections II to VIII of the paper, while further commentary and explanation is provided in the explanatory text. Responses are required by 30 March 2012. ESMA notes that it will take into account responses to the paper in finalising the guidelines for adoption in Q2 2012. (30/01/12) <http://www.esma.europa.eu/system/files/2012-43.pdf> http://www.esma.europa.eu/system/files/2012-44_0.pdf (NB: over 70 pages long)

CP12/1**: Large exposures regime: groups of connected clients and connected counterparties

The CP proposes the following: changes to the Handbook definition of connected counterparties; the basis for aggregating exposures to connected counterparties when applying large exposure limits; new guidance on the treatment of large exposures to structured finance vehicles, which intends to provide additional clarity on how exposures to structured finance vehicles, such as ABCP conduits, credit card and mortgage master trusts, covered bonds, CMBS, CLO and certain other standalone securitisation vehicles should be aggregated under the regime; a change to the Handbook guidance in BIPRU 10.6.33G on the institutional exemption. Comments should be received by 26 April 2012. (26/01/12) <http://www.fsa.gov.uk/static/pubs/cp/cp12-01.pdf> (NB: over 60 pages long)

FSA: Proposed guidance on transaction reporting strategy trades

FSA has published this guidance consultation following enquiries from firms who were unsure how to transaction report strategy trades entered into on Aii exchanges. Responses are required by 22 February 2012. (25/01/12) [Proposed guidance on transaction reporting strategy trades](http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/guidance/GC12_01.pdf) http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/guidance/GC12_01.pdf

ESMA: Draft technical standards on the Regulation (EU) xxxx/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps

In November 2011 the Council and the Parliament voted on a Regulation on short selling and certain aspects of credit default swaps. ESMA notes that this is about to be published and should be applicable from 1 November 2012. It is also noted that the consultation paper on the draft technical standards is published without prejudice to another consultation on technical advice to the EC on delegated acts to be issued by ESMA shortly. The consultation paper on technical advice will also include the corresponding consultation on one regulatory technical standard on the method of calculation of the fall in value of a financial instrument, since it is dependent on the provisions of a future EC's delegated act on the definition of what is a significant fall in value of financial instruments other than liquid shares. Responses are required by 13 February 2012. (25/01/12) <http://www.esma.europa.eu/system/files/2012-30.pdf> (NB: over 50 pages long)

The Recognised Auction Platforms Regulations 2011/2699

A correction slip has been published in respect of the above, noting that the first italic coming into force date, for the purpose of regulations 6, 10 and Schedule 1: "12th December 2011" should read "18th June 2012"; and immediately above the preamble, the second italic coming into force date, for the purpose of the remaining regulations: "18th June 2012" should read "12th December 2011". (19/01/12) http://www.legislation.gov.uk/ukxi/2011/2699/pdfs/uksics_20112699_en.pdf

ESMA: Q&A on the common operation of the Market Abuse Directive

The document is aimed at competent authorities to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA and at helping issuers, investors and other market participants by providing clarity on existing market abuse requirements, rather than creating an extra layer of requirements. (11/01/12) <http://www.esma.europa.eu/system/files/2012-9.pdf>

ACER: User guide for reporting delayed publication of inside information and suspicious transactions

Following the implementation of REMIT, ACER has published this guide setting out how reports on the above can be submitted to it. (5/01/12) http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/REMIT/UserGuideRemitV1%20Final.pdf

ESMA: 2012 work plan

ESMA has published the above, highlighting the key priorities (arranged under the following headings: single rulebook; contribution to financial stability; financial consumer protection' supervision; convergence and operational set up) and explaining how they will be delivered. Annex 3 presents a more detailed view on the key work streams ESMA will run in 2012. (4/01/12) <http://www.esma.europa.eu/system/files/esm-2011-330.pdf>

ESMA: Guidelines on certain aspects of the MiFID suitability requirements

This consultation paper sets out draft ESMA guidelines on certain aspects of MiFID suitability arrangements. It is noted that these do not address all issues relating to the suitability requirements or to the related obligations of investment firms. For example, they do not address client information requirements generally, internal controls, or organisational requirements regarding the launch of products that firms should comply with to ensure that the client base of the firm includes clients for whom any newly approved products would be suitable. Responses are required by 24 February 2012. ESMA intends to publish final report and guidelines in Q2 2012. (22/12/11) http://www.esma.europa.eu/system/files/2011_445.pdf

ESMA: Guidelines on certain aspects of the MiFID compliance function requirements

This consultation paper sets out draft ESMA guidelines on certain aspects of MiFID compliance function requirements. The draft guidelines include the following: responsibilities of the compliance function for monitoring, reporting and advising and organisational requirements of the compliance function for the standards of effectiveness, permanence and independence. It is noted that separate guidelines are proposed for the arrangements an investment firm should apply in the following situations: the application of the exception set out in Article 6(3)(2) of the MiFID Implementing Directive, the extent of interaction of the compliance function with other functions, and the outsourcing of the tasks of the compliance function.. Responses are required by 24 February 2012. ESMA intends to publish final report and guidelines in Q2 2012. (22/12/11) http://www.esma.europa.eu/system/files/2011_446.pdf (NB: over 30 pages long)

EC: Transitional period for use of non-EU credit ratings/Australian CRA regime endorsed

ESMA has until 30 April 2012 the initial transitional period of three months for credit ratings issued outside the EU. This decision allows the use in the EU of credit ratings issued in third countries while the convergence process with the EU requirements and the endorsement process of third countries continue. ESMA has also announced that it has decided to endorse Australia's regulatory regime on credit ratings (according to Art 4 (3) of the Credit Rating Agencies Regulation). (22/12/11) <http://esma.europa.eu/news/ESMA-extends-transitional-period-use-non-EU-credit-ratings-Australian-CRA-regime-endorsed>

ACER: Guidance on the application of the definitions set out in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency/Q&A

ACER has published contains the first edition of guidance on the application of the definitions set out in Article 2 of REMIT, directed to National Regulatory Authorities. It concentrates on the three issues which ACER considers to be priorities following the entry into force of REMIT (inside information, market manipulation and possible signals of suspected insider dealing and market manipulation which persons professionally arranging transaction are obliged to notify to NRAs pursuant to Article 15 of REMIT). In addition, a Q&A, which includes a draft implementation timetable, has been published. (21/12/11) http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/REMIT/1st%20edition%20ACER%20guidance%20111218%20ap%20vz%20clean%20ap%20clean%20sonia.pdf
http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/REMIT/QuestionsAndAnswers3%20ap_final%20zu_cca.pdf

ESMA: Waivers from pre-trade transparency - CESR positions and ESMA opinions

The document is aimed at competent authorities under MiFID in order to ensure that, in their supervisory activities, their actions are converging in accordance with the opinions provided by ESMA. The examples are also intended to help firms by providing clarity as to the content of the MiFID requirements CESR published its first positions on MiFID pre-trade transparency waivers in 2009 and last updated them in December 2010. This document endorses the decisions

previously adopted by CESR. The information in the table will be updated on a continuous basis as and when ESMA forms new opinions on waivers. (15/12/11) <http://www.fsa.gov.uk/pubs/other/lq-insurance-undertaking.pdf>

CP11/28**: UK implementation of Amending Directive 2010/73/EU - simplifying the EU Prospectus and Transparency Directives

This joint FSA/HMT consultation sets out the way in which the UK intends to take forward the implementation of the Amending Directive.. Responsibility for this is shared between the two bodies and delineates the relevant areas of responsibility for each body through the provision of separate commentary, legal drafting, and impact assessments. Responses are required by 13 March 2012. A PS, summarising the feedback and setting out next steps, is expected in Q2 2012. (13/12/11) http://www.fsa.gov.uk/pubs/cp/cp11_28.pdf (NB: over 80 pages long)

ESMA: Technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

The purpose of this consultation document from ESMA is to seek comments on the technical advice that ESMA proposes to give to the EC on a number of possible delegated acts. Responses are required by 6 January 2012. (13/12/11) <http://www.esma.europa.eu/system/files/2011-444.pdf> (NB: over 50 pages long)

The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2011/2928

These Regulations extend the sunset clauses in FSMA which would otherwise cease on 31 December 2011 so that subsections (4) and (8) of s118 FSMA and related ancillary provisions will remain in force until 31/12/14. . (Date in force: 31/12/11) (8/12/11) http://www.legislation.gov.uk/ukxi/2011/2928/pdfs/ukxi_20112928_en.pdf

Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency

This has now been published in the Official Journal. (8/12/11) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:EN:PDF>

ESMA: Speech by Steven Maijor (EFAMA Investment Management Forum, 29 November 2011)

Topics include MiFID II; AIFM Directive; UCITS; ETFs; PRIPs. (29/11/11) http://www.esma.europa.eu/data/document/2011_404.pdf

European Parliament: MiFID review consultation

The Rapporteur for the MiFID review, Markus Ferber, has launched a consultation based on a questionnaire to inform ECOFIN's work. Responses are required by 13 January 2012. (23/11/11) [Economic and Monetary Affairs \(ECON\) : Presentation](http://www.europarl.europa.eu/document/activities/cont/201111/20111122ATT32125/20111122ATT32125EN.doc)
<http://www.europarl.europa.eu/document/activities/cont/201111/20111122ATT32125/20111122ATT32125EN.doc>

European Parliament: Short selling and CDS trading

This press release notes that the European Parliament has voted into law a regulation to curb short selling and trading in CDS. Parliament obtained a ban on naked CDS trading (purchasing default insurance contracts without owning the related bonds). Purchasing Italian CDS, for example, will now be possible only if the buyer already owns Italian government bonds or a stake in a sector highly dependent on the performance of these bonds, such as an Italian bank – in the event of a Italian default, Italian banks would certainly suffer significantly. The sole exception is an option for a national authority to lift the ban for a maximum of 12 months in cases where its sovereign debt market is no longer functioning properly, and then possibly renew it for a further six months. ESMA would publish an opinion on its web site as to the utility of suspending the ban within 24 hours. A negative opinion from ESMA would have political weight. The majority of MEPs originally advocated introducing a requirement to convert a naked short sale, the riskiest sort of short selling, to a normal short sale within a single trading day. This so-called hard "locate and reserve rule", whereby a trader must not only notify from where it plans to borrow the shares in question but must also have a guarantee that it will

indeed be able to borrow them, was finally diluted. The regulation now requires the trader to locate and have a "reasonable expectation" of being able to borrow the shares from the located party. ESMA will determine measures for judging what may be deemed a "reasonable expectation". The item also notes enhanced reporting requirements. The new regulation must be formally approved by the Council in the coming weeks, and will enter into force in November 2012. (15/15/11)

http://www.europarl.europa.eu/pdfs/news/public/focus/20111107FCS30711/20111107FCS30711_en.pdf

The Recognised Auction Platforms Regulations 2011/2699

The purpose of the Recognised Auction Platforms Regulations 2011 is to implement Articles 35, 36, and 43 of Commission Regulation (EU) 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances (O.J. L302/1. 18.11.2010) by providing for the authorisation and regulation of auction platforms auctioning such allowances, and for the extension of UK law implementing EU law on regulated markets in financial instruments and on market abuse apply to such auction platforms. (Dates in force: 12/12/2011 (regulations 6, 10 and Schedule 1); 18/6/12 (remaining regulations). (14/11/11)

http://www.legislation.gov.uk/ukxi/2011/2699/pdfs/ukxi_20112699_en.pdf

FSA: Transaction Reporting User Pack

FSA has published a guidance consultation of a proposed v3 of TRUP, available in both clean and marked-up versions. Responses are required by 24 November 2011. (27/10/11) http://www.fsa.gov.uk/pubs/guidance/gc11_24_clean.pdf (NB: over 50 pages long) http://www.fsa.gov.uk/pubs/guidance/gc11_24.pdf (NB: over 60 pages long)

FSA: MarketWatch 41

This edition comprises finalised guidance for reporting of transactions on Turquoise derivatives and finalised guidance for reporting of transactions on derivative markets where the reference data is not available. (24/10/11)

http://www.fsa.gov.uk/pubs/newsletters/mw_newsletter41.pdf

EC: MiFID

MiFID has published its proposals with regard to revising MiFID which will also increase the supervisory powers of regulators and provide clear operating rules for all trading activities. Similar discussions are taking place in the United States and other major global financial centres. Proposals now pass to the European Parliament and the Council (Member States) for negotiation and adoption. Once adopted the Regulation, the Directive, and the necessary technical rules implementing these will apply together as of the same date. (20/10/11) [EUROPA - Press Releases - New rules for more efficient, resilient and transparent financial markets in Europe](#)
<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/716&format=HTML&aged=0&language=EN&guiLanguage=en> (FAQ) http://ec.europa.eu/internal_market/securities/docs/isd/mifid/COM_2011_656_en.pdf (Directive: NB: over 190 pages long) http://ec.europa.eu/internal_market/securities/docs/isd/mifid/COM_2011_652_en.pdf (Regulation: NB: 60 pages long) <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/719&format=HTML&aged=0&language=EN&guiLanguage=en> (FAQ on emissions allowances)

EC: MAD

The EC has set out proposals with regard to the revision of MAD with the objectives of keeping pace with market developments (extending scope to commodity and related derivative markets); reinforcing regulators' investigative and sanctioning powers; proposals with regard to fines and reducing administrative burdens on SME issuers: The proposal now passes to the European Parliament and the Council for negotiation and adoption. Once adopted the regulation would apply from 24 months after its entry into force. (20/10/11) [EUROPA - Press Releases - Getting tough on insider dealing and market manipulation](#)
<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/715&format=HTML&aged=0&language=EN&guiLanguage=en> (FAQ) http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_651_en.pdf (Regulation – NB: over 70 pages long) http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_654_en.pdf (Directive on criminal sanctions for insider dealing and market manipulation)

IOSCO: Regulatory issues raised by the Impact of technological changes on market integrity and efficiency

IOSCO has published its final report which discusses, amongst other matters, high frequency trading; key regulatory tools; and sets out five specific recommendations for authorities. (20/10/11)
<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD361.pdf> (NB: over 80 pages long)

EC: Inspections in suspected cartel in the sector of Euro interest rate derivative

The EC has confirmed that, from 18 October 2011, its officials undertook unannounced inspections at the premises of companies active in the sector of financial derivative products linked to the EURIBOR in certain Member States in relation to concerns that the companies concerned may have violated EU antitrust rules that prohibit cartels and restrictive business practices (19/10/11) [EUROPA - Press Releases - Antitrust: Commission confirms inspections in suspected cartel in the sector of Euro interest rate derivatives](#)

IOSCO: Methodology for assessing implementation of the IOSCO objectives and principles of securities regulation

IOSO has published this document, which replaces an earlier version from February 2008. (19/10/11)
<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD359.pdf> (NB: over 200 pages long)

EP/EC: Short selling

Parliament's negotiators obtained a ban on naked CDS trading, with the sole exception of an option for a national authority to lift the ban temporarily in cases where its sovereign debt market is no longer functioning properly. In such cases, within 24 hours, ESMA would publish an opinion on its website as to the utility of suspending the ban and a negative opinion from ESMA would have a political weight. Reporting requirements have also been stepped up. The Council and the full Parliament must now ratify the agreement. A plenary vote in Parliament is expected to be taken in the third week of November 2011. The regulation is expected to enter into force in November 2012. Michel Barnier has issued a statement welcoming the move and an FAQ is also available (last link below). (19/10/11)
http://www.europarl.europa.eu/pdfs/news/expert/infopress/20111018IPR29720/20111018IPR29720_en.pdf
<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/712&format=HTML&aged=0&language=EN&guiLanguage=en>
<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/713&format=HTML&aged=0&language=EN&guiLanguage=en>

EC: Regulation on energy market integrity and transparency

The EC has announced that the EU has now adopted the regulation, originally proposed in December 2010, on wholesale energy trading. The new law will enter into force by the end of 2011. The regulation: prohibits use of inside information when selling or buying at wholesale energy markets (exclusive and price-sensitive information should be disclosed before trades can take place); outlaws manipulative transactions or the spreading of incorrect information that give false or misleading signals about the supply, demand or prices; obliges energy traders to report their transactions to the Agency for the Cooperation of Energy Regulators (ACER), either directly or through a third party (e.g. a broker or trade reporting system) and makes ACER responsible for independent monitoring of all the trades and checking whether rules are followed. In cases where ACER confirms a suspicion of market abuse, it will request national regulators to investigate the case and, in the case of cross-border manipulations, will also coordinate the investigations. The regulation will be published in the Official Journal in due course. (10/10/11)
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1168&format=HTML&aged=0&language=EN&guiLanguage=en>

ESMA: Consultation on the Guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities

ESMA has now published the responses to this consultation, which are available to download individually basis via the following link. (6/10/11) <http://www.esma.europa.eu/index.php?page=responses&id=186>

ESMA: Speech by Stephen Maijor: Market transparency – does it prevent crisis? (29 September 2011)

Topics include: transparency and securities regulation, including the MiFID Review and accounting. (29/09/11)
http://www.esma.europa.eu/data/document/2011_322.pdf

FSA: Supervisory formula method and significant risk transfer

FSA has published the finalised guidance in respect of FSA's expectations for firms using the SFM to calculate risk-weighted exposure amounts for unrated securitisation positions. It includes details of feedback received and FSA's responses to it. (29/09/11) http://www.fsa.gov.uk/pubs/final/fg_supervisory_formula_method.pdf

ESMA: Short selling measures

ESMA has noted that the Italian and Spanish regulators have published statements setting out details of their decision to renew the temporary short selling ban in their jurisdictions. Their decisions are published on their respective websites, accessible via the following links. (28/09/11) <http://www.consob.it/main/documenti/comunicatistampa/cs-2011.html#20110928> <http://www.cnmv.es/Portal/verDoc.axd?t={b48623ff-d191-417a-bd64-5a13d6d384f7}>

ESMA: Speech by Verena Ross: Keynote speech at AIMA conference (22 September 2011)

Topics include: aspects of the AIFM Directive (including third country issues; professional liability insurance, depository duties and leverage); ESMA's powers; OTC derivatives; EMIR; MiFID review; short selling. (28/09/11)
http://www.esma.europa.eu/data/document/2011_320.pdf

EC: Proposal for a Regulation of the European Parliament and of the Council on OTC derivative transactions, central counterparties and trade repositories

A Presidency compromise proposal of the above has been published. This is to be discussed at a COREPER II meeting on 28 September 2011. (27/09/11) <http://register.consilium.europa.eu/pdf/en/11/st14/st14544.en11.pdf> (NB: over 140 pages long)

EC: Regulation of the European Parliament and of the Council on wholesale energy market integrity and transparency

Further to an earlier news update, the REMIT regulation has now been published together with a note which states that the plenary had adopted the single compromise amendment to the proposal for a Regulation. The amendment adopted corresponds to what was agreed between the three institutions and ought therefore to be acceptable to the Council. The text of the amendment adopted and the European Parliament's legislative resolution are set out in this document (26/09/11) (second link below). <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00034.en11.pdf> (NB: over 50 pages long) <http://register.consilium.europa.eu/pdf/en/11/st13/st13998.en11.pdf> (NB: 30 pages long)

FOA: The impact of speculative trading in commodity markets – a review of the evidence

This report has been prepared by FTI UK Holdings Limited for FOA and reviews 20 papers on the impact of speculation in commodity markets. It concludes that, while some of studies find links between speculative activity and price levels and price volatility, these are often at best correlations and which do not prove causation; most academic studies find it very hard to find any formal causality from speculative flows on price levels or price volatility; policy responses aimed at reducing speculation in commodity markets need to understand that they are different from the markets in financial products in that they provide producer and consumer price signals and there is a link to a real object which has, in most cases, a finite life; and policy makers must balance any possible benefits against the probable costs in terms of reducing liquidity and hedging and hindering the price formation process. It argues that policy intervention without serious evidence should be avoided. (22/09/11)
http://www.foa.co.uk/admin/tiny_mce/jscripts/tiny_mce/plugins/filemanager/files/Regulation/Position_Papers/FTI_Impact_of_Speculative_Trading_in_Commodity_Markets.pdf (NB: over 70 pages long)

BIS: Quarterly review (September 2011)

The review is available to download by section via the following link. Topics include: measuring counterparty credit exposures in the OTC derivatives market; exploring the relationship between "guarantees extended" and CDS sold and lender complacency in the market for syndicated loans. (19/09/11) [BIS Quarterly Review, September 2011](#)

European Parliament: EU Regulation on energy market integrity and transparency

The European Parliament has announced the adoption of the Regulation (known as REMIT), which will cover contracts and derivatives for the supply and transportation of natural gas and electricity. New rules will ban the use of insider information and market manipulation practices, while national penalties for breaches will have to reflect the damage done to consumers. All trade deals will be monitored by the newly established Agency for the Cooperation of Energy Regulators (ACER) which will supply the data to EU Member States, to aid them in investigating breaches of the regulation and enforce remedies. To balance ACER's powers with those of national regulators and ensure its independence, its Director will be required to consult them on REMIT issues, but will not be bound by their opinions. An EU register will list energy traders – unregistered traders will be unable to trade. Once the regulation is agreed formally at first-reading it will enter into force 20 days after its publication in the Official Journal. The provisions on the reporting of information by traders to ACER (the list of contracts and derivatives which must be reported and uniform rules to be applied), will take effect six months after the EC approves the necessary implementing acts. (15/09/11) http://www.europarl.europa.eu/pdfs/news/expert/infopress/20110914IPR26634/20110914IPR26634_en.pdf
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0376+0+DOC+XML+V0//EN&language=EN>

EC: Proposal for a Regulation of the European Parliament and of the Council on OTC derivative transactions, central counterparties and trade repositories

A Presidency compromise proposal of the above has been published. This is to be discussed at a meeting of financial services attachés on 15 September 2011. (14/09/11) <http://register.consilium.europa.eu/pdf/en/11/st14/st14158.en11.pdf> (NB: 160 pages long)

FSB: Exchange traded funds

Further to FSB's April 2011 note on ETFs, responses have now been made available to download individually via the following link. Respondents include IMA and ICMA. (9/09/11) [Responses to the FSB note on ETFs](#)

EC: Proposal for a Regulation of the European Parliament and of the Council on OTC derivative transactions, central counterparties and trade repositories

A Presidency compromise proposal of the above has been published. This was discussed at a meeting of financial services attachés on 7 September 2011. (8/09/11) <http://register.consilium.europa.eu/pdf/en/11/st13/st13826.en11.pdf> (NB: over 140 pages long)

FSA: MarketWatch 40

Topics include: Turquoise Derivatives operates as an MTF – consequences for transaction reporting; finalised guidance for reporting transactions in derivatives conducted through clearing platforms of derivative markets; proposed new guidance for firms reporting derivative transactions conducted through clearing platforms of derivative markets where the reference data for those transactions is not made available to FSA and ARMs and finalised guidance for transaction reporting of transactions in Chi-X centrally cleared CFDs. (5/09/11) http://www.fsa.gov.uk/pubs/newsletters/mw_newsletter40.pdf

BoE: Speech by Paul Fisher: Tail risks and contract design from a financial stability perspective (1 September 2011)

This speech, given at Clare College, Cambridge, considers risks arising in contracts "where, because of a failure to take into account how the financial system as a whole operates, the true value of the contract is different from what it was intended to be". Specific types of contract discussed include SIVs, RMBS master trust securitisations and contingent capital securities. (1/09/11) <http://www.bankofengland.co.uk/publications/speeches/2011/speech515.pdf>

EC: Proposal for a Regulation of the European Parliament and of the Council on OTC derivative transactions, central counterparties and trade repositories

A Presidency compromise proposal of the above has been published. This is being discussed at a meeting of financial services attachés on 2 September 2011. (31/08/11) <http://register.consilium.europa.eu/pdf/en/11/st13/st13595.en11.pdf> (NB: over 140 pages long)

ESMA: Short selling measures

ESMA has coordinated press releases from the regulators in the various jurisdictions where short selling bans are currently in force (Belgium, France, Greece, Italy and Spain) – links to these, which are all in English, follow. Its general update on short selling measures has also been revised and appears in the last link below. (26/08/11) http://www.fsma.be/en/OtherNews/Article/press/div/2011-08-25_shortselling.aspx http://www.amf-france.org/documents/general/10122_1.pdf http://www.hcmc.gr/photos/anakoinoseis/files/25.8.2011_Press_Statement_short%20selling.pdf [Consob](#) <http://www.cnmv.es/Portal/verDoc.axd?t=%7bcf6e6eda-1f20-48f3-aa3f-aba79d6615d3%7d> <http://esma.europa.eu/popup2.php?id=5238>

OECD: Bank competition and financial stability

This report examines the interplay between banking competition and financial stability, taking into account the experiences of the recent global crisis and the policy response to date. Specific topics include: retail banking; competition in derivative markets and bank competition and government guarantees. (15/08/11) <http://www.oecd.org/dataoecd/14/49/48501035.pdf> (NB: 80 pages long)

ESMA: Short selling measures

ESMA has published a statement in which it notes that Belgium, France, Italy and Spain are introducing measures in respect of short selling, with effect from 12 August 2011. ESMA "wants to emphasise that the requirements in the Market Abuse Directive (MAD) referring to the prohibition of the dissemination of information which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news. European competent authorities will take a firm stance against any behaviour that breaches these requirements and ESMA will support national authorities to act swiftly against any such behaviour which is clearly punishable. While short-selling can be a valid trading strategy, when used in combination with spreading false market rumours this is clearly abusive". (12/08/11) http://www.esma.europa.eu/data/document/ESMA_2011_266_Public_statement_on_short_selling.pdf

ESMA: Waivers from pre-trade transparency - CESR positions and ESMA opinions

ESMA has published its first opinions on pre-trade transparency waivers to competent authorities under Article 29(1)(a) of the ESMA Regulation. They relate to the MiFID compliance of two trading functionalities submitted for ESMA's assessment by the relevant national competent authorities as part of the process originally developed by CESR in spring 2009. The substance of the individual (anonymised) opinions has been included (in red) in the table annexed to the document. ESMA considered a reference price system proposed by a trading venue to be MiFID compliant, whereas a system intended to formalise negotiated trades was not considered to comply with the MiFID requirements for granting a pre-trade transparency waiver. (10/08/11) http://www.esma.europa.eu/data/document/2011_241.pdf

ESMA: Measures adopted by competent authorities on short selling

The section on Greece in this document has been updated. (9/08/11) <http://www.esma.europa.eu/popup2.php?id=7696>

FSA: Liquidity swaps

FSA has published a guidance consultation on the prudential guidance for liquidity swaps. Responses are required by 21 September 2011. (22/07/11) http://www.fsa.gov.uk/pubs/guidance/gc11_18.pdf

ESMA: Guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities

ESMA has published this consultation which sets out proposals for detailed guidelines for trading platforms, investment firms and competent authorities to address challenges of a highly automated trading environment. The guidelines seek to clarify the obligations of trading platforms and investment firms under the existing EU legislative framework. Responses are required by 3 October 2011. ESMA intends to publish final guidelines by the end of 2011. (20/07/11)
http://www.esma.europa.eu/data/document/2011_223.pdf (press release)
http://www.esma.europa.eu/data/document/2011_224.pdf (report – NB: over 100 pages long)

EC: Proposal for a Regulation of the European Parliament and of the Council on short selling and certain aspects of credit default swaps

This report looks at the outcome of the European Parliament's proceedings in relation to the above proposal and contains the text of the proposal as at 5 July 2011. (18/07/11)
<http://register.consilium.europa.eu/pdf/en/11/st12/st12481.en11.pdf>

BIS/IOSCO/IAIS: Report on asset securitisation incentives

The Joint Forum has released the above report, which in addition to looking at incentives to engage in securitisation before and after the financial crisis, outlines recommendations to authorities on the tools and approaches they can employ to promote a sustainable and responsible securitisation framework. (13/07/11)
http://www.iaisweb.org/temp/13_July_2011_Joint_Forum_releases_report_on_securitisation_incentives.pdf (press release, including synopsis)
http://www.iaisweb.org/temp/Joint_Forum_Report_on_asset_securitisation_incentives.pdf (full report - NB: over 60 pages long)

ESMA: Mapping of the Transparency Directive - options, discretions and “gold-plating”

ESMA has published this review showing how securities regulators across Europe use options and discretions under the Transparency Directive. The report was intended to ascertain the extent to which Member States introduced options, discretions, additional requirements and/or more stringent rules in their national legislation. Overall, the report shows that a large majority of Member States made use of additional requirements. (7/07/11)
<http://www.esma.europa.eu/popup2.php?id=7620> http://www.esma.europa.eu/data/document/2011_194.pdf (NB: over 120 pages long)

European Parliament: Parliament decides stance on derivatives, short selling, investor compensation

This press release reports on plenary sessions held at which proposals on the above were considered. It notes that with very significant differences expected between the position of the EP and, once adopted, that of Member States for the directive on investor compensation schemes, MEPs chose to close the first reading procedure today. In the case of the two texts on derivatives and short selling, however, the plenary vote was only used to collect significant majorities which should strengthen the hand of MEP negotiators in their ongoing talks with Member States. The final vote on investor compensation schemes was 566 votes in favour, 17 against and 88 abstentions. The amended proposals on derivatives and short selling were both adopted by a show of hands but the final votes on these two were postponed. (6/07/11) http://www.europarl.europa.eu/pdfs/news/expert/infopress/20110705IPR23303/20110705IPR23303_en.pdf

Clearing and settlement, moving OTC derivatives onto exchange/central counterparties – regulatory “wholesale products”

FSA: FSA reviews of counterparty credit risk management by central counterparties

FSA has published its finalised guidance on this topic, which is aimed at providing additional context to the review process FSA undertakes when considering CCPs. It provides further information as to how FSA assesses compliance with FSMA and REC rules and, where relevant, provides examples of the kind of evidence which might support a positive assessment of a proposal against them. FSA emphasises that, whilst it has outlined a “typical” approach, any review will necessarily be customised to the specifics of the proposed clearing service. (31/01/12)
<http://www.fsa.gov.uk/static/pubs/guidance/fg12-03.pdf>

ECOFIN: Proposal for a Regulation of the European Parliament and of the Council on OTC derivative transactions, central counterparties and trade repositories (EMIR)

Compromise text agreed in respect of Article 13(2) and Article 15(3 and related recitals at an ECOFIN meeting on 24 January 2012 has been published. (27/01/12) <http://register.consilium.europa.eu/pdf/en/12/st05/st05795.en12.pdf>

IOSCO: Follow-on analysis to the report on trading of OTC derivatives

This report describes the different types of trading platforms currently available for the execution of OTC derivatives transactions in IOSCO member jurisdictions. Where possible, it also notes the differences relating to participant, product and geographic coverage. (25/01/12) <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD368.pdf>

EU: Derivatives - Council's position updated ahead of talks with the European Parliament

This press release notes that the Council has adjusted its position in negotiations with the European Parliament on a draft regulation aimed at increasing transparency on all derivatives and reducing risk in the OTC derivatives market. A general approach agreed in October 2011 specified that a CCP authorisation by a member state competent authority could only be blocked by a negative opinion of the college supported by a "unanimity minus one" vote (i.e. all the members of the college, excluding the authorities of the "home" member state). However, in order to facilitate agreement with the European Parliament, which is pushing for a stronger role for the college and for ESMA, the Council has approved a proposal by the presidency which would introduce two additional safeguards, whereby: following a negative opinion of the college, with "unanimity minus one", the "home" member state can refer the matter to ESMA for binding mediation; when a "sufficient" majority in the college opposes authorisation of a CCP, this "sufficient majority" may then decide to put the issue to ESMA for binding mediation. The Council's position defines a "sufficient" majority as two-thirds of college members, with votes in the college limited to two per member state for colleges of up to and including 12 members and three for colleges above that size. The item also notes compromises on pension schemes (which would be exempt from a clearing obligation for a period of three years, extendable by another two years plus one years, subject to reports justifying the deferrals) and on how CCPs from third countries will be approached. (23/01/12) http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/127502.pdf

FMLC: Issue 116: Commission Regulation establishing a Union Registry in connection with the Union emissions trading scheme

FMLC has published the texts of three letters sent to EC offices in respect of concerns over legal certainty on the above. (23/01/12) <http://www.fmlc.org/papers/Issue116Ltr2FaullDelbeke.pdf> <http://www.fmlc.org/papers/Issue116Ltr2Dumont.pdf> <http://www.fmlc.org/papers/Issue116Letter2Slingenberg.pdf>

BIS/IOSCO: Report on OTC derivatives data reporting and aggregation requirements - final report

The final report on OTC derivatives data that should be collected, stored and disseminated by trade repositories has now been published, reflecting feedback received following an August 2011 consultation. It is noted that some questions remain regarding how best to address current data gaps and define authorities' access to trade repositories. As requested by the G20, internationally coordinated working groups will address these questions in the coming year. (17/01/12) <http://www.bis.org/publ/cpss100.pdf> (NB: over 70 pages long)

PS12/1: Auctioning of greenhouse gas emission allowances: Feedback to CP11/14

FSA had consulted on measures to complement HMT's implementation of a new regulatory regime applicable to platforms that will conduct auctions in emission allowances. FSA now summarises the responses to the consultation on its approach to the recognition and supervision of Recognised Auction Platforms and sets out the changes to the Handbook (rules came into effect on 22 December 2011). FSA intends to hold a further consultation on bidding on an auction platform in the spring. (13/01/12) http://www.fsa.gov.uk/pubs/policy/ps12_01.pdf (NB: over 50 pages long)

ESMA: Guidelines on systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities

The guidelines cover: the operation of an electronic trading system by a regulated market or a multilateral trading facility; the use of an electronic trading system, including a trading algorithm, by an investment firm for dealing on own account or for the execution of orders on behalf of clients; and the provision of direct market access or sponsored access by an investment firm as part of the service of the execution of orders on behalf of clients. It is noted that the guidelines will also have implications for non-MiFID firms, such as those who sell electronic trading systems to market operators or investment firms, or act as the outsourced providers of such systems, or provide connectivity services to investment firms when accessing trading platforms. The guidelines will also affect firms exempt from MiFID who trade on own account and access trading platforms directly as members, participants or users, or through DMA or SA. The guidelines will become effective one month after the publication by national competent authorities of the guidelines and recommendations on their official website in their national language (estimated to be 1 May 2012). (22/12/11) http://www.esma.europa.eu/system/files/2011_456.pdf (NB: over 60 pages long)

FSA: Applications for approval as a Recognised Auction Platform/ Recognised Auction Platforms Regulations 2011/2699

FSA reports that its board has now made rules and guidance which set out its approach to the approval and supervision of a Recognised Auction Platform (a link to the Instrument itself is the second link below). Once approved, a Recognised Auction Platform will be able to compete for the procurements of definitive auction platforms within the EU to auction emission allowances under the EU Emissions Trading Scheme. A common auction platform will be appointed by EU Member States and the EC, but the UK, Germany and Poland have exercised a right to appoint their own national auction platforms. Appointments of all auction platforms will be subject to a competitive procurement process. The tender for the appointment of the UK platform will be published before the end of 2011. It is also noted that FSA intends to publish a PS further to CP11/14, which proposed to add rules and guidance to REC to assist RIEs in understanding how FSA will supervise RAPs when conducting auctions of emission allowances in the first week of January. The SI implements Articles 35, 36, and 43 of Commission Regulation (EU) 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances (O.J. L302/1. 18.11.2010) by providing for the authorisation and regulation of auction platforms auctioning such allowances, and for the extension of UK law implementing EU law on regulated markets in financial instruments and on market abuse apply to such auction platforms and comes into force on 12/12/11 (for the purpose of regulations 6, 10 and Schedule 1 and 18/6/12 (remainder). (22/12/11) http://media.fisahandbook.info/Legislation/2011/2011_77.pdf (NB: over 30 pages long) http://www.legislation.gov.uk/ukxi/2011/2699/pdfs/ukxi_20112699_en.pdf

BIS: Application of own credit risk adjustments to derivatives

This consultation paper proposes that the application of paragraph 75 of the Basel III rules to fair valued derivatives is not straightforward since their valuations depend on a range of factors other than the bank's own creditworthiness and that debit valuation adjustments for OTC derivatives and securities financing transactions should be fully deducted in the calculation of Common Equity Tier 1. It briefly reviews other options for applying the underlying concept of paragraph 75 to these products and the reasons these alternatives were not supported by the Basel Committee. Responses are required by 17 February 2012. (21/12/11) <http://www.bis.org/publ/bcbs214.pdf>

ESMA: OTC derivatives regulation

This press release notes a meeting held on 9 December 2011 attended by leaders and senior representatives of the authorities responsible for the regulation of OTC derivatives markets in the EU, USA, Canada, Hong Kong, Japan and Singapore. It is noted that it was the first time the authorities have met as a group to discuss their implementation efforts. In the meeting, the authorities addressed the cross-border issues related to the implementation of new legislation and rules to govern the OTC derivatives markets in their respective jurisdictions. At the conclusion of the meeting, the authorities agreed to continue bilateral regulatory dialogues and to meet as a group again in early 2012. (12/12/11) http://www.esma.europa.eu/system/files/2011-431_1.pdf

HMRC: Draft Finance Bill 2012 clauses and other tax updates

HMRC has published a comprehensive list of these with accompanying documentation, including draft regulation and technical notes which can be downloaded via the link below. One item concerns Foreign Exchange - Anti Avoidance Regulations: the Government has today announced in a Written Ministerial Statement that regulations have been laid to put beyond doubt that companies can only defer foreign exchange gains and losses under the Loan Relationship & Derivative Contract (Disregard and Bringing into Account of Profits and Losses) Regulations 2004, from the date that they have a foreign currency loan relationship or derivative contract which is matched with shares, ships or aircraft. The Regulations will apply to shares, ships or aircraft which are matched on or after 6 December 2011. The changes block a

disclosed avoidance scheme. (6/12/11) <http://www.hmrc.gov.uk/budget-updates/march2011/draft-tax-finance-bill-2012.htm>

ECB: Decision of the ECB of 16 November 2011 establishing detailed rules and procedures for implementing the eligibility criteria for central securities depositories to access TARGET2-Securities services

This has been published in the Official Journal. (2/12/11) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:319:0117:0123:EN:PDF>

BIS: The macrofinancial implications of alternative configurations for access to central counterparties in OTC derivatives markets

The G-20 leaders' commitment that all standardised OTC derivatives will be centrally cleared by the end of 2012 is intended to increase the safety and resilience of the global financial system. This report analyses the potential implications for financial stability and efficiency of alternative access arrangements to CCPs. (18/11/11) <http://www.bis.org/publ/cgfs46.pdf> (NB: over 30 pages long)

BoE: The non-investment products code for principals and broking firms in the wholesale markets

BoE has published an updated version of this code, which has been drawn up by market practitioners in the UK representing principals and brokers in the foreign exchange, money and bullion markets. It is noted that the code has no statutory underpinning except where it refers to existing legal requirements, but that those who prepared it sought, where appropriate, to make its provisions consistent with the relevant parallel provisions in the FSA Handbook, bearing in mind, in particular, that some firms will operate both in the non-investment and investment product markets. (15/11/11) <http://www.bankofengland.co.uk/markets/forex/fxjsc/nipscode1111.pdf> (NB: over 40 pages long)

EC: Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC (11/11/11) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0683:FIN:EN:PDF>

ESMA: Considerations of materiality in financial reporting

This consultation seeks comments from interested parties on their understanding of various aspects of materiality in an effort to contribute to a consistent application of this important concept in financial reporting. Responses are required by 29 February 2012. (10/11/11) http://www.esma.europa.eu/data/document/2011_373.pdf

ESMA: Review of European enforcers on the implementation of IFRS 8 – operating segments

This report provides the main findings of the review of European enforcers on the implementation of IFRS 8 – Operating Segments and ESMA's tentative recommendations to enhance the application of the standard. (10/11/11) <http://www.esma.europa.eu/popup2.php?id=8054> (NB: 30 pages long)

EC: Proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories. (1/11/11) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0652:FIN:EN:PDF> (NB: 60 pages long)

EC: Commission requests Poland and Slovenia to implement rules for settlement systems and collateral arrangements

The EC has requested Poland and Slovenia to notify within the next two months the measures they are taking to implement EU rules that strengthen the protection of settlement systems and financial collateral arrangements in financial markets which were due to be implemented by Member States by 1 January 2011. The requests to Poland and Slovenia take the form of reasoned opinions, the second step of EU infringement procedures. If the two Member States

do not notify measures to fully implement the Directive within two months, the EC may refer the matter to the ECJ and could request it to impose financial penalties. (27/10/11) [EUROPA - Press Releases - Financial services: Commission requests Poland and Slovenia to implement rules for settlement systems and collateral arrangements](#)

BoE: Speech by Paul Tucker: Central counterparties: the agenda (24 October 2011)

Text of the above, given at the EC's conference on the post trading landscape, Paul Tucker considers the importance of CCP risk managers having clear and independent reporting lines to group boards; stresses the need for effective resolution regimes for CCPs; argues that as bond holders and other unsecured creditors should bear the losses of a failed bank, clearing members should probably bear the brunt of 'recapitalising' CCPs as their contribution to keeping it going and advocates initial margin requirements for uncleared OTC derivatives contracts (24/10/11) <http://www.bankofengland.co.uk/publications/speeches/2011/speech524.pdf>

FSA: FSA/SEC roundtable discussion on market structures

FSA has published a short press release on a meeting hosted by Martin Wheatley of FSA and Mary Schapiro of SEC on 14 October 2011 which was attended by markets and securities regulators from Europe, the Americas, Asia and Australia. The roundtable focused on a number of market structure issues specifically automated trading strategies such as HFT, market fragmentation and undisplayed liquidity. The meeting also discussed the appropriate approaches regulators might adopt in the light of these market structure developments. (17/10/11) <http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/085.shtml>

FSA: Applications for recognition as a Recognised Auction Platform

From 17 October 2011, persons intending to apply for recognition as a Recognised Auction Platform are invited to contact FSA's Markets Division to discuss their proposals for compliance with the recognition requirements (as set out in the July HMT/FSA consultation documents on the regulation of auctions of EU emissions allowances). Draft applications are welcome. (17/10/11) [Applications for recognition as a Recognised Auction Platform](#)

FSB: OTC derivatives market reforms - progress report on Implementation

FSB has published its second six-monthly progress report, which provides a detailed review of progress toward meeting the commitment of G20 Leaders at the Pittsburgh 2009 Summit that, by the end of 2012 all standardised OTC derivative contracts be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties; that OTC derivative contracts be reported to trade repositories; and that non-centrally cleared contracts be subject to higher capital requirements. It is noted that few FSB members have the legislation or regulations in place to provide the framework for this. FSB raises concerns over standardised derivatives that are moved onto exchanges or electronic trading platforms (and therefore no longer traded "OTC") and clarifies that, in order to achieve the G20 objective of mitigating systemic risk, full implementation of the G20 commitments needs to cover these derivatives, irrespective of whether they continue to trade OTC or are moved onto organised platforms. A further progress report will be published in spring 2012. Responses to this paper should be sent by 30 November 2011. (12/10/11) http://www.financialstabilityboard.org/press/pr_111011b.pdf
http://www.financialstabilityboard.org/publications/r_111011b.pdf f (NB: 70 pages long)

EC: EGMI Group report

The EGMI Group was formed in 2010 to advise the EC on various issues in relation to post-trade services and market infrastructures in the EU. This report provides an overview of how the efforts to develop a safe and efficient clearing and settlement infrastructure for the EU have progressed and considers the post-trading landscape by asset class. Issues concerning commodities are outside the scope of the report. (12/10/11) http://ec.europa.eu/internal_market/financial-markets/docs/clearing/egmi/101011_report_en.pdf (NB: over 40 pages long)

FSA: OTC Derivatives Regulators' Forum

FSA has published a short note on a meeting held by the above on 4/5 October 2011 in New York at which ongoing work on OTC derivatives reform was discussed. Topics of discussion during the meeting included ODRF's work with a number of OTC derivatives trade repositories with respect to their functionality and the needs of the global regulatory community, and the development of cooperative oversight arrangements among authorities involving OTC derivatives

CCPs and trade repositories with wide international memberships. The next formal “in person” meeting of ODRF will be held in Hong Kong in March 2012. (11/10/11) [Recent meeting of the OTC Derivatives Regulators' Forum](#)

ECOFIN/FMCL: OTC derivatives

Further to its 3-4 October meeting, ECOFIN has published a press release which notes that it has set out its position with a view to negotiations with the European Parliament on a draft regulation aimed at increasing transparency and reducing risk in the OTC derivatives market which calls for reporting of all derivative contracts to trade repositories and the clearing of standardised OTC derivative contracts through CCPs in order to reduce counterparty risk. The compromise proposed by the presidency allows room for further technical work and it is intended that the regulation would apply from the end of 2012. Separately, FMLC has published the text of a paper which looks at a September 2010 draft of EMIR and raises issues concerning the scope of the Regulation as it relates to parties; the scope of the Regulation as it relates to eligible contracts; the civil law consequences of breach of the obligation to clear derivatives; frontloading; segregation and different client clearing models; default procedures and portability; different methods of taking collateral and the need to amend the EU Collateral Directive; deficiencies arising from the Settlement Finality Directive and issues relating to the insolvency of a CCP; interference with the automatic early termination election under an ISDA and regulatory capital. (6/10/11)

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/124903.pdf

<http://www.fmlc.org/papers/Issue156%20PaperOct11.pdf> (NB: over 30 pages long)

CP11/19**: Financial resources requirements for Recognised Bodies

In the light of various regulatory and competitive developments, FSA believes that there is an opportunity to consider enhancing to REC to help CCPs prepare for their future obligations under EMIR. It has reviewed REC 2.3 to ensure that it remains appropriate to give full effect to the Recognition Requirements and, in the case of a UK RIE, that it continues to reflect the obligations of a Regulated Market under MiFID. It proposes to: make it clearer what regulatory capital is for; strengthen the “standard approach” as an objective proxy for the cost of orderly closure by standardising the meaning of “operating expenses”; set the “standard approach” as a floor to the financial resources requirement, by not allowing alternative bespoke arrangements; replace existing supervisory practices in relation to the use of a liquidity buffer with specific risk-based processes and introduce guidance on measuring group risk as a component of the financial resources calculation. Responses are required by 6 January 2012. (5/10/11)

http://www.fsa.gov.uk/pubs/cp/cp11_19.pdf (NB: over 60 pages long)

BIS: High-frequency trading in the foreign exchange market

This report considers aspects of high frequency trading in the foreign exchange market,, including its definition, effect on other market participants, behaviour in normal and stressed times, and key differences with HFT in equities. It also identifies issues with regard to market functioning, systemic risks, and market integrity and competition that may warrant further investigation. (28/09/11) <http://www.bis.org/publ/mkctc05.pdf> (NB: over 30 pages long)

EFAMA: Blueprint for a European consolidated tape

This document sets out a blueprint for the establishment and operation of a European Consolidated Tape, including recommended enabling measures and the approach to its operation. (20/09/11)

http://www.efama.org/index.php?option=com_docman&task=doc_download&gid=1444

IOSCO: Principles for the regulation and supervision of commodity derivatives markets

This report addresses the G20's November 2010 request for further work on regulation and supervision of physical commodity derivatives markets. The principles are aimed at ensuring a globally consistent approach to the oversight of commodity derivatives markets which will deliver effective supervision, combats market manipulation and improves price transparency. They are aimed at contributing to enhanced price discovery in commodity derivative markets and primarily intended to apply to ETF contracts, futures contracts options and options referenced to a physical commodity, index or price series which may settle in cash or by physical delivery, although many of the principles will also be applicable to OTC markets. (15/09/11) <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD358.pdf> (NB: over 70 pages long)

FSA: Transactions on Turquoise Derivatives and derivative markets where reference data is unavailable to FSA and ARMs

FSA has published a short single guidance consultation document on the above topics. With regard to the former, FSA proposes that firms may continue to report transactions executed in derivatives admitted to trading on Turquoise Derivatives as if they were derivatives admitted to trading on a regulated market. With regard to the latter issue, FSA proposes that where reference data is not made available to the FSA and ARMs, firms will be required to report these transactions using the equivalent ISIN number) for ISIN derivative markets or the Alternative Instrument Identifier (Aii) code for Aii derivative markets of the standardised derivative contracts (order book contracts). The consultation closes on 22 September for the Turquoise Derivatives item and on 6 October 2011 for the reference data item. (9/09/11) [Transactions on Turquoise Derivatives](http://www.fsa.gov.uk/pubs/guidance/gc11_21.pdf) http://www.fsa.gov.uk/pubs/guidance/gc11_21.pdf

BIS/BERR: The future of computer trading in financial markets

A working paper to inform the work of policy makers globally has now been published, along with supporting evidence. The document is comprised of three papers on financial stability and computer trading; the impact of computer trading on liquidity, price efficiency/discovery and transaction costs; and the impact of technology developments. The first part concludes that there is no direct evidence that high frequency computer based trading has increased volatility, but that, in specific circumstances, a key type of mechanism can lead to significant instability in financial markets with computer based trading self-reinforcing feedback loops. The second part reports that liquidity has improved, transaction costs are lower, and market efficiency has not been harmed by computerised trading in regular market conditions. The third part considers the future impact of "trading robots" which will be able to adapt and learn with little human involvement in their design. A final report on this project will appear in autumn 2012. (9/09/11) <http://www.bis.gov.uk/foresight/our-work/projects/current-projects/computer-trading/working-paper>
<http://www.bis.gov.uk/assets/bispartners/foresight/docs/computer-trading/11-1276-the-future-of-computer-trading-in-financial-markets.pdf> (NB: over 50 pages long)

BIS/IOSCO: Report on OTC derivatives data reporting and aggregation requirements

This consultation report considers how OTC derivatives data should be collected, stored and disseminated by trade repositories. The proposed requirements and data formats will apply to both market participants reporting to by trade repositories and to by trade repositories reporting to the public and to regulators. The report also finds that certain information currently not supported by trade repositories would be helpful in assessing systemic risk and financial stability, and discusses options for bridging these gaps. Issues relating to data access for the authorities and reporting entities are also discussed, as are the mechanisms and tools that the authorities will need to aggregate OTC derivatives data. Responses should be sent by 23 September 2011 (24/08/11) <http://www.bis.org/publ/cpss96.pdf> (NB: over 50 pages long)

EC: Opinion of the European Data Protection Supervisor on the proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories

This has been published in the Official Journal. (22/07/11) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:216:0009:0016:EN:PDF>

HMT: Regulating auctions of EU emissions allowances/ CP11/14**: Auctioning of greenhouse gas emission allowances

HMT's consultation sets out the rationale for the proposed amendments to existing legislation on financial services and draft regulations intended to implement the provisions necessary for FSA to authorise UK platforms to auction EU emissions allowances This will enable UK RIEs to be eligible to compete in several auction platform procurement processes across the EU. Responses to this are required by 22 August 2011. FSA's CP invites comments to amendments to REC, FEES and GLOSS in order to complement HMT's implementation of a new regulatory regime applicable to platforms that will conduct auctions in emission allowances. The Handbook amendments originate from the introduction of the EU carbon emission allowance auctioning regime that is being implemented by Regulation 1031/2010 (the Commission Auction Regulation. Responses are required by 25 September 2011 (22/07/11) http://www.hm-treasury.gov.uk/d/condoc_regulating_auctions_eu_emissions_allowances.PDF (NB: 40 pages long)
http://www.fsa.gov.uk/pubs/cp/cp11_14.pdf (NB: over 60 pages long)

EC: Proposal for a Regulation of the European Parliament and of the Council on derivative transactions, central counterparties and trade repositories

A Presidency compromise proposal of the above has been published. This was to have been discussed at a meeting of attaches on 19 June 2011. (20/07/11) <http://register.consilium.europa.eu/pdf/en/11/st13/st13012.en11.pdf> (NB: over 100 pages long)

FSA: FSA reviews of credit risk management by central counterparties

FSA has published the following paper as a guidance consultation. It aims to provide additional context to the review process FSA undertakes when considering credit risk management by CCPs. It provides further information as to how FSA assesses compliance with FSMA and the Recognition Requirements and, where relevant, provides examples of the kind of evidence which might support a positive assessment of a proposal against them. Responses are required by 10 August 2011. (11/07/11) [FSA reviews of credit risk management by central counterparties](http://www.fsa.gov.uk/pubs/guidance/gc11_16.pdf)
http://www.fsa.gov.uk/pubs/guidance/gc11_16.pdf

Getting the third pillar to work – active investors and listed company regulation

CP12/2**: Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules

The CP sets out proposals for changes LR to ensure that they reflect properly recent changes in market practices. It proposes incorporate into the formal body of LR other relevant material such as technical notes. The principal areas in which changes are proposed are: reverse takeovers; sponsors; transactions; financial information and externally managed companies. The paper also raises some wider issues about the nature of the premium listing standard. Responses to the main proposals are required by 26 April 2012. FSA intends to publish its feedback and PS in the summer with the implementation of the rules coming into effect shortly afterwards. Regarding the wider issues mentioned above, FSA will, subject to responses, consider developing specific options or proposals for discussion in a further paper later this year. As part of this, it would also intend to consult on a number of further, more technical, amendments to LR that remain to be dealt with following this consultation. (26/01/12)
http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/cp/cp12_02.pdf (NB: over 170 pages long)

ESMA: ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

The responses to this consultation have now been published and may be downloaded individually via the following link. (11/01/12) <http://www.esma.europa.eu/consultation/ESMA%E2%80%99s-technical-advice-possible-delegated-acts-concerning-Prospectus-Directive-amended#responses>

EC: Public consultation on the application of Directive 2007/44 EC as regards acquisitions and increase of holdings in the financial sector

The public consultation includes specific questions related to the procedure foreseen in the Acquisitions Directive for the prudential assessment of the acquisitions of qualifying holdings in the financial sector and specific questions related to the substantial aspects of the prudential assessment of the acquisitions of qualifying holdings in the financial sector. Responses are required by 10 February 2012. (9/12/11)
http://ec.europa.eu/internal_market/consultations/docs/2011/acquisitions/consultation_paper_en.pdf

ESMA: Empty voting

ESMA has published the responses received to the call for evidence which are available to download individually via the following link. (1/12/11) <http://www.esma.europa.eu/index.php?page=responses&id=189>

ESMA: Final report - technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

Following a call for evidence and a consultation, ESMA's final technical advice has been submitted to the EC. (4/10/11) http://www.esma.europa.eu/data/document/2011_323.pdf (NB: over 150 pages long)

ESMA: Empty voting

ESMA has published a call for evidence, noting that there are no specific rules relating to empty voting (having voting rights attached to shares without corresponding economic exposure) at the European level. As two Member States have taken or are planning to take steps to address empty voting, ESMA is seeking to collect information and evidence on the extent to which empty voting practices exist in practice and the effects of such practices. Responses are required by 25 November 2011. (14/09/11) <http://www.esma.europa.eu/popup2.php?id=7819>

The Takeover Panel: The Takeover Code

Amendments to the Takeover Code will take effect from 19 September 2011. (7/09/11)
http://www.thetakeoverpanel.org.uk/wp-content/uploads/2009/01/Code_190911.pdf (NB: 300 pages long)

ESMA: Consultation on ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU

ESMA has now published the responses to the above which are available to download individually via the following link. (29/07/11) [ESMA \[European Securities and Markets Authority\]](#)

ESMA: Statement on disclosures related to sovereign debt to be included in IFRS financial statements

In this statement, ESMA notes that it has increased its coordination of the monitoring activities of competent authorities in response to the specific market circumstances and developments in this area and wishes to stress the need for enhanced transparency in European listed issuers' interim and annual financial statements using IFRS. (29/07/11)
http://www.esma.europa.eu/data/document/2011_226.pdf

Archived material on the sector is available via the following links: [January-June 2009](#), [July-December 2009](#), [January-December 2010](#) and [January-July 2011](#).

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