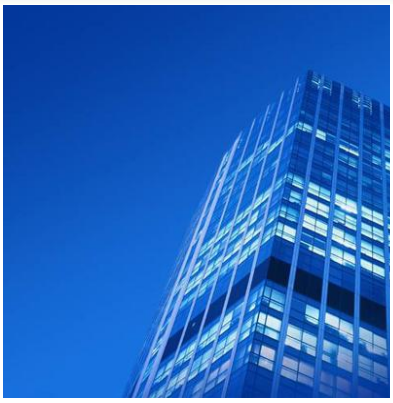
Deloitte.



Governance, Regulation & Compliance

Regulatory Radar

Regulatory Newsletter, Issue 39, October 2011

Newsletter on banking and financial regulation

In this issue

In October, the European Commission published its proposals to revise MIFID and MAD. The MiFID proposals aim to make financial markets more efficient, resilient and transparent and to strengthen the protection of investors. More information on MiFID II can be found ➲here.

On 12 October, ESMA published an opinion on the practical arrangements for the late transposition of the UCITS IV Directive setting out practical measures that competent authorities can agree upon to mitigate a number of issues arising out of the late transposition.

On a wider international level, the Financial Stability Board published a number of interesting reports such as a follow-up peer review report on compensation practices which assesses progress made by national authorities and significant financial institutions in implementing the Principles for Sound Compensation Practices and Implementation Standards.

On a national level, the Belgian Parliament adopted the law containing tax and miscellaneous measures, among which an amendment to the provisions governing bank secrecy rules.

We hope you enjoy the reading.

Best wishes for 2012,

The Editorial Board.

Financial Services Industry

Normative documents

Official Journal of Belgium (BS/MB)

Consolidated supervision

On 11 October, the Royal Decree of 4 October 2011

amending the Royal Decree of 12 August 1994 on the consolidated supervision of credit institutions, investment firms and management companies of undertakings for collective investment and the Royal Decree of 20 December 1995 on foreign investment firms was published in the Official Journal. The Royal Decree aims to bring the aforementioned Royal Decrees in line with Directive 2009/111/EC amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

Official Journal of the European Union (OJ)

AML/CFT and sanctions

In October, the following documents related to AML/CTF and sanctions measures were published in the Official Journal:

- Council Implementing Regulation (EU) No 968/2011 of 29 September 2011 implementing Article 11(1) and (4) of Regulation (EU) No 753/2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan in OJ L 257 of 1 October 2011
- Council Implementing Decision 2011/639/CFSP of 29 September 2011 implementing Decision 2011/486/CFSP concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan in OJ L 257 of 1 October 2011
- Council Regulation (EU) No 999/2011 of 10 October 2011 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus in OJ L 265 of 11 October 2011
- Council Implementing Regulation (EU) No 1000/2011 of 10 October 2011 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus in OJ L 265 of 11 October 2011
- Council Decision 2011/666/CFSP of 10 October 2011 amending Decision 2010/639/CFSP concerning restrictive measures against Belarus in OJ L 265 of 11 October 2011
- Council Implementing Regulation (EU) No 1002/2011 of 10 October 2011 implementing Article 12(1) of Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran in OJ L 267 of 12 October 2011
- Council Implementing Decision 2011/670/CFSP of 10 October 2011 implementing Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran in OJ L 267 of 12 October 2011
- Council Regulation (EU) No 1011/2011 of 13 October 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria in OJ L 269 of 14

October 2011

- Council Decision 2011/684/CFSP of 13 October 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria in OJ L 269 of 14 October 2011
- Commission Implementing Regulation (EU) No 1024/2011 of 14 October 2011 amending for the 159th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network in OJ L 270 of 15 October 2011
- Council Regulation (EU) No 1048/2011 of 20 October 2011 repealing Regulation (EC) No 1763/2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) in OJ L 276 of 21 October 2011
- Council Implementing Regulation (EU) No 1049/2011 of 20 October 2011 implementing Article 11(1) of Regulation (EU) No 753/2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan in OJ L 276 of 21 October 2011
- Council Implementing Decision 2011/698/CFSP of 20 October 2011 implementing Decision 2011/486/CFSP concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan in OJ L 276 of 21 October 2011
- Council Implementing Decision 2011/699/CFSP of 20 October 2011 implementing Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo in OJ L 276 of 21 October 2011
- Council Implementing Regulation (EU) No 1063/2011 of 21 October 2011 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism in OJ L 277 of 22 October 2011
- Council Decision 2011/701/CFSP of 21 October 2011 amending Decision 2011/430/CFSP in order to update the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism in OJ L 277 of 22 October 2011
- Commission Implementing Regulation (EU) No 1081/2011 of 25 October 2011 amending for the 160th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network in OJ L 280 of 27 October 2011
- Council Regulation (EU) No 1083/2011 of 27 October 2011 amending Regulation (EC) No 194/2008 renewing and strengthening the

restrictive measures in respect of Burma/Myanmar in OJ L 281 of 28 October 2011

- ➲ Council Decision 2011/705/CFSP of 27 October 2011 repealing Decision 2010/145/CFSP renewing measures in support of the effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) in OJ L 281 of 28 October 2011
- ➲ Council Decision 2011/706/CFSP of 27 October 2011 amending Decision 2010/638/CFSP concerning restrictive measures against the Republic of Guinea in OJ L 281 of 28 October 2011

Target2

On 26 October, the Guideline of the European Central Bank of 14 October 2011 amending Guideline ECB/2007/2 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (ECB/2011/15) has been published in OJ L 279.

Financial Services and Markets Authorities (FSMA)[1]

Acquisition of own shares

On 11 October, the FSMA published a new version of Circular CBFA_2009_24 on the acquisition of own shares or certificates by listed companies or companies whose securities are admitted for trading on a MTF (in ➲Dutch and in ➲French). The Circular describes the requirements to which listed companies or companies whose securities are admitted for trading on a MTF must adhere when acquiring own shares such as transparency requirements with respect to acquisition transactions.

Obligations of issuers listed on Alternext Brussels

On 6 October, the FSMA published a new version of the Circular CBFA_2008_18 on the obligations of issuers listed on Alternext Brussels (in ➲Dutch and in ➲French). The Circular provides an overview of the legislation and regulation applicable on issuers listed on Alternext Brussels with respect to the information requirements and the prevention on market abuse.

Consultative or informative documents

CEA

G20

On 27 October, the CEA published ➲the letter the International Network of Insurance Associations (INIA) has sent to the French President Nicolas Sarkozy ahead of the G20 Summit in Cannes. In the letter, the INIA expresses its concern over the ongoing perception that

[1] As of 1 April 2011, the new "Twin Peaks" supervisory architecture has come into force in Belgium. The new architecture replaces the Banking, Finance and Insurance Commission (CBFA) with two new regulators, the National Bank of Belgium (NBB) and the newly created Financial Services and Markets Authority (FSMA). Within the new framework FSMA is responsible for the supervision of the financial markets and the "conduct of business" rules, the micro-prudential supervision of portfolio management and investment advice companies, UCI management companies and UCI's, institutions for occupational pension, financial intermediaries, the financial education of investors and their protection against the illicit provision of financial products and services.

insurance activities may contribute to systemic risks and about the inclusion of bail-in instruments as part of a resolution framework.

Council of the European Union

Strategy on terrorist financing

On 17 October, the Council of European Union published the ➲Report on the implementation of the revised Strategy on terrorist financing. The report outlines progress in achieving the goals mentioned in the recommendations of Revised Strategy on Terrorist Financing.

European Credit Research Institute (ECRI)

Review of the Payment Service Directive

On 19 October, ECRI published a policy brief, ➲entitled "Review of the Payment Services Directive: The question of surcharges". The Payment Services Directive was intended to provide more price transparency for users and a level playing field for efficient competition among different payment services by decreasing the inhibiting effects of different legislation, cross-subsidisation and non-cost-based pricing. The European Commission, however, intended most of these effects to come about through market led initiatives. In the run-up to the review of the Directive, the paper asks whether more could be done to promote the use of efficient payment methods. In this respect it concludes that the trend towards transparent and efficient pricing calls for abolishing cross-subsidisation. Price competition cannot exist in a market that functions without direct charges and where new entrants have to rely on cross-subsidisation in order to sell their services. If the end-users do not see the costs of different payment methods, they have little incentive to change their behaviour towards the more efficient payment methods. If given the option to impose a surcharge, merchants may be encouraged to start accepting payment cards. However, as the competitive environment may distort the pricing choices of the merchant, there is a risk that surcharges may be used to extract consumer surplus. Furthermore, surcharges influence consumers' perceptions of the cost of card payments and imposing a surcharge on cost-efficient means of payment may deter consumers from paying efficiently. Therefore, imposing surcharges on card payments comes with a risk of steering the pricing of payment instruments towards less transparency. According to the brief, the Commission should carefully consider the pros and cons of surcharges and take into account their interplay with pricing structures of wider payment systems. If surcharges are to be generally forbidden, it limits the bargaining power of merchants' vis-á-vis card companies. Allowing it however will hand merchants a tool to influence their customers' payment choice.

European Commission

Payment institutions and money laundering

On 4 October, the European Commission has published

➲a staff working paper to provide guidance to EU supervisors and private stakeholders about the interaction between EU rules governing Payment Services Providers and rules governing Anti-Money Laundering. The guidance is focused on the supervision of payment institutions and their reporting obligations in various cross-border situations. The paper indicates that it stems from a combined reading of both Payment Service Directive (PSD) and Anti-Money Laundering Directive (AMLD) that payment institutions have to respect, as regards their branches or agents, the AMLD rules of the host country and are subject to the AML supervision of the host country performed in close cooperation with the home country authorities. Prudential supervision per se is still the responsibility of the home country, but cooperation with host authorities remains indispensable. The scope of this working document is limited to two scenarios:

- A payment institution authorised in Member State A (the 'home country') has an agent or several agents in Member State B (the 'host country');
- A payment institution authorised in Member State A has a branch in Member State B.

European Securities and Markets Authority (ESMA)[2]

Developments in the European supervisory architecture

On 11 October, ESMA published ➲the keynote speech its executive director, Verena Ross, gave at the City of London Brussels Annual Reception. In the speech, Ms. Ross reflects on the new ESAs and the changes they have brought and are bringing about 9 months after they were created on 1 January this year. With respect to the ESAs' powers, she indicated that the ESA's are determined to use their powers to draft technical standards, recommendations and opinions to their full effect. This should reduce the opportunities for regulatory arbitrage over time and ensure that financial services players can truly operate in a single EU market under one set of rules and requirements and thus compete on equal and fair terms. Ms. Ross also emphasized the good cooperation between the ESAs. From an institutional perspective this has been achieved through creating the Joint Committee and giving it strong roles in coordinating work between the ESAs. For example in the key area of consumer and investor protection, where each ESA has focused its attention, a Consumer Protection Sub Committee of the Joint Committee dealing with issues of consumer protection as well as financial innovation has been created to ensure that any work in this area does take full account of the cross-sectoral aspects of how products are actually sold to consumers and investors. With respect to work being carried ESMA, she highlighted the five key priorities and explained under each what the Authority has already done and what the future focus of the work will be:

- Single rulebook: Ms. Ross indicated that with EMIR, Short-Selling Regulation, AIFMD, Prospectus

[2] ESMA has replaced the Committee of European Securities Regulators (CESR), as of 1 January 2011.

Directive and others, ESMA will have a significant work load in the formulation of technical standards. In addition to the formulation of technical standards, there will be significant work to advise the Commission and other co-legislators on regulations and directives that are about to enter or are going through the legislative process. The most obvious example here is MiFID, but there is also forthcoming activity in relation to PRIPS, Central Securities Depositories....

- Regulatory arbitrage: Through opinions, guidelines and recommendations, (which have a public comply and explain mechanism associated with them), wider FAQs and other supervisory assistance tools, ESMA will promote harmonised approaches. It will also conduct peer reviews and follow through where national authorities are not implementing legislation appropriately.
- Investor protection: On the subject of investor protection, Ms. Ross noted that the establishment of the Standing Committee on Financial Innovation will give a new dimension to this area and will play a key role in analysing financial market trends and identify risks to investors across the whole of ESMA's responsibilities and work closely with the other ESAs on this topic which clearly has a cross-sectoral dimension. She also indicated that at this point in time, ESMA is working on ETFs and structured UCITS and is planning to have guidelines ready for consultation by the end of this year.
- Credit Rating Agency supervision: Ms. Ross indicated that the supervision of Credit Rating Agencies (CRAs) is one of ESMA key priorities. While, due to the transition process from national authorities to ESMA, the registration process for existing CRAs lies in the hands of national authorities (operating through colleges on which ESMA sits as an observer), in the future ESMA will register and authorise new CRAs. After registration it is responsible for the supervisory task. She also stated that there is the prospect that ESMA will take on registration and supervision of Trade Repositories under EMIR and will play a role in the supervisory colleges for CCPs.
- Financial stability: With respect to financial stability, Ms. Ross indicated that ESMA will continue to actively contribute data and analysis - as well as risk mitigation and solutions - to financial stability issues, working closely with the ESRB and the other ESAs. Specifically the work on ETFs and highly automated trading are focused on the potential financial stability risks arising from new products and activities.

Financial Action Task Force (FATF)

AML/CFT

On 28 October, the FATF published the outcome of FATF Plenary meeting held on 27-28 October 2011. During the meeting the following documents were adopted:

- ➲ Public statement on jurisdictions with strategic anti-money laundering and combating the financing of terrorism (AML/CFT) deficiencies;
- ➲ Public statement on jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF;
- ➲ The follow-up report to the mutual evaluation report of Greece;
- ➲ A statement on the progress made by Argentina in addressing the deficiencies identified in its mutual evaluation report of October 2010;
- ➲ A statement on the voluntary tax compliance programme in Bangladesh;
- ➲ A statement on the AML/CFT improvements in Ukraine.

National Bank of Belgium (NBB)[3]

Management of operational risk

On 27 October, the NBB published Communication NBB_2011_05 on Prudential expectations for a Sound Management of Operational Risk (in ➲Dutch and in ➲French). The Communication informs credit institutions, stockbroking firms, financial holdings, settlement institutions and institutions equivalent to settlement institutions that NBB will use the Basel Committee's ➲Principles for the Sound Management of Operational Risk in its prudential supervision of the management of operational risk by institutions.

Financial Stability Board (FSB)

Monitoring and reporting on the implementation of G20 financial reforms

On 18 October, the FSB published a ➲framework for monitoring and reporting on the implementation of G20 financial reforms. Given its responsibility for coordinating and promoting the monitoring of the implementation of agreed G20 and FSB financial reforms, the FSB, has established a Coordination Framework for Implementation Monitoring. The Framework addresses the questions of what to monitor; how to monitor; who should monitor; and to whom the information should be reported and disseminated. The Framework highlights priority areas where consistent and comprehensive implementation of reforms, as determined by the G20, is most critical for global financial stability. These areas will undergo more intensive monitoring and detailed reporting, including on implementation progress on a country-by-country basis. The initial priority areas for monitoring are: the Basel III framework, OTC market reforms, compensation practices, policy measures for global systemically important financial institutions, resolution frameworks and shadow banking. Reports on implementation progress in each of these areas will be

[3] As of 1 April 2011, the new "Twin Peaks" supervisory architecture has come into force in Belgium. The new architecture replaces the Banking, Finance and Insurance Commission (CBFA) with two new regulators, the National Bank of Belgium (NBB) and the newly created Financial Services and Markets Authority (FSMA). Within the new framework NBB is responsible for the macro prudential supervision and micro-prudential supervision of credit institutions including financial services groups, stockbroking firms, insurance and reinsurance companies, clearing and settlement institutions payment institutions and institutions for electronic money and surety companies.

published at least once a year (more frequently in some cases).

Compensation practices

On 11 October, the FSB published a ➲follow-up peer review report on compensation practices, which assesses progress made both by national authorities and by significant financial institutions in implementing the FSB ➲Principles for Sound Compensation Practices and ➲their Implementation Standards. This follow-up review finds that relevant authorities and firms in FSB member jurisdictions have made good progress in implementing the Principles and Standards – many national authorities have taken the necessary regulatory actions, supervisory oversight has intensified, and the governance of compensation schemes at firms has improved. A total of 13 of the 24 FSB member jurisdictions have implemented all 9 Principles and 15 Standards, while five other jurisdictions have implemented all but one or two Standards. The peer review also collected and analysed information from a sample of 66 banks and broker dealers identified by FSB member jurisdictions as significant for the purposes of this review. The 20 large internationally active firms in the sample were found to have made progress in implementing the Principles and Standards and their compensation practices appear, on average, to be broadly consistent with nearly all elements of the Principles and Standards. The progress at these firms may reflect the priority given to them in terms of supervisory attention as well as their location in jurisdictions that moved earlier in implementing the Principles and Standards. The progress at other firms – competing mostly in domestic markets – is much more varied, with some of these firms as advanced as the large internationally active firms, while others are at an earlier stage of progress. Notwithstanding the aforementioned, the FSB emphasizes that more work is necessary to achieve sound compensation practices – both to overcome constraints to full implementation by individual national authorities and to address concerns over different interpretations of the standards that may give rise to an uneven playing field in the market for highly skilled employees. Finally, the report contains six recommendations to support advancement of the implementation of the FSB Principles and Standards by national authorities and firms in order to effectively impact firms' behaviour and risk-taking incentives.

Organization for Economic Co-operation and Development (OECD)

Principles on financial consumer protection

In a ➲press release of 18 October, the OECD announced the approval by G20 finance ministers of the ➲principles on financial consumer protection developed by the OECD. The principles form part of a broader initiative by G20 leaders to strengthen trust and confidence in the financial sector, which is widely recognised to have fallen since the economic crisis. They are designed to assist G20 countries and other interested economies to enhance

financial consumer protection.

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Credit institutions and investment firms

Consultative or informative documents

Bank of International Settlements (BIS)

Basel III implementation

On 14 October, the BIS published ➲a speech of its General Manager Mr. Jaime Caruana, entitled "Basel III: New strains and old debates - challenges for supervisors, risk managers and auditors". The speech talks about the roles of bank boards, senior management, risk managers and auditors in implementing the new Basel III framework. With respect to the responsibility of banks, Mr. Caruana stated that improving governance is the first step the needs to be taken. The crisis showed that existing risk management systems could not cope with unforeseen stresses. But systems alone were not to blame; sound governance was often lacking. As the cornerstone on which any effective risk management framework, sound incentive structures and robust governance arrangements must be put in place. To forge the link between corporate governance and risk management. Mr. Caruana noted that some banks have drawn up a "triple line of defence". According to him this approach is particularly valid, as it correctly distinguishes between the roles of business units, support functions and internal audit.

- The first line of defence is the business unit, which is accountable for identifying, measuring, taking and mitigating the risks of its business.
- The second line of defence, which includes risk management, compliance, legal, finance, operations and information technology, works with the business units to ensure that the first line has properly identified, measured and reported their business risks. Collectively, all elements of this line of defence are responsible for developing a bank-wide view of risk.
- The third line of defence, namely internal audit, independently and systematically reviews the efficiency and effectiveness of the first two lines of defence and contributes to improving their effectiveness. This line of defence should be supported more generally by the external auditors and the board's audit committee (which should be required for large banks and internationally active banks).

With respect to the role of audit, Mr. Caruana stated that the ever increasing complexity of products and operations and the parallel development of regulations such as the Basel Accords place intense demands on the technical resources and authority of internal auditors. Internal auditors need a deep understanding of the bank's business. They must critically analyse the operations they

audit and recommend improvements to the internal control framework. For its part, management must ensure that the organisation pays due regard to auditors' recommendations, and that these are properly understood and meticulously implemented without delay.

Capital requirements and trade finance

On 25 October, the BCBS published a ➲report on the Basel capital framework's treatment of trade finance. Following consultations with the World Bank, the World Trade Organisation and the International Chamber of Commerce, the Basel Committee on Banking Supervision has evaluated the impact of Basel II and III on trade finance in the context of low income countries. As a result of this evaluation, the Committee has adopted two changes to the treatment of trade finance in the Basel II and III capital adequacy framework. These changes respect the integrity of the capital framework and its broader financial stability objectives. The changes to the capital framework agreed by the Committee are as follows:

- Waive the one-year maturity floor for certain trade finance instruments under the advanced internal ratings-based approach (AIRB) for credit risk; and
- Waive the so-called sovereign floor for certain trade-finance related claims on banks using the standardised approach for credit risk.

Basel III frequently asked questions

On 20 0ctober, the BCBS published answers to a ➲second set of Basel III frequently asked questions. The FAQ aims to cover interpretation questions with respect to the definition of capital and loss absorbency of capital at the point of non-viability. The set updates the first set of FAQs that relate to the definition of capital, which was published in July.

Basel III implementation

On 18 October, the BCBS published its ➲first Progress report on Basel III implementation. The report provides a high-level view of Basel Committee members' progress in adopting Basel II, Basel 2.5 and Basel III, as of end September 2011. It focuses on the status of domestic rule-making processes to ensure that the Committee's capital standards are transformed into national law or regulation according to the internationally agreed timeframes. The Committee believes that disclosure will provide additional incentive for members to fully comply with the international agreements.

European Association of Co-operative Banks (EACB)

Mortgages

On 26 October, the EACB published ➲its comments on the European Commission’s ➲Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property.

Capital requirements

In a ➲press release of 19 October, the EACB stresses that shortening of the recapitalization period of banks in Europe is not the right remedy to the crisis at this moment. The Association also expresses its fear that that for many co-operative banks the cut down of balance sheets will be the only option to provide for higher capital ratios in the short run as they cannot raise common equity on capital markets. According to the EACB, this could have a very negative impact on the financing of the real economy and specifically the financing of SME at the local level.

European Banking Authority (EBA)[4]

Measures to restore confidence in the banking sector

In a ➲press release of 26 October, EBA expresses its support for the agreement at EU level on measures to restore confidence in the banking sector. These measures form part of a broader package aimed at addressing the current situation in the EU by restoring stability and confidence in the markets. The Authority indicates that its contribution to the overall package focuses on the capital and term funding needs in the EU banking sector against the backdrop of the increasing concerns regarding sovereign debt. Firstly, additional steps are required to restart the term unsecured funding market. This would help banks to continue their lending activities in 2012 and to avoid a spiral of forced deleveraging and the ensuing credit crunches, which would affect the real economy. To this end, public guarantee schemes should be set in place where appropriate to support banks' access to term funding at reasonable conditions. The EBA has been asked to work with the EU Commission, the ECB and European Investment Bank (EIB) to urgently explore options for achieving this objective. Secondly, the EBA states that it has designed a capital package which, while recognising the significant steps already taken to strengthen capital positions in the EU, aims at providing a further capital buffer for the EU banking system. Banks are required to strengthen their capital positions by building up a temporary capital buffer against sovereign debt exposures to reflect current market prices. In addition, banks are required to establish a buffer such that the Core Tier 1 capital ratio reaches 9%. Banks will be expected to build these buffers by the end of June 2012. The capital needs will be met only with capital of the highest quality. For private instruments, only new issuances of very strong convertible capital will be accepted if in line with strict and standardised criteria to be defined by the EBA.
The capital buffers for addressing market concerns over sovereign exposures are further detailed in a ➲methodological note and ➲Q&A accompanying the press release.

Transparency in Pillar 3 reports

On 17 October, EBA published ➲the result of its assessment of the 2010 Pillar 3 disclosures made by banks. The main conclusions of the analysis confirm that

[4] EBA has replaced the Committee of European Banking Supervisors (CEBS), as of 1 January 2011.

banks have made efforts to improve their disclosures and to convey their risk profile in a comprehensive way to market participants. In all areas under review, best practice disclosures have been identified, and the EBA encourages credit institutions to follow them.
In addition, the analysis states that some of the findings included in the 2010 report calling for further improvements remain valid although they apply to a reduced number of banks or concern specific requirements of the CRD (e.g. quantitative back-testing information for credit risk, information on counterparty credit risk covering the issue of wrong-way risk, etc.).
Finally, the EBA calls for further efforts to be made for a greater harmonisation of the disclosures provided by the firms, in terms of both timeline and standardisation in the presentation of public data. This would benefit both supervisors and market participants.

European Banking Federation (EBF)

Capital requirements

On 10 October, the EBF published ➲the letter it had sent to the Polish Presidency. The letter sets out the EBF's key concerns with the European Commission's proposals against the backdrop of the following guiding principles:

- The cumulative impact of the new measures cannot be ignored;
- The competitive position of the European industry should not be put at risk;
- CRD 4 should refrain from creating new competitive distortions across the EU.

European Banking Industry Committee (EBIC)

Capital requirements

On 14 October, EBIC published ➲a letter it had send to the Members of the Economic and Monetary Affairs Committee (ECON) of the European Parliament with respect to the transposition of the Basel III framework into the European Union through ➲the review of the Capital Requirements Directive ("CRD IV").

European Federation of Building Societies (EFBS)

Capital requirements

On 18 October, the EFBS published ➲its comments on ➲the implementation of Basel III into European Law ("CRD IV").

European Savings Banks Group (ESBG)

Recapitalisation

In a ➲press release of 21 October, the ESBG expressed its concern about the forced recapitalisation plan for European financial institutions the European Commission is working on. According to the ESBG, the recapitalisation plans should be restricted to global systematically important financial institutions (the so-called Global SIFIs). The Group also stresses that forced recapitalisation plans could result in greater market

uncertainty. It would be far more adequate to wait until the transposition of Basel III through the CRD IV directive has been fully implemented.

Capital requirements

In a ➲press release of 5 October, the ESBG expressed its concern that the implementation of the Basel III regulatory framework via review of the Capital Requirements Directive review will dramatically hinder retail bank lending to small and medium-sized enterprises (SMEs). According to the Group, Basel III does not account for the specificities and diversity of the European banking sector. It was developed for large, internationally active banks, while its transposition will apply to all EU credit institutions: large and small, international and regional, retail and universal banking models with different ownership and organisational structures. Unlike the U.S., the EU's real economy is financed largely by the banking sector, whose smaller, retail banking institutions are important lenders to households and SMEs at the local and regional levels. The ESBG also emphasized that savings and retail banks should not penalised by the "one size fits all" approach that the European Commission has adopted towards its recent proposals. The introduction of unprecedented and unexplored liquidity ratios, including the proposed Liquidity Coverage Ratio (LCR), might also prove inappropriate for certain savings bank models and damage the banks' ability to lend to SMEs, thus constricting the European economy.

European Systemic Risk Board (ESRB)

Lending in foreign currencies

On 11 October, the ESRB published ➲set of recommendations on lending in currencies other than the legal tender of the relevant country ("foreign currency lending") addressed to the Member States of the EU, their national supervisory authorities and the European Banking Authority. These recommendations reflect financial stability concerns arising from foreign currency lending to the non-financial private sector. The recommendations cover borrowers without a natural or financial hedge and address the risks identified by the ESRB. For credit and market risk, the recommendations are intended to limit the probability and consequences of such risks materialising by increasing the resilience of the financial system and ensuring the creditworthiness of new borrowers. It is also recommended that borrowers be given the appropriate information to make well-informed decisions. Moreover, credit institutions should properly incorporate foreign currency lending risks into their internal risk management systems, which in turn is expected to contribute to improved risk pricing. Regarding excessive credit growth induced by foreign currency lending and the possibility of the emergence of asset price misalignments, national authorities are recommended to further tighten their rules on foreign currency lending. With respect to funding and liquidity risks, credit institutions are urged to move towards sustainable funding structures. One of the key features of the framework is the principle of reciprocity, which means

that for financial institutions operating through the provision of cross-border services or through branches in other Member States, home Member States' authorities should impose measures on foreign currency lending at least as stringent as those in force in the host Member States. Implementation deadlines vary between June 2012 and December 2013 depending on the recommendation and addressee.

National Bank of Belgium (NBB)[5]

Measurement of operational risk

On 27 October, the NBB published the Communication NBB_2011_06 on the Prudential expectations regarding the implementation of the regulations on own funds for institutions that make use of the Advanced Measurement Approach (AMA) concerning operational risk (in ➲Dutch and in ➲French). The Communication informs credit institutions and stockbroking firms that NBB will use the prudential expectations set out in the Basel Committee's ➲"Operational Risk: Supervisory Guidelines for the Advanced Measurement Approaches" document when carrying out its supervision on the use of the Advanced Measurement Approach (AMA) for the calculation of capital requirements for operational risk.

Financial Stability Board (FSB)

Shadow banking

On 27 October, the FSB published a ➲report on Shadow Banking: Strengthening Oversight and Regulation. The report provides the FSB's recommendations on this subject that were requested by the G20 Leaders at the November 2010 Seoul Summit. The report's recommendations for effective monitoring set out high-level principles for the relevant authorities and a stylised monitoring process. This process calls on authorities to first assess the broad scale and trends of non-bank credit intermediation in the financial system, drawing on information sources such as Flow of Funds and Sector Balance Sheet data, and complemented with other information such as supervisory data. Based on this assessment, authorities should narrow down their focus to those types of non-bank credit intermediation that have the potential to pose systemic risks, by focusing in particular on those involving the four key risk factors: (i) maturity transformation; (ii) liquidity transformation; (iii) imperfect credit risk transfer; and/or (iv) leverage. Authorities should then assess in detail the potential impact that the severe distress or failure of certain shadow banking entities/activities would pose to the overall financial system through looking at other factors, such as the inter-connectedness between the shadow banking system and the regular banking system. The report's recommendations to strengthen regulation set

[5] As of 1 April 2011, the new "Twin Peaks" supervisory architecture has come into force in Belgium. The new architecture replaces the Banking, Finance and Insurance Commission (CBFA) with two new regulators, the National Bank of Belgium (NBB) and the newly created Financial Services and Markets Authority (FSMA). Within the new framework NBB is responsible for the macro prudential supervision and micro-prudential supervision of credit institutions including financial services groups, stockbroking firms, insurance and reinsurance companies, clearing and settlement institutions payment institutions and institutions for electronic money and surety companies.

out general principles for designing and implementing regulatory measures to address the risks identified by the monitoring process. Finally, the report describes work plans for the five workstreams, which were ➲announced in September, that will assess in more detail the case for further regulatory action:

- The regulation of banks' interactions with shadow banking entities (indirect regulation): the Basel Committee on Banking Supervision (BCBS) will examine enhanced consolidation for prudential regulatory purposes, concentration limits/large exposure rules, risk weights for banks' exposures to shadow banking entities, and treatment of implicit support by July 2012;
- The regulatory reform of money market funds (MMFs): The International Organization of Securities Commissions (IOSCO) will examine regulatory action related to MMFs by July 2012;
- The regulation of other shadow banking entities: new workstream set up under the FSB Task Force will examine shadow banking entities other than MMFs by September 2012;
- The regulation of securitisation: IOSCO, in coordination with the BCBS, will examine retention requirements and transparency by July 2012;
- The regulation of activities related to securities lending/repos: A new workstream set up under the FSB Task Force will examine securities lending and repos (repurchase agreements) including possible measures on margins and haircuts by the end of 2012.

Consumer finance protection

On 26 October, the FSB published ➲a report on consumer finance protection in the area of consumer credit, including mortgages, credit cards, and secured and unsecured loans. The report provides a global overview of policy initiatives completed or planned to strengthen consumer protection frameworks. It also presents a comprehensive picture of existing and evolving institutional arrangements and reviews the work of regulators and prudential supervisors in various areas of consumer protection, including responsible lending practices, disclosure guidelines, product intervention, and complaints and dispute resolution mechanisms. Based on the assessment, the report presents internationally applicable lessons and identifies gaps where additional international work could help to advance consumer finance protection and financial stability. Potential areas for future work include:

- Calling upon an international organisation of regulators to take the lead on global financial consumer protection efforts;
- Launching work on institutional arrangements and, if appropriate, develop best practices to guide institutional reform;
- Strengthening supervisory tools by identifying gaps and weaknesses.

Principles for sound residential mortgage underwriting

practices

On 26 October, the FSB also published a ➲consultation paper on principles for sound residential mortgage underwriting practices. As the global crisis demonstrated, the consequences of weak residential mortgage underwriting practices in one country can be transferred globally through securitisation of mortgages underwritten to weak standards. As such, it is important to have sound underwriting practices at the point at which a mortgage loan is originally made. As such the FSB Principles for Sound Residential Mortgage Underwriting Practices aim to provide a framework for jurisdictions to set minimum acceptable underwriting standards. The Principles span the following areas (i) effective verification of income and other financial information; (ii) reasonable debt service coverage; (iii) appropriate loan-to-value ratios; (iv) effective collateral management; and (v) prudent use of mortgage insurance. The paper also sets out an implementation framework to promote minimum residential mortgage underwriting standards, and describes tools that could be used to monitor and supervise these standards. Responses to the consultation paper could be submitted until Friday 9 December 2011. The final set of principles will be released in early 2012.

Macroeconomic impact of stronger capital requirements for G-SIBs

On 10 October, the FSB and the Basel Committee on Banking Supervision (BCBS) released ➲an assessment of the macroeconomic costs and benefits of proposals for higher loss absorbency for global systemically important banks (G-SIBs). The report provides an assessment of the transitional impact of the implementation of the stronger requirements set out in the Basel Committee's ➲consultative document on additional G-SIB loss absorbency released in July. The assessment concludes that the transition to stronger capital standards on G-SIBs is likely to have at most a modest impact on aggregate output, while the benefits from reducing the risk of damaging financial crises will be substantial. Raising capital requirements on an illustrative group of potential G-SIBs by one percentage point over eight years is estimated to lower GDP by less than one one-hundredth of a percentage point (0.01%) per year during the implementation period. The primary driver of this macroeconomic impact is an estimated increase of lending spreads of between 5 and 6 basis points. The overall impact of the Basel III proposals (which apply to all banks) and the G-SIB framework is also quite small, with GDP at the point of peak impact projected to be lower by 0.34% relative to its baseline level. Roughly four one-hundredths of a percentage point (0.04%) are subtracted from annual growth during this period, while lending spreads rise by around 31 basis points. The permanent benefits of the G-SIB framework arise from the reduced likelihood of systemic crises that can have long-lasting effects on the economy. The MAG estimated that the Basel III and G-SIB proposals combined contribute a permanent annual benefit of up to 2.5% of GDP - many times the costs of the reforms in terms of

temporarily slower annual growth. As with any economic analysis, these results rest on a number of assumptions, including about the role of G-SIBs in the financial system and about how banks will go about meeting stronger requirements. The report reviews a number of alternative assumptions and concludes that they would not affect the overall conclusions.

Common Data Template for Global Systemically Important Banks

On 6 October, the FSB published a ➲consultation paper on a Common Template for Global Systemically Important Banks. The crisis has shown that authorities need better, homogenous and consistent data at both the national and international level to ensure that they can recognise and address the build-up of risks in a timely manner. Absent such improvements, micro and macro prudential processes will be severely handicapped by the major gaps in information that currently exist, and will remain at significant risk of missing emerging vulnerabilities that could threaten global financial stability. To bridge these information gaps and complement the policy efforts underway to address the risks posed by global systemically important financial institutions, and as part of a wider initiative to enhance information in response to the crisis, the G-20 finance ministers and central bank governors called on the Financial Stability Board (FSB) in November 2009 to improve data collection and sharing in this area, in close consultation with the IMF. The consultation paper sets out a number of preliminary proposals in this regard. The paper has two principal sections. The first section describes the broad form of a new preliminary common template and the main components of data that will be collected. The second section then provides more detail on the open issues for consultation and sets out detailed questions on which feedback is sought.

Organization for Economic Co-operation and Development (OECD)

Bank failure resolution and crisis management

On 3 and 4 October, the OECB organized the 2011 Banking Law Symposium. The conference focused on bank failure resolution and crisis management, in particular, the use of guarantees and the spill-overs between the credit qualities of sovereigns and banking systems. Documents and presentation related to the symposium can be found ➲here.

World Savings Banks Institute (WSBI)

G20

On 10 October, the WSBI together with the ESBG published a ➲position paper setting out its message to the G20 Leaders Summit. The paper calls the attention of the G20 members on a number of concerns and proposals. The WSBI/ESBG's overall objective is to avoid that the international banking framework detriments some banking institutions – such as savings and socially committed retail banks - and market practices that

actually contribute to stabilising the markets and supporting the real economy.

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Investment products and asset management

Consultative or informative documents

Bank of International Settlements (BIS)

Portfolio and risk management for central banks and sovereign wealth funds

On 13 October, the BIS published a ➲collection of papers dealing with portfolio and risk management for central banks and sovereign wealth funds which were presented at the Third Public Investors Conference.

Council of the European Union

OTC derivative transactions, central counterparties and trade repositories

On 4 October, the Council of European Union published the ➲General approach on Proposal for a Regulation of the European Parliament and of the Council on OTC derivative transactions, central counterparties and trade repositories.

European Association of Co-operative Banks (EACB)

Systems and controls in a highly automated trading environment

On 3 October, the EACB published ➲its response to ➲ESMA's consultation on guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities.

European Association of Public Banks (EAPB)

Systems and controls in a highly automated trading environment

On 6 October, the EAPB published ➲its response to ➲ESMA's consultation on guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities.

European Banking Federation (EBF)

MiFID II

In a ➲press release of 20 October, the EBF welcomed the MiFID Review Proposals. The EBF is supportive of the way the issues are addressed, in particular, the Conduct of Business proposals concerning investor protection. It also finds encouraging the Commission's call for the removal of barriers and discriminatory practices that can be used to prevent competition in the provision of

clearing services. However, according to the Federation some significant areas of concern remain that will need more careful consideration to ensure the legislation is well adapted to the needs of investors and issuers who use the markets.
The EBF also points out that the regulatory solution proposed for topical and controversial issues such as high frequency trading would need to be calibrated adequately. It adds that important details of how the transparency regime for financial instruments would be determined need to be worked through. The same applies to the way Europe intends to fulfil the G20 commitment to tackle less regulated and more opaque parts of the financial system.

Requirements for OTC derivatives data reporting and aggregation

On 4 October, the EBF published ➲its response to the ➲consultation report on OTC derivatives data reporting and aggregation requirements.

Systems and controls in a highly automated trading environment

On 4 October, the EBF also published ➲its response to ➲ESMA's consultation on guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities.

European Commission

MiFID II

On 20 October, the European Commission published its proposals to revise the Markets in Financial Instruments Directive (MiFID). These proposals consist of a Directive and a Regulation and aim to make financial markets more efficient, resilient and transparent, and to strengthen the protection of investors. The new framework also aims to increase the supervisory powers of regulators and provide clear operating rules for all trading activities. More information on MiFID II can be found ➲here.

Review of MAD

On the same day, the European Commission also published ➲its proposals to revise the Market Abuse Directive (MAD). The proposals consist of a Regulation on Market Abuse (MAR) and a Directive on criminal sanctions for market abuse. The proposal for a Regulation aims to update and strengthen the existing framework to ensure market integrity and investor protection provided by the Market Abuse Directive. Therefore the proposal extends the scope of the market abuse framework to apply to any financial instrument admitted to trading on a MTF or organised trading facility, as well as to any related financial instruments traded OTC which can have an effect on the covered underlying market. This is necessary to avoid any regulatory arbitrage among trading venues, to ensure that the protection of investors and the integrity of markets are preserved on a level playing field in the whole Union, and to ensure that

market manipulation of such financial instruments through derivatives traded OTC, such as credit default swaps (CDS), is clearly prohibited. Given the qualification of emission allowances as financial instruments, the proposal includes a specific definition of inside information for emission allowances. In addition, the proposal describes a number of measures to ensure regulators have access to the information they need to detect and sanction market abuse. Since the sanctions currently available to regulators are often weak and lacking a deterrent effect, the proposal also introduces greater harmonisation of administrative sanctions. Finally, the proposed Regulation sets out a number of measures to reduce the administrative burdens, e.g. the Regulation requires SME issuers to disclose inside information in a modified and simplified market-specific way. Such inside information may be published by those SME growth markets, on behalf of those issuers, in accordance with a standardised content and format defined in implementing technical standards adopted by the Commission. SME issuers are also exempt, under certain conditions, from the obligation to keep and constantly update insiders' lists. The proposed Directive on Criminal Sanctions for Market Abuse describes minimum rules on criminal offences and on criminal sanctions for market abuse. It defines the two offences, insider dealing and market manipulation, which should be regarded by Member States as criminal offences if committed intentionally and requires Member States to ensure that these criminal offences are punishable by criminal sanctions which are effective, proportionate and dissuasive.

European Covered Bonds Council (ECBC)

Covered Bond Label

In a ➲press release of 7 October, the ECBC announced its Label Initiative for covered bonds, The initiative aims to highlight to investors the value and quality of covered bonds and further enhances the recognition of, and trust in the covered bond asset class and improve access to relevant and transparent information for investors, regulators and other market participants. The long-term objective of the initiative is to promote liquidity and strengthen covered bonds' secondary market activity. The labelling initiative is based on the ➲Covered Bond Label Convention which defines core characteristics required for a covered bond programme to qualify for the Label. This definition of the required characteristics is complemented by a transparency tool to be developed at national level based on "Voluntary Label Transparency Guidelines".

European Fund and Asset Management Association (EFAMA)

Transparency of investment fees

On 4 October, EFAMA published ➲a report on Total Expense Ratio ("TER") of European mutual funds. The report aims to give investors greater transparency and understanding of cost breakdown within the Total

Expense Ratio ("TER") of European mutual funds. As part of its on-going campaign to promote investor education, EFAMA believes greater transparency is needed to reveal the breakdown of fees within the TER of funds so investors understand what they are paying. While it is currently possible to project the TER through mutual fund expense information, it is not possible to deconstruct the ratio to fees collected by distributors, administrators and custodians and what is retained by the fund management firm. The current bundling of distribution and management fees has made it difficult to understand the costs charged by various types of organisations in the fund value chain. The report benchmarks how much on average of European funds' TER are paid, by the survey participants, to investment managers, fund distributors and other services providers (e.g. fund administrators, custodians). In the sample the breakdown of TERs reveals that, on average, UCITS fund managers retain around 42% of fees and charges while the majority of the remaining 58% is paid in retrocessions to distributors and a smaller proportion paid to other operating services such as administration. The report also reveals that investment management fees in Europe are on average only about 3 bps greater than management fees in the US across all asset classes.

European Parliament

Short selling and sovereign debt speculation

In a ➲press release of 18 October, the European Parliament announced that a deal had been reached with respect to the regulation on standards and requirements for the practices of short selling and trading in credit default swaps (CDS). The rules will impose much more transparency, increase the powers of ESMA and virtually ban certain CDS trades, thereby making speculation on a country's default more difficult. Parliament's negotiators obtained a ban on naked CDS trading (purchasing default insurance contracts without owning the related bonds), 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. Even this possibility would be closely circumscribed, because the text specifies a limited number of indicators which could justify the regulator's action. Moreover, within 24 hours, the European Securities and Markets Authority (ESMA) would publish an opinion on its web site as to the utility of suspending the ban. A negative opinion from ESMA would have a political weight. Another key to strengthening the Commission proposal is stepping up reporting requirements. A lack of information was one of the main problems for supervisors before the crisis. The extra information to be provided to national and European supervisors will allow them to carry out their preventive work better by alerting them earlier to potential risks. For example, supervisors would be informed of large short positions already when this position accounts for 0.5% of the issued capital. Both Council and the full Parliament must now ratify the agreement.

European Securities and Markets Authority (ESMA)[6]

Late transposition of the UCITS IV Directive

On 12 October, ESMA published an ➲opinion on the practical arrangements for the late transposition of the UCITS IV Directive. The opinion proposes a number of practical arrangements that competent authorities can agree upon to mitigate a number of issues arising out of the late transposition of the UCITS IV Directive. These arrangements are the following:

- New UCITS notifications when the host Member State has not transposed the Directive: The host MS competent authority cannot refuse a valid notification under the Directive on the ground that the Directive has not yet been implemented in the host jurisdiction.
- New UCITS notification when the home Member State has not transposed the Directive: The home authority in a non-transposing country is not entitled to notify new UCITS unless national legislation, even if it did not transpose entirely the UCITS IV package, provides for rules which already materially comply with Articles 12, 14, 15 and 51 of the Directive and, where applicable, with their related implementing measures. The home authority in the non-transposing country should also be in a position to fulfil its obligations on access to documents. Competent authorities in non-transposing countries need to provide to ESMA the national legislation related to Articles 12, 14, 15 and 51 of the Directive and, where applicable, with their implementing measures. On this condition, UCITS established in these Member States could be notified in the transposing Member State via the regulator-to regulator procedure provided for in the Directive. If the current national legislation of the non-transposing MS does not already materially comply with Articles 12, 14, 15 and 51 of the Directive and, where applicable, their implementing measures, notification via the regulator-to regulator procedure provided for in the Directive could still be possible under the condition that both the competent authority and the management company of the UCITS certify to the competent authority of the host MS that the UCITS management company complies on a voluntary basis with the articles of the Directive listed above and the host competent authority is satisfied by this statement.
- Management company passport: ESMA believes that UCITS management companies established in a transposing Member State should be able to create a fund via the management company passport in a Member State where the Directive has not been transposed irrespective of the provisions currently in place in such jurisdiction. However management companies established in a

[6] ESMA has replaced the Committee of European Securities Regulators (CESR), as of 1 January 2011.

non-transposing country can only make use of the management company passport only if the current national legislation materially complies with Articles 12, 14, 15 and 51 of the Directive and, where applicable, their implementing measures and the relevant competent authorities are able to provide the co-operation as required by Article 101 of the Directive and the relevant implementing measures in case of remote management.

- Mergers between two UCITS established in the same Member State that has not transposed the Directive and at least one of the two UCITS is marketed in another Member States: If the current national legislation materially complies with Articles 40, 41, 42, 43 and 45 of the Directive and, where applicable, their implementing measures, the merger can be authorised. If the existing national legislation does not materially comply with Articles 40, 41, 42, 43 and 45 of the Directive and, where applicable, their implementing measures, the merger should not be permitted.
- Mergers between two UCITS established in different Member State with one Member State that has not transposed the Directive: Due to the inherent complexity of the operation, ESMA is of the view that cross-border mergers involving a UCITS established in a Member State that has not transposed the Directive are not possible on the sole basis of the direct applicability of the Directive.
- Master feeder structure: ESMA is of the view that master feeder structures should not be permitted if one of the two MS in which the UCITS are established has not transposed the Directive since this matter cannot be addressed solely on the basis of the direct applicability of the Directive. Master feeder structures should also not be permitted if both the proposed master UCITS and the proposed feeder UCITS are located in a MS which has not transposed the Directive and the proposed feeder UCITS has been notified in accordance with Article 93 of the Directive to another MS.

Prospectus Directive

On 3 October, ESMA published its ➲technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU. The document sets out ESMA's advice with respect to the content and format of the final terms of the base prospectus, format of the summary of the prospectus and proportionate disclosure regime.

With respect to the content of the final terms of the base prospectus, ESMA provides prescriptive lists of securities note items which should be permitted in final terms. Some flexibility is however provided by allowing the inclusion in the final terms of information which does not relate to the securities note but is considered by ESMA as

useful to investors. The list of items which could be considered as "Additional Information" will be determined by ESMA at a further stage. ESMA also recommends that that a separate summary for each issuance off the base prospectus should be annexed to the relevant final terms as it contains key information for investors and to ensure the comparability of summaries. Finally, ESMA emphasizes that all the information that is not allowed to be included in the final terms, requires the approval of a supplement or a new prospectus. On the subject of the format of the final terms, ESMA indicates the base prospectus should include a section containing a template, the "form of final terms", which will have to be filled out for each individual issue.

In the technical Advice on summaries, ESMA provides an exhaustive overview of the information that should and can be included in the summary by means of tables. Furthermore summaries should be drafted in plain language, presenting the information in an easily accessible way and ensuring that readers can understand the key information immediately. The summary has to contain the key information on the key risks and issuers are free to include the headings of risks if it achieves this objective of giving key information on key risks. However, according to ESMA, summaries should not exceed 7% of the length of a prospectus or 15 pages, whichever is the shorter. Finally, summaries should be self contained and may not contain cross references to other parts of the prospectus.

On the subject of the proportionate disclosure regime. ESMA first focuses on the proportionate disclosure regime for rights issue. With respect to the scope of the regime, ESMA considers that issues where statutory pre-emption rights are disabled and replaced by similar rights should benefit from the proportionate disclosure regime when those rights meet the certain characteristics. Regarding the content of the proportionate prospectus, ESMA states that historical financial information should be required only for the last financial year and that a number of redundant items such as selected financial information and history and development of the issuer can be deleted. Finally, according to the Authority, prospectuses drawn up under the proportionate regime should clearly notify that they have been drafted under that regime. Regarding the proportionate disclosure regime for SMEs and issuers with reduced market capitalisation, ESMA indicates that a full prospectus should be required for IPOs and initial admissions on regulated markets. The proportionate disclosure regime will only be applicable to subsequent public offerings made by issuers whose shares are already admitted to trading on a regulated market and to public offerings made by issuers whose shares are not admitted on a regulated market, whether those shares are traded on MTFs or OTC. Finally, on the subject of the proportionate disclosure regime regarding credit institutions, ESMA states that credit institutions issuing non-equity securities in a continuous or repeated manner and have opted in the prospectus regime, should be required to include in their prospectuses historical

financial information for only the last financial year when those issuers decide to opt into the prospectus regime.

Federation of European Securities Exchanges (FESE)

MiFID review

In a ➲press release of 20 October, the FESE together with the CFA Institute, EuroInvestors welcomed the ➲publication by the European Commission of the proposal for amending the Markets in Financial Instruments Directive (MiFID) and indicated that the MiFID Review be oriented towards the following principles:

- Promoting the transparency and consolidation of trade data for all financial instruments;
- Maintaining and enhancing market credibility, openness, and investor confidence;
- Ensuring a level playing field in trade execution for all market participants;
- Improving direct access of individual investors to capital markets by reducing the overall complexity and costs of investing; improving the integrity, reliability and quality of the data they need to evaluate alternative investment opportunities; enforcing the existing rules requiring fair investor information and disclosure of conflicts of interests; ensuring that sales processes are presented to investors in a fair way and distinguished from unbiased advice; and extending investor protections to all "substitute" retail investment products;
- Ensuring consistency with other legislation aimed at promoting relevant and appropriate issuer information which balances the diverse needs of companies at different stages of growth with the information needs of investors, with particular attention to the needs of Europe's smaller companies.

Systems and controls in a highly automated trading environment

On 3 October, the FESE published ➲its response to the ➲ESMA's consultation on guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities.

Financial Stability Board (FSB)

OTC derivatives market reforms implementation

On 11 October, the FSB published its ➲second six-monthly progress report on implementation of over-the-counter (OTC) derivatives market reforms. The report provides a detailed review of progress towards meeting the commitment of G20 Leaders at the Pittsburgh 2009 Summit that, by end-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. The report notes that, as of now, with only just over one year until the end-2012 deadline for implementing the G20 commitments, few FSB members have the legislation or regulations in place to provide the framework for operationalising the commitments. While recognising the implementation challenges and the complexity of the needed laws and regulations, the report concludes that jurisdictions should aggressively push forward to meet the G-20 end-2012 deadline in as many reform areas as possible. Furthermore, it describes number of issues related to overlaps, gaps or conflicts in legislative and regulatory frameworks, if not addressed, could compromise achievement of the G20 objectives. On such issue concerns the applicability of the G20 commitments to standardised derivatives that are moved onto exchanges or electronic trading platforms (and therefore no longer traded "OTC"). The report 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.

International Organization of Securities Commissions (IOSCO)

Market integrity

On 20 October, the IOSCO published the ➲Final Report on Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency. The Report analyses the most significant technological developments that have arisen in financial markets in recent years and their impact on market integrity and efficiency. It concludes that financial markets have evolved considerably in recent years and that this evolution continues. Their technological change is multi-dimensional: it relates to the participants, how they connect to the markets, and the markets themselves. It impacts the capability of markets authorities to supervise markets effectively. Whilst developments may have helped foster innovation and choice or improve market efficiency and liquidity, these same developments may also have had negative effects. To assist securities markets regulators in mitigating these effects, the report sets out the following 5 recommendations:

1. Regulators should require that trading venue operators provide fair, transparent and non-discriminatory access to their markets and to associated products and services.
2. Regulators should seek to ensure that trading venues have in place suitable trading control mechanisms (such as trading halts, volatility interruptions, limit-up-limit-down controls, etc.) to deal with volatile market conditions. Trading systems and algorithms should be robust and flexible such that they are capable of dealing with, and adjusting to, evolving market conditions. In the case of trading systems, this should include the ability to adjust to changes (including sudden increases) in message traffic.

3. All order flow of trading participants, irrespective of whether they are direct venue members or otherwise, must be subject to appropriate controls, including automated pre-trade controls. These controls should be subject to the regulatory requirements of a suitable market authority or authorities. In addition, regulators should identify any risks arising from currently unregulated direct members/participants of trading venues and, where any are identified, take concrete steps to address them.
4. Regulators should continue to assess the impact on market integrity and efficiency of technological developments and market structure changes, including algorithmic and high frequency trading. Based on this, regulators should seek to ensure that suitable measures are taken to mitigate any related risks to market integrity and efficiency, including any risks to price formation or to the resiliency and stability of markets, to which such developments give rise.
5. Market authorities should monitor for novel forms or variations of market abuse that may arise as a result of technological developments and take action as necessary. They should also review their arrangements (including cross-border information sharing arrangements) and capabilities for the continuous monitoring of trading (including transactions, orders entered or orders cancelled) to help ensure that they remain effective.

Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation

On 13 October, the IOSCO published a ➲new version of its Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation.

Securities and Markets Stakeholder Group (SMSG)[7]

AIFMD

On 27 October, the SMSG published ➲its advice on ESMA's draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Man-agers Directive in relation to supervision and third countries. In its analysis of the draft ESMA advice, the Group focused on how it contributes to achieving the main purposes of the AIFM directive: anticipate systemic risk and provide the appropriate level of investor protection. The Stakeholder Group has considered if these objectives are achieved in a fit for purpose manner, wherever possible minimizing market impact. Based on this analysis, it calls for a consideration of a number of specific elements of the draft advice. According to the Group, there are currently some elements in the Draft Advice that could potentially

[7] The Securities and Markets Stakeholder Group has been set up by ESMA to help facilitate consultation with stakeholders in areas relevant to the tasks of ESMA. The Group will be consulted on actions concerning regulatory technical standards and implementing technical standards.

impact the balance between market stability and investor protection, This is the case where certain proposals can appear not to be strictly aligned with the purposes of the AIFM directive, such as the proposals around (i) the use of equivalence for third country purposes and (ii) the operating conditions regarding risk management, due diligence or internal organizational requirements for managers.

Systems and controls in a highly automated trading environment

On 27 October, the SMSG also published a ➲position paper with respect to ➲ESMA's consultation on guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities. In the position paper, the Group places the key issues around high frequency trading (HFT) in the wider context. The paper first tries to the define HFT. The drivers that have been behind its development and other facilitating factors are then analysed (2), as well as the benefits and risks associated with this activity (3). Finally, the different options for regulating HFT are assessed in light of these different elements (4). The Group states that overall it believes that competition is essential to markets, and therefore fragmentation, is here to stay, and that technology will continue to adapt to this increasingly complex trading environment. However, it also believes that regulation should address some of the risks associated with the increase in HFT, in order to ensure the level playing field and ultimately to better protect the investors. The Group therefore expresses its support for the efforts of ESMA to provide guidelines on safe-guards and controls in a proactive manner, in order to set a framework and pave the way further for European regulation, especially in regards to the Markets in Financial Instruments Directive (MiFID) and the Market Abuse Directive (MAD).

On the same day, the SMSG also published ➲its response to the aforementioned consultation. In the response, the Group sets out its comments with respect to the organizational requirements for trading platforms and investment firm described in the draft guidelines. Overall, it is of the opinion that the proposed requirements are appropriate and cover all major areas of trading systems with the exception of area business continuity and resilience arrangements. The Group also emphasized that the regulation of the issues related to a highly automated trading environment, and, in particular, to high frequency trading (hereafter "HFT") should aim at applying the same rules to all trading platforms, including over-the-counter trading, so as to ensure a level playing field and avoid any distortions. In addition, it needs to be ensured that unsubstantiated regulation of HFT does not adversely affect the liquidity of trading venues and their innovation.

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Consultative or informative documents

CEA

Insurance of Natural Catastrophes in Europe

On 18 October, the CEA published a ➲position paper on Insurance of Natural Catastrophes in Europe. The CEA aims to illustrate through the paper how the applicable insurance schemes work in Europe. Firstly, this paper examines the role of insurers and reinsurers, as well as highlights the criteria for insurability and how a forward-looking approach is essential for more accurate predictions of natural catastrophes. Secondly, this paper reviews the diversity of insurance penetration throughout the EU and explains why a "one-size-fits-all" proposal is simply not feasible on an EU-wide scale. Thirdly, the paper examines the impact of climate change and illustrates how the expected increase infrequency and severity of natural catastrophes will require significantly more attention on adaptation measures. Finally, the paper details the core principles for insurance scheme efficiency: responsibility sharing; coordinated action; and ex-ante financing.

European Insurance and Occupational Pensions Authority (EIOPA)[8]

Solvency II equivalency

On 26 October, EIOPA published its final advice on its assessment of the Solvency II equivalence of ➲the Swiss supervisory system, the ➲Bermudan supervisory system and the ➲Japanese reinsurance supervisory regime.

Cross-Border Cooperation Mechanisms between Insurance Guarantee Schemes in the EU

On 5 October, EIOPA published ➲a report on the Cross-Border Cooperation Mechanisms between Insurance Guarantee Schemes (IGSs) in the EU. The purpose of the report is to summarise the findings of a mapping exercise of the existing mechanisms for cross-border cooperation between Insurance Guarantee Schemes of Member States and/or between Insurance Guarantee Schemes and national supervisory authorities, and to provide general recommendations to the European Commission in the area of cooperation between IGSs as well as between supervisors and IGSs.

International Association of Insurance Supervisors (IAIS)

Insurance Core Principles

On 1 October, the IAIS published ➲the 2011 revised IAIS

[8] EIOPA has replaced the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), as of 1 January 2011.

Insurance Core Principles, Standards, Guidance and Assessment Methodology (ICP). The ICPs constitute a framework for the evaluation of supervisory regimes under the Financial Sector Assessment Program (FSAP) conducted jointly by the World Bank and International Monetary Fund. The new set of ICPs is based on developments in insurance markets and supervision since the last revision in 2003. It takes into account experience gained from the FSAP assessments as well as recommendations issued by the G20 Finance Ministers and Central Bank Governors and the Financial Stability Board.

Annual report

On 1 October, the IAIS also published ➲its 2010/11 annual report. The report outlines the Association's work related to financial stability, including the development of a methodology to identify potentially systemically important insurers (G-SII), possible supervisory measures to address any systemic concerns, and appropriate resolution mechanisms in the insurance context. It further describes progress made on the development of the Common Framework of the Supervision of Internationally Active Insurance Groups – "ComFrame." It report also points to initiatives launched to strengthen the effectiveness of insurance supervision and to foster convergence.

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Tax

Consultative or informative documents

Belgian Parliament

Banking Secrecy

On 13 October, the Belgian Parliament adopted the ➲law containing tax and miscellaneous measures. The law contains a number of new tax provisions, among which is an amendment to provisions governing banking secrecy, i.e. articles 319bis and 333/1 Income Tax Code. The changes are made to avoid any interpretation issues that might have arisen with respect to the new bank secrecy rules, introduced by the Law of 14 April 2011 and applicable as of 1 July 2011. They aim to leave no doubt as to the fact that (i) the release of the banking secrecy requires a detailed prior notification to the taxpayer, not only in case of tax fraud but also in case the tax authorities want to establish the tax burden based on signs and indicia; (ii) no such notification is required in case the release of the banking secrecy is requested by a foreign tax administration and (iii) the banking secrecy does under no circumstance apply to tax collectors. These clarifications apply retroactively as from 1 July 2011. The law was published in the Official Journal of 10 November.

CEA

VAT treatment of financial and insurance services

On 24 October 2011, the CEA, together with the EBF and the EFAMA, ➲commented on the on-going discussion regarding the modernization of the VAT treatment of insurance and financial services. The CEA, EBF and the EFAMA notably believe that VAT treatment of derivatives should be harmonized to provide consistency across the EU and operational certainty to businesses, in particular, with respect to derivatives with delivery of underlying assets. Additionally, the CEA, EBF and EFAMA stress that specific exclusions from VAT exemption could still be exempt under general VAT principles in case these are part of composite supplies.

On 12 October 2011, the CEA published ➲its comments on the ➲Polish Presidency compromise text of 30 September 2011 on draft directive and regulation on the VAT treatment of financial and insurance services. In the response, the CEA reiterates its position that all essential parts of intermediary services (i.e. conclusion, maintenance, renewal and termination) with respect to insurance contracts should be VAT exempt, taking into account modern tendencies in the insurance sector (e.g. on-line intermediation).

Council of the European Union

VAT treatment of financial and insurance services

On 30 September, the Council of the European Union published a ➲new compromise text on the draft Regulation clarifies the scope of various financial services, including financial transfer and financial deposit taking.

European Banking Federation (EBF)

VAT treatment of financial and insurance services

On 24 October, the EBF published ➲the letter that the European Insurance and Reinsurance Federation (CEA), the European Banking Federation (EBF), and the European Fund and Asset Management Association (EFAMA) had send to the Polish Presidency with respect to the VAT treatment of financial and insurance services.

European Commission

Financial Transaction Tax (FTT)

On 28 September, the European Commission published ➲a proposal to introduce a Financial Transaction Tax ("FTT") in the EU. The publication of the proposal was accompanied by a ➲citizen's summary.

European Court of Justice (ECJ)

Purchase of default debts

On 27 October 2011, the European Court of Justice issued its ruling in the case of GFKL ➲Financial Services (C-93/10). According to the Court the purchase of defaulted debts related to (mortgage) loans by a financial institution, at a lower price than the face value, does not constitute an economic activity falling within the scope of

VAT. It thereby distinguishes this activity from regular factoring services which are subject to VAT.

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We are always interested in your feedback. Please let us know what you think of this newsletter and send your comments to Regulatory Radar.

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