

Financial Services – Update on UK and European Regulatory Developments

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Part A – Regulation of Financial Markets

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Short selling bans introduced by individual EU member states	EU	Ongoing.	<p>The European Securities and Markets Authority (ESMA) maintains a table of the short selling bans currently in force by EU securities regulators.</p> <p><i>Recommended actions:</i> Firms should monitor all short sales and ensure that net short sales do not take place in breach of restrictions.</p>	<p>Click here for ESMA's update on measures adopted by competent authorities on short selling.</p>

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Mandatory central counterparty clearing of OTC derivatives	EU	<p>The European Market Infrastructure Regulations (EMIR) came into force on 16 August 2012.</p> <p>For the clearing obligation to apply, clearing houses must be authorised for clearing and classes of derivatives must be designated by ESMA as subject to the clearing obligation. Products which are currently cleared by clearing houses will be the first to be designated. The FCA estimates the first quarter of 2014 as the earliest date when the clearing obligation will apply.</p> <p>The reporting obligation may start on 1 July 2013 for interest rate and credit derivatives and on 1 January 2014 for other derivative classes. The European Commission's (the Commission) rules on timely confirmation and daily marking-to-market came into force on 15 March 2013. The Commission's rules on portfolio reconciliation, portfolio compression and dispute resolution come into force on 15 September 2013.</p>	<p>The Regulations introduce mandatory clearing of OTC derivatives via one or more central counterparties (clearing houses) which will be authorised by an EU regulator, and mandatory reporting of specified classes of derivatives trades to a trade repository.</p> <p><i>Recent developments:</i> The Commission and the European Parliament have adopted ESMA's technical standards, with the proviso that the clearing obligation on non-financial firms will be phased in over a period of time.</p> <p><i>Recommended actions:</i> Look out for announcements that transaction types have been designated for clearing and for changes in counterparty margining requirements. EMIR's impact will be significant, particularly in terms of (i) the cost of posting margin; (ii) changes to booking systems and processes; and (iii) the clearing documentation required to be put in place with each clearing member.</p>	<p>Click here for the Commission's derivatives page, including link to EMIR.</p> <p>Click here for ESMA's technical standards.</p> <p>Click here for the FCA's EMIR website.</p> <p>Click here for the Commission's EMIR Q&As (recently updated).</p>

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Short selling disclosures and restrictions	EU	<p>The Regulations on short selling of shares and sovereign debt and various sets of related technical standards came into force on 1 November 2012 and have direct effect throughout the EU.</p>	<p>The Regulations introduce: (i) mandatory disclosure of net short positions to the regulator; (ii) restrictions on naked short selling; (iii) a prohibition on uncovered positions on sovereign credit default swaps and (iv) regulator powers to impose temporary restrictions during stressed markets.</p> <p><i>Recent developments:</i> The FCA will introduce electronic reporting through an internet portal in due course. In the meantime, it has made the disclosure forms available from its website. The forms will need to be downloaded, completed and returned by email to the FCA. Short sales of shares listed elsewhere in the EU should be reported to the relevant EU regulator.</p> <p><i>Recommended actions:</i> Firms should monitor all short sales and ensure that disclosure is made in compliance with the Regulations.</p>	<p>Click here for ESMA's short selling Regulations website (including text of the Regulations).</p> <p>Click here for the FSA's short selling regulations website.</p>
Review of the Market Abuse Directive	EU	<p>The Commission published a proposal to revise the Market Abuse Directive (MAD II) on 20 October 2011. It consists of the Market Abuse Regulation (MAR) and a supplementing EU Directive on criminal sanctions for insider dealing and market manipulation (CSMAD). The UK government has for present exercised its discretion not to opt in to CSMAD.</p> <p>The EU parliament will consider the proposals in July 2013.</p>	<p>The Commission intends that the scope of the existing market abuse regime will be extended to multilateral trading facilities (MTFs) and organised trading facility (OTFs), as well as regulated markets. Also in scope are related financial instruments traded on an OTC basis which can have an effect on instruments traded on a trading venue. Under the existing regime, the market integrity and transparency rules apply to commodity derivatives markets, but not to the underlying markets. The Commission intends that MAR will govern transactions or behaviour in the underlying spot markets which are related to, and have an effect on, the financial and derivative markets which are within the scope of MAR. The trading of emission allowances will also fall within the scope of MAR.</p> <p><i>Recommended actions:</i> Prior to adoption, firms will need to identify relevant instruments in scope and undertake a full compliance review of market abuse procedures, including reporting procedures.</p>	<p>Click here for the Commission's proposal.</p> <p>Click here for the current draft of CSMAD.</p> <p>Click here for the current draft of MAR.</p>

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Financial Transactions Tax	EU	The Commission adopted its proposal for a Directive on a financial transaction tax 14 February 2013.	<p>The financial transaction tax (FTT) will apply to transactions in financial instruments, (such as bonds, shares, derivatives and fund units) OTC or on a market to which a financial institution established in an EU Member State is a party, and where at least one party to the transaction is established in an EU Member State. Financial institutions include UCITS and AIFs. Member States will apply the rates of FTT, which must be at least 0.1% of the consideration (for shares and bonds) and 0.01% of the notional amount (for derivatives). Securities issues are exempt. As drafted, the Directive has very wide extra-territorial effect, applying to transactions over instruments issued in participating EU Member States – so would cover a transaction with a UK bank over a French issued bond.</p> <p>The UK is not participating in the Directive. The UK government has announced that it will mount a legal challenge to the Directive at the European Court of Justice on the basis of the Directive’s extra-territorial effect.</p> <p>Due to the lack of EU consensus, 11 EU countries have been authorized by the “enhanced co-operation” procedure to establish their own FTT.</p> <p>If implemented, the legislation will apply from 1 January 2014.</p>	<p>Click here for the Commission’s proposal.</p>

Part B – Regulation of Investment Management

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Alternative Investment Fund Managers Directive	EU	<p>The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013.</p> <p>The Commission published the Level 2 Regulation (the implementing measures underling various parts of the Directive) (the Level 2 Regulations) on 19 December 2012.</p>	<p>The Directive affects all EU managers of funds other than UCITS funds, and all non-EU managers of funds seeking to market in the EU (regardless of whether the fund is based in or outside the EU).</p> <p><i>Recent developments:</i></p> <p>At EU level, the Commission’s Level 2 delegated Regulation creates a single rulebook for all AIFMs. The Level 2 Regulation will have direct effect and will be likely be incorporated by reference in Member States’ rulebooks.</p> <p>At EU level, ESMA published its final guidelines on sound remuneration policies under the AIFM Directive on 11 February 2013.</p> <p>In the UK, the FCA has published two consultation papers and draft new handbook rules. In the first Consultation Paper, the FCA stated that (i) the first date by which UK firms already managing or marketing AIFs before 22 July 2013 may submit an application for an AIFM authorisation or a variation of permission is 22 July 2013 and (ii) firms managing AIFs as at 22 July 2013 must be AIFMD compliant and have submitted an application for authorisation by 22 July 2014. In the second Consultation Paper, the FCA has included draft perimeter guidance on (inter alia) its interpretation of the “marketing” concept under the Directive. The Treasury has published consultation papers on transposition of the AIFM Directive (with draft statutory instrument) on 11 January 2013 and March 2013. The Treasury has also published Q&As on the Directive, which provide welcome clarification on matters such as the application of the transitional provisions to non-UK and non-EU AIFMs.</p> <p><i>(continued on next page)</i></p>	<p>Click here for a copy of the Directive.</p> <p>Click here for a copy of the Level 2 Regulation.</p> <p>Click here for ESMA’s discussion paper “Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM”.</p> <p>Click here for the FCA consultation papers.</p> <p>Click here for the Irish Central Bank Consultation.</p> <p>Click here for the HM Treasury consultations.</p> <p>Click here for the ESMA Remuneration Guidelines.</p> <p>Click here for the HM Treasury Q&A.</p>

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Alternative Investment Fund Managers Directive	EU	<p>The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013.</p> <p>The Commission has not yet published the detailed implementing measures underling various parts of the Directive (the Level 2 Regulations).</p>	<p><i>(continued from previous page)</i></p> <p>In France, the draft regulation implementing the AIFM Directive was published on 17 April 2013. The current draft, which is open for public consultation, seems to follow the AMF presentation from January this year. The draft regulation intends to (i) consolidate the rules for French asset management companies to create a single category of asset manager, whether regulated under AIFMD, UCITS or MiFID, with the same conditions for authorisation; and (ii) simplify the range of fund products which may be offered to French investors, which will be UCITS, AIF and “other funds”, including non-AIF fund, regulated or not. The draft regulation also intends to simplify the range of minimum investments with a simple distinction between no minimum investment amounts for retail investors and 100,000 euros for professional investors. The draft implementing regulation also proposes to create a French “professional specialized fund” which will be structured in order to compete with the Irish Qualified Investment Fund (QIF) or Luxembourg Specialised Investment Fund (SIF), with a simplified regulatory approval procedure. This fund will be in the form of a corporate entity (SICAV-SA, SAS and perhaps <i>société en commandite</i> (i.e. French limited partnership)) or an FCP. The draft regulation also provides that, if an AIF has at least one retail investor, even though the manager of the fund would fall within the scope of the 100/500 million thresholds exemption, such an AIF would be required to appoint a depositary and its manager must be authorised under the AIFM Directive.</p> <p>In Germany, the second and third reading of the draft bill implementing the Directive is expected to take place in the Germanparliament on 10 May 2013. It is not expected that the final act will enter into force before 22 July 2013. A one year grandfathering period until 21 July 2014 to comply with the German implementation of the Directive will apply to all existing funds and their AIFMs. According to the current draft bill,</p> <p><i>(continued on next page)</i></p>	<p>Click here for a copy of the Directive.</p> <p>Click here for a copy of the Level 2 Regulation.</p> <p>Click here for ESMA’s discussion paper “Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM”.</p> <p>Click here for the FCA consultation paper.</p> <p>Click here for the Irish Central Bank Consultation.</p> <p>Click here for the HM Treasury consultation.</p> <p>Click here for the ESMA Remuneration Guidelines.</p>

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Alternative Investment Fund Managers Directive	EU	<p>The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013.</p> <p>The Commission has not yet published the detailed implementing measures underling various parts of the Directive (the Level 2 Regulations).</p>	<p><i>(continued from previous page)</i></p> <p>Germany will abolish private placements with immediate effect, with an exception for ongoing private placements (i.e. those started before 21 July 2013) which will be permitted until 21 July 2014. After this date a full marketing notification to BaFin for any type of distribution will be required.</p> <p>Most German closed-ended funds (often organized as a limited partnership (e.g. as a <i>Kommanditgesellschaft</i>)) have only recently (from 1 June 2012) been required to submit marketing notifications to BaFin for their distribution in Germany and were not obliged to obtain permissions for their management companies (i.e. their AIFM). Under the bill, such funds will have to submit new marketing notifications to BaFin and apply for permissions for their AIFMs for the first time. Since notifications/applications in some cases will have to be submitted to BaFin no later than 1 January 2014 (due to applicable periods for assessment by BaFin) and that initially the process for notification and application will be time consuming, clients should start with the necessary actions as soon as possible after the new law comes into force.</p> <p>In Luxembourg, a draft bill implementing the Directive was submitted to the Luxembourg parliament on 24 August 2012. In addition to implementation of the Directive, the draft bill also covers other related changes that will have an impact on the legislation applicable to Luxembourg investment funds. The bill provides for the creation of Luxembourg AIFMs as well as for the possibility of UCITS management companies to be authorized as AIFMs. Non-UCITS management companies will be limited to managing non-AIFs and small-AIFs opting to be out of scope of the Directive. The bill will also will add a new category of Professional of the Financial Sector (PSF), i.e. depositary of an AIF; introduce a Special Limited Partnership (<i>société en commandite spéciale</i>) which is similar to the English limited partnership and update the current Limited Partnership</p> <p><i>(continued on next page)</i></p>	<p>Click here for a copy of the Directive.</p> <p>Click here for a copy of the Level 2 Regulation.</p> <p>Click here for ESMA's discussion paper "Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM".</p> <p>Click here for the FCA consultation paper.</p> <p>Click here for the Irish Central Bank Consultation.</p> <p>Click here for the HM Treasury consultation.</p> <p>Click here for the ESMA Remuneration Guidelines.</p>

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Alternative Investment Fund Managers Directive	EU	<p>The Directive came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013.</p> <p>The Commission has not yet published the detailed implementing measures underlying various parts of the Directive (the Level 2 Regulations).</p>	<p><i>(continued from previous page)</i></p> <p><i>(société en commandite simple)</i> and partnership limited by shares (<i>société en commandite par actions</i>) regimes. It is anticipated that the law will enter into force well before 22 July 2013.</p> <p>In Ireland, the Central Bank is using the implementation of the Directive as an opportunity to redesign the current regulatory framework for Irish alternative investment funds and has issued a consultation taking the form of a draft AIF handbook replacing the existing non UCITS Notices and Guidance Notes, representing a consolidated version of the regulatory provisions governing AIFs. The key changes proposed are: (i) removal of the promoter regime; (ii) replacement of the Qualifying Investors Fund regime with an enhanced Qualifying Alternative Investor Fund regime; (iii) introduction of share class flexibility within funds or sub-funds requiring 'fair' treatment of shareholders (rather than 'equal' under current regime); (iv) replacement of Irish prime brokerage rules with the Directive's criteria; (v) enhancement of the retail AIFs regime; and (vi) elimination of the Professional Investor Fund regime.</p> <p><i>Recommended actions:</i> AIFMD will have a substantial impact on authorisation of fund managers, their structure, their operations and the manner in which their funds are run. Firms should consider whether they are in scope, which entity should be authorised as the AIFM, the required new compliance policies and procedures and the required additional regulatory capital. Firms will need to consider their marketing arrangements in the EU, whether they want to use the passport and the additional compliance burden involved.</p>	<p>Click here for a copy of the Directive.</p> <p>Click here for a copy of the Level 2 Regulation.</p> <p>Click here for ESMA's discussion paper "Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM".</p> <p>Click here for the FCA consultation paper.</p> <p>Click here for the Irish Central Bank Consultation.</p> <p>Click here for the HM Treasury consultation.</p> <p>Click here for the ESMA Remuneration Guidelines.</p>

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MiFID II	EU	<p>The Commission published in October 2011 a proposed directive and regulation to amend MiFID (MiFID II).</p> <p>MiFID II is currently subject to negotiation between the European Parliament and the Council of the EU. ESMA will need to produce a large number of related Level 2 measures. It is anticipated that the implementation date will not be earlier than mid 2014 to January 2015.</p>	<p>The MiFID II proposals include (i) creation of a new type of trading venue within the regulatory framework, the organised trading facility (OTF), capturing all forms of organised trading that do not match existing categories; (ii) significantly increased regulation of commodities trading, including introducing a position reporting obligation and powers for regulators to intervene in trading activity; (iii) new powers for regulators to ban or restrict types of financial products; (iv) new safeguards on algorithmic and high frequency trading activities (mainly to address market volatility); (v) a new regime for 3rd countries which abolishes the UK's overseas person exemption and replaces it with a requirement for overseas firms providing services into Europe to obtain a form of authorisation and (vi) new pre and post trade transparency rules for non-equity products, including bonds and commodities, similar to the transparency rules which apply to regulated equity markets.</p> <p><i>Recent developments:</i> The indicative date for the first reading by the European Parliament of MiFID II is 8 October 2013.</p>	<p>Click here for the current draft of MiFID II (15 April 2013).</p>
CRD IV	EU	<p>The Commission published in July 2011 a proposal for new capital requirements for credit institutions and MiFID investment firms (CRD IV). The existing Capital Requirements Directive will be replaced with a regulation and a directive: the Capital Requirements Regulation (CRR) and the CRD IV Directive.</p>	<p>Investment firms currently subject to the Capital Requirements Directive will be faced with higher capital requirements and new governance requirements.</p> <p><i>Recent developments:</i> The European Parliament adopted the proposed CRD IV Directive on 16 April 2013, including the cap on bankers' bonuses. The text is subject to final review and translation – in substance the legislation has been agreed. Implementation of CRD IV will likely be from 1 January 2014 – this is the date the FCA is planning on. The FCA will publish consultations on CRD IV implementation in the summer of 2013.</p> <p><i>Recommended actions:</i> Investment firms subject to CRD IV will need to consider the impact on their capital requirements. The FCA has a webpage on CRD IV reporting. UK firms should study the changes which the FCA will propose to its BIPRU and GENPRU rulebooks. The FCA has earlier published its approach to implementing transitional provisions in CRD IV.</p>	<p>Click here for the text of CRD IV.</p> <p>Click here for the text of CRR.</p> <p>Click here for the FCA's statement on CRD IV implementation and click here for the FCA's guidance on CRD IV reporting.</p>

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
MiFID Remuneration Policies	EU	<p>ESMA expects to publish its final report and final guidelines on MiFID Remuneration Policies by the second quarter of 2013.</p> <p>The FCA published finalised guidance on 16 January 2013 on risks to customers from financial incentives paid to sales staff.</p>	<p>Both ESMA and the FCA have proposed rules under MiFID conflicts of interest rules principally focussed on remuneration of staff who sell financial products to the retail market. Both sets of rules are closely aligned.</p> <p><i>Recommended actions:</i> The FCA will adopt the ESMA guidelines in Q2 2013. Firms should review compliance of their remuneration schemes for sales staff with the FCA's requirements without delay.</p>	<p>Click here for a link to the ESMA Consultation Paper.</p> <p>Click here for a link to the FCA's finalised guidance.</p>
Dodd-Frank – Commodity Futures Trading Commission exemptions from registration	US – SEC and CFTC	<p>The CFTC has adopted final regulations on the use of exemptions from registration for sponsors of private funds.</p>	<p>The CFTC has adopted final regulations which modify and remove certain CFTC exemptions widely used by sponsors of private funds. The CFTC Staff has issued multiple no-action letters that may temporarily or permanently assist qualifying sponsors of private funds with avoiding CFTC registration. The Department of the Treasury determined that certain foreign currency forwards and foreign currency swaps are not considered “swaps” for some CFTC jurisdictional issues including whether the contracts are counted toward the CPO de minimis trading registration exemption. The position limits rule was vacated and remanded to the CFTC in autumn 2012 for further work on the CFTC's cost-benefit analysis.</p> <p><i>Recommended actions:</i> Private fund sponsors must be operating under an effective registration as a “Commodity pool operator” or be relying on the remaining <i>de minimis</i> commodity interest trading exemption on a fund-by-fund basis. If a private fund sponsor can qualify for no-action relief, the sponsor should have claimed the relief.</p> <p>Registered CPOs must be filing CFTC Form CPO-PQR or NFA Form PQR on a quarterly basis depending on the CPO's size. For CPOs whose registration was effective as of March 31, 2013, the first filing is due May 30, 2013.</p>	<p>Dechert has produced a number of <i>DechertOnPoints</i> on the CFTC rules under Dodd-Frank:</p> <p>CFTC Changes Rules Affecting Public and Private Funds</p> <p>CFTC Issues No-Action Relief Extending Compliance Date for Amended Rules 4.5 and 4.13(a)(4) to December 31, 2012</p> <p>CFTC Staff Releases Responses to Frequently Asked Questions Regarding Rule Amendments Affecting CPOs and CTAs.</p>

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Dodd-Frank – rules on major swap participants	US – SEC and CFTC	The SEC and CFTC have adopted final rules on “major swap participants”, “major security-based swap participants”, “swap” and “security-based swap”.	<p>The CFTC has adopted final rules on “major swap participants”, “major security-based swap participants”, “swap” and “security-based swap”.</p> <p><i>Recommended actions:</i> Investment managers will need to determine if their status has changed to “major swap participant”, which will depend on the scale of their trading in OTC derivatives. The scope of the definition of “commodity interest” now includes many types of OTC derivatives. A fund trading OTC derivatives may be a “commodity pool” and subject to the US CFTC where it was not previously, to the extent the fund has any US investors.</p> <p>Where trading swaps with a U.S. nexus and to the extent not already completed, investment managers should be in contact with their swaps dealers to complete the necessary phases of the ISDA Dodd-Frank Act Protocol.</p>	<p>Dechert has produced a number of <i>DechertOnPoints</i>:</p> <p>CFTC Finalizes Futures and Swaps Position Limit Rules</p> <p>CFTC Finalizes Swap Data Recordkeeping and Reporting Requirements</p> <p>CFTC Adopts Customer Property Segregation and Other Swap Regulations, Proposes Volcker Rule</p> <p>Impact of CFTC Swap Regulations on Structured Finance Industry.</p>

Part C – Regulation of Investment Funds

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
US FATCA	US	<p>The US Foreign Account Tax Compliance Act became law in March 2010.</p> <p>FFIs must register with the IRS through an online “Portal” by 25 October 2013 to be included on an IRS list of participating and registered deemed-compliant FFIs to be published 2 December 2013 and updated monthly. Nonparticipating FFIs will be subject to withholding beginning on 1 January 2014 (for withholding on US source dividends, interest and other US source income) and 1 January 2017 (for withholding on gross proceeds).</p> <p>Withholding on non-US source passthru payments will not occur before 2017. New account opening procedures generally must be implemented by 1 January 2014.</p> <p>Fund managers may act as “sponsoring entities” on behalf of funds that they manage, in which case such managers will serve as a control point of contact with the IRS and the Portal.</p>	<p>FATCA is a new reporting and withholding regime intended to prevent US investors from evading tax by investing through foreign entities. FATCA requires foreign financial institutions (FFIs) to report information to the US IRS regarding their US account holders or otherwise suffer potential US withholding taxes.</p> <p><i>Recent developments:</i> The UK government has signed an inter-governmental agreement (IGA) with the US government to allow “Reporting UK Financial Institutions” to fulfil their reporting obligations on US account holders by reporting directly to the UK Revenue. The IGA also confirms which types of accounts are within scope and the types of UK regulated entities which are “deemed compliant” FFIs and not subject to the requirements.</p> <p>The Irish government has also signed an IGA which is similar to the IGA signed by the UK government. Reporting Irish Foreign Financial Institutions will report directly to the Irish Revenue Commissioners, without needing to withhold on or terminate recalcitrant account holders.</p> <p>Other jurisdictions which have concluded IGAs are Denmark, Mexico, Switzerland and Norway although many other jurisdictions are discussing or negotiating IGAs with the US government.</p> <p><i>Recommended actions:</i> Managers should consider acting as sponsoring entities for their managed funds and appointing third party service providers to carry out the funds’ FATCA obligations.</p> <p>Managers also will need to determine whether their funds fall within any “deemed compliant” category, and will need to determine the extent of their reporting or withholding responsibilities and amend account opening procedures as necessary to comply with FATCA. Documentation, including offering documents, administration agreements, distribution agreements, management agreements and ISDA documentation may need FATCA provisions.</p>	<p>Click here for <i>DechertOnPoint</i> ‘Final Proposed FATCA Regulations Issued’</p> <p>Click here for a copy of the US-UK IGA.</p>

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
UCITS IV, V and VI Directives	EU	<p>The European Parliament's Economic and Monetary Affairs Committee (ECON) approved a revised draft of UCITS V Directive on 21 March 2013. The draft will now go to the European Parliament for consideration in May.</p> <p>Separately, the Commission has published a consultation paper on further changes to the UCITS regime (UCITS VI). The FCA will publish a consultation paper on UCITS V in due course. The Commission has indicated that UCITS V will apply by the end of 2014. The Commission expects to publish its legislative proposal for UCITS VI in October 2013.</p>	<p><i>Recent developments:</i></p> <p>In relation to UCITS V, the Commission's key proposals relate to the UCITS depositary function, remuneration and sanctions for breach of the rules. The rules relating to the depositary function are similar to the equivalent provisions in the AIFM Directive. The Parliament's Economic and Monetary Affairs Committee (ECON) announced on 21 March 2013 that it had approved the proposal to cap bonuses for asset management staff at a 1:1 ratio with their annual salary, and that at least 50% of the bonus should comprise units in the underlying fund. The UCITS V text which reflects this position is not yet available.</p> <p>In relation to UCITS VI, the topics which the Commission is consulting on include eligible assets and use of derivatives, efficient portfolio management (EPM) techniques, the use of OTC derivatives, extraordinary liquidity management tools, passporting rights for UCITS depositaries and money market funds.</p>	<p>Click here for the current version of the UCITS V proposal and here for Commission FAQs.</p> <p>Click here for ESMA's guidelines.</p> <p>Click here for AIMA's position paper on UCITS V.</p> <p>Click here for the Commission's consultation on UCITS VI.</p>
FCA's Retail Distribution Review	UK – FCA	<p>The FCA has adopted changes to the COBS sourcebook relating to the distribution of certain retail investment and group personal pension products within the UK. The changes were effective on 31 December 2012.</p> <p>The FCA published a policy statement in April 2013 with new rules which ban the payment of commission from product providers to platforms. These rules enter into force on 6 April 2014.</p>	<p>The FCA has published final text of the conduct of business rules which ban payments from product providers to platforms and cash rebates from product providers to clients. The rules enter into force on 6 April 2014, although firms have the benefit of a transitional period that runs until 5 April 2016 for legacy payments. In broad terms, platforms are services which provide execution and custody of investments from more than one product provider.</p> <p><i>Recommended actions:</i> These rules apply to any investment manager or fund paying commission to platforms, which typically distribute products on an execution only basis. Firms should make available any "RDR ready" share class to platforms and check the terms of their distribution agreements with platforms to ensure they are compliant with the RDR.</p>	<p>Click here for the FCA's RDR page.</p>

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Proposed EU regulation of packaged retail investment products	EU	<p>The Commission published a proposal for a Regulation on key information documents for packaged retail investment products (PRIIPs) in July 2012.</p> <p>The proposal will be considered by the European Parliament and the Council of the EU in 2013. The Regulation is not likely to apply before the end of 2014.</p>	<p>PRIPs are all types of investment products “where the amount repayable to the investor is subject to fluctuations because of exposure in reference values or to the performance of assets which are not directly purchased by the investor.” This covers insurance based products, structured term deposits and virtually all investment funds.</p> <p>The Commission has proposed a requirement to provide a “key information document” (KID) when the product is made available to retail investors, applying the same principles in the UCITS Directive’s KIID.</p>	<p>Click here for the current draft of the Regulation.</p>
FCA proposal to restrict retail distribution of unregulated collective investment schemes	UK – FCA	<p>The FCA published a proposal on 22 August 2012 to restrict the promotion by authorised firms of unregulated collective investment schemes to retail investors in the UK. The FCA indicated on 7 May 2013 that it has deferred for now publication of its final policy statement on its proposal.</p>	<p>The FCA is proposing to remove the ability of intermediaries to promote unregulated collective investment schemes on the basis of a “suitability check” on the investor, and various other exemptions in the table in COBS 4.12.</p> <p>All non-UCITS funds will be subject to the new restrictions. The FCA’s latest thinking is to exclude venture capital trusts, real estate investment trusts and exchange traded products from the new marketing restriction.</p>	<p>Click here for the FCA proposal.</p>

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Shadow banking	EU	<p>The European Parliament announced on 20 November 2012 that it had adopted a non-legislative resolution on shadow banking.</p> <p>The Financial Stability Board (FSB) published a set of policy recommendations in relation to “shadow banking” in November 2012. The FSB will finalise its policy recommendations by the time of the G20 summit in September 2013.</p> <p>IOSCO has issued policy recommendations to provide the basis for common standards for the regulation and management of money market funds across jurisdictions.</p> <p>We expect to see a draft Directive from the Commission in May or June 2013.</p>	<p>According to the FSB policy recommendations, any investment fund which extends or trades in credit (non-bank credit intermediation) or is a money market fund may be subject to regulatory supervision, on the basis that such funds raise systemic risk concerns.</p> <p>The European Parliament’s resolution includes suggestions such as extending capital requirements to all unregulated entities, imposing limits on the complexity of financial products or considering whether shadow banking entities linked to a bank should be included on the bank’s balance sheet.</p> <p>The Commission’s draft legislation is likely to take the form of amendments to the UCITS and AIFM Directives.</p>	<p>Click here for the FSB’s page on shadow banking.</p>
New legislation for Real Estate Investment Trusts (REITs)	Ireland	<p>The Irish Minister for Finance announced on 5 December 2012 that new REITs legislation will be enacted in Ireland.</p>	<p>REITs are established as listed companies and are used to invest in a diverse range of rental investment properties in a tax efficient manner.</p> <p>REITs will be exempt from corporation tax on qualifying income and gains, but will be required to distribute the majority of their profits annually to their investors and these distributions will be taxed at the level of the investor.</p> <p>This new structure should encourage investment in property by facilitating investment from investors seeking income yielding investments. However, given the conditions generally applicable to REITs, such as borrowing restrictions and risk diversification requirements, in many cases the existing regulated and unregulated structures will continue to be the most suitable vehicles for investments in property which do not fit the profile for a REIT.</p>	<p>Click here for the Irish REITs proposal.</p>

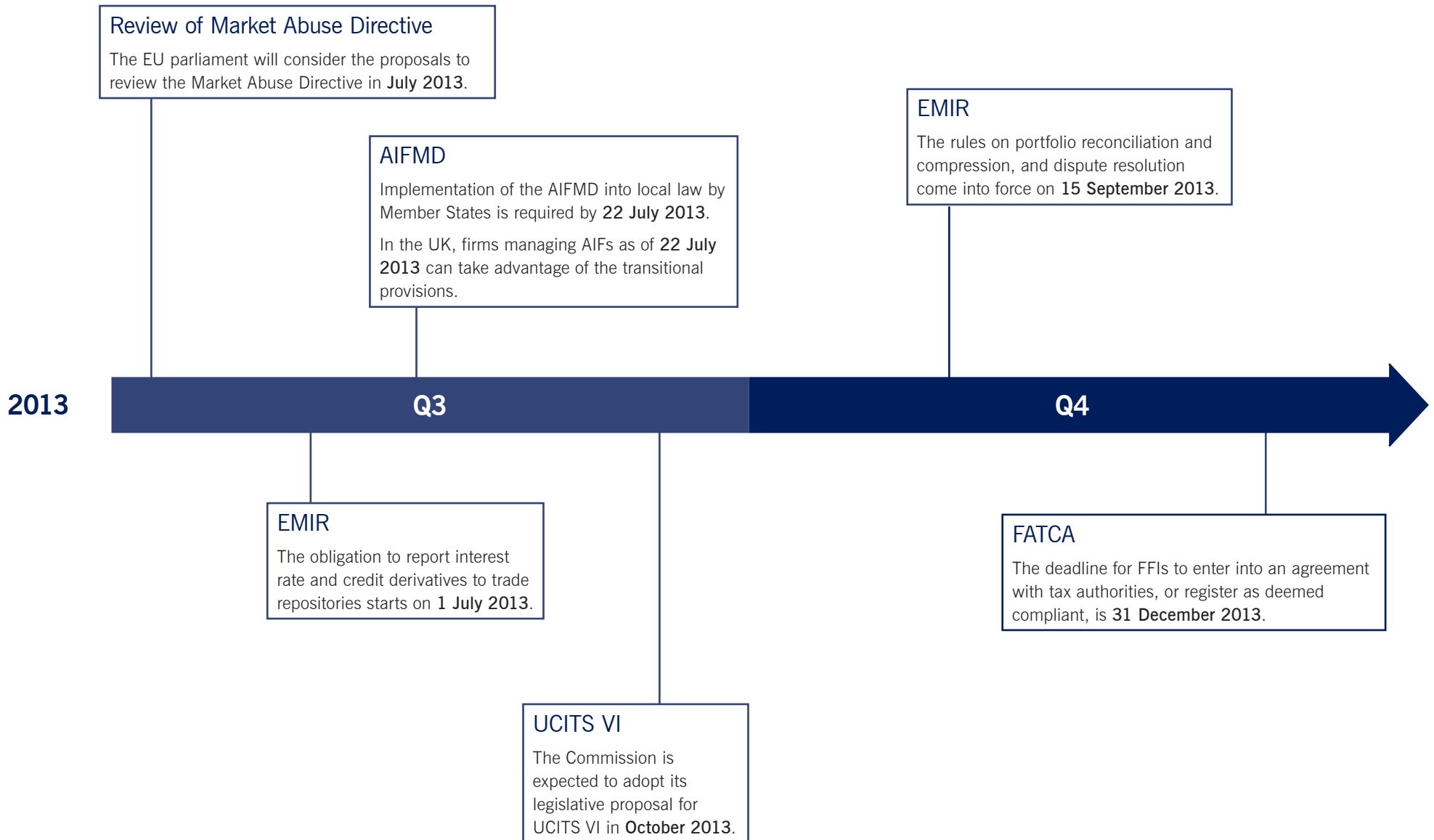
Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
New Corporate Structure for Funds (SICAV)	Ireland	The Irish Minister for Finance has approved in principle the development of legislation for a new corporate structure (a SICAV). Legislation is expected in 2013.	<p>The SICAV will meet US check the box taxation requirements and reduce administrative costs on funds by removing the need for compliance with various requirements of Irish company law.</p> <p>Once the legislation is introduced, it will still be possible to establish a fund as a variable capital investment company pursuant to Part XIII of the Companies Act 1990 (VCC). It will also be possible for existing VCCs to convert to a SICAV.</p>	<p>Click here for the legislative proposal.</p>

Part D – Other Developments of Interest

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Introduction of Deferred Prosecution Agreements	England and Wales	<p>Crime and Courts Act 2013 received Royal Assent on 25 April 2013.</p> <p>Expected to come into force in early 2014.</p>	<p>The Crime and Courts Act 2013 (the “Act”) introduces deferred prosecution agreements (“DPAs”) into UK law and aligns the UK more closely with the US.</p> <p>DPAs are voluntary agreements between prosecutors and (i) companies; (ii) partnerships; or (iii) unincorporated associations under which a prosecutor will not commence criminal proceedings pending successful compliance with a range of conditions such as - amongst others - the payment of penalties, implementing or making changes to compliance programmes, providing training to employees, co-operating with investigations related to the alleged offences and the payment of prosecution costs. DPAs are not available to individuals so even if companies have entered into a DPA, their employees can still be prosecuted.</p> <p>The offences for which DPAs may be entered into are broadly speaking fraud, bribery and money laundering offences. However, DPA’s will also be available for offences under the Financial Services and Markets Act 2000 (s23, s25, s85, s346, s397, s398). DPAs will be available in relation to conduct occurring prior to the commencement date of the Act so long as criminal proceedings have not been commenced.</p> <p>The Act designates the Director of the Serious Fraud Office and the Director of Public Prosecutions as having the ability to enter into a DPA. This power may be extended to other prosecution bodies (such as the Financial Conduct Authority) by order of the Secretary of State.</p>	<p>Click here for the <i>DechertOnPoint</i> “Deferred Prosecution Agreements: A Powerful New Tool for UK Prosecutors?”</p>

Development	Jurisdiction	Stage and Timing	Impact and Considerations	Current Key Documents and Further Guidance
Increases in tax evasion enforcement and intelligence gathering	UK / EU	<p>Enforcement – ongoing</p> <p>Intelligence – to be discussed at the upcoming G8 summit</p>	<p>Concerns about tax evasion in the UK have led to an increase in resources for HMRC and an increase in the number of prosecutions.</p> <p>David Cameron, the Prime Minister of the UK, has written to the President of the European Council, Herman Van Rompuy, setting out suggested steps to agree at the G8 summit which could improve the collection of taxes on a global scale.</p>	<p>Click here for the <i>DechertOnPoint</i> “HM Revenue & Customs – Tax Evasion Enforcement”</p>

Regulatory Calendar – Key Milestones



REGULATORY CALENDAR – KEY MILESTONES (cont'd)

