DechertOnPoint

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A legal update from Dechert's Financial Services Group

EU Regulatory Developments

UK Regulatory Developments

Financial Services Europe and International Update

Regulatory Developments

This update summarises current regulatory developments in the European Union and the UK in the investment funds and asset management sectors in the past four weeks.

EU Regulatory Developments

EVCA Consults on New Professional Standards Handbook

On 1 June 2011, the European Venture Capital Association ("EVCA") published for consultation a new handbook on the professional standards to be observed by the European private equity and venture capital industry.

This follows a review, announced in January 2011, of the EVCA's professional standards in the light of the adoption of the Alternative Investment Fund Managers Directive by the European Parliament in November 2010.

The handbook brings together certain existing EVCA professional standards (i.e., the code of conduct, governing principles and corporate governance guidelines) with the aim of providing accessible, clear and practical guidance on the principles which should govern the professional relationships between managers, investors, portfolio companies and others engaged in the European private equity and venture capital industry.

The ECB President's Proposal for a European Ministry of Finance

ECB President Jean Claude Trichet, speaking on 2 June 2011, on receiving the prestigious Charlemagne prize, has called for a Ministry of Finance to be established in the euro zone with the power to veto national fiscal policies of EU member states in order to sustain the euro. Its remit could include in particular major fiscal spending items. The new European Ministry of Finance which Monsieur Trichet envisages would preside over a "confederation of sovereign states" and would effectively be a financial super regulator for the entire EU region. It would take on "all the typical responsibilities of the executive branches as regards the [European] union's integrated financial sector", he stated. He also suggested that a single ministry would be a natural extension of the Eurosystem (the official name for all of the EU's present governing apparatus). He further proposed that a member state's deficit should not exceed 3 per cent of GDP.

As other commentators have already pointed out there are two kinds of organisation: those that are rewarded for failure by being given more power and increased budgets (this includes most regulators) and those that are punished for their mistakes, which includes private financial services firms operating in a free market without bail outs. The European Union falls clearly into the first category. Each time EU centralisation is shown to fail, for example, by the creation of an unmanageable currency zone, its bureaucrats' response is always to centralise even further. When the European Exchange Rate Mechanism failed, the response to that was to create the single currency. The eurozone itself is now in crisis, so the answer, (according to Monsieur Trichet) is to give even greater power to Brussels over national authorities. Crises are useful because they allow a fresh power grab by its institutions. If politics were imbued with the same discipline as the marketplace, with the equivalent of profit and loss, the answer would be very different.

EU Contract Law: Optional Instrument

The European Commission issued a Green Paper on "policy options for progress towards a European Contract Law for consumers and businesses" in July 2010. This falls under the responsibility of Commissioner Reding (DG Justice), who has referred to her wish to create a "European civil code" or to harmonise EU contract law to provide a high level of consumer protection.

The European Parliament plenary vote on the Own Initiative report by Diana Wallis took place on 8 June 2011 and members voted in favour of the "optional instrument"—one of seven options put forward by the European Commission in its Green Paper.

The following points were included in the final text:

- the scope should cover both business to business and business to consumer contracts;
- the proposal should be issued in the form of a Regulation;
- the Optional Instrument could be complemented by a tool-box (which it proposes introducing on a step-by-step basis);
- it believes the instrument should offer very high levels of consumer protection;
- insurance contracts should be included within its scope;
- **it urges caution in terms of including financial services more generally at this stage, calling on the Commission to establish a dedicated intra-service expert group for any future preparatory work on financial services to ensure that their specific characteristics are taken into account;**
- it calls on the Commission to clarify the intended relationship between the Option Instrument and the Rome I Directive; and
- it also asks the Commission to clarify which contracting party will have the choice between the instrument and the normally applicable law.

The deadline for responding to the findings of the European Commission's Expert Group (in the form of a feasibility study) is 1 July 2011. Commissioner Reding has advised that she intends to present a legislative proposal on EU contract law in October 2011. (This already features in the Commission's work programme for that period).

Comment:

This EU proposal seems designed to weaken English Law as the governing law of first choice in many international commercial contracts and London as a leading venue for the settlement of disputes by substituting a civil law based system, for which there will be little demand in practice.

EMIR: Hungarian Presidency Produces Further Compromise Text

Derivatives were brought to the forefront of regulatory concerns at the Commission as the financial crisis developed, from the near-collapse of Bear Stearns to the default of Lehman's and the bail-out of AIG. In October 2009, the Commission published a Communication outlining the range of legislative measures that it has now published as a draft regulation. On 15 September 2010 the Commission issued its formal Proposal for a Regulation on OTC Derivatives, central counterparties and trade repositories.

The Hungarian Presidency produced a further compromise text at the end of May 2011. This includes the following points:

- the scope of the Regulations still remains unconfirmed;
- in terms of intra-group exemptions the counterparty must be part of the same group provided the counterparty is established in the EU or in a third country jurisdiction which provides for equivalent obligations, subject to a certain number of conditions;
- reference is made to the drafting of implementing standards by ESMA—these have still to be agreed; and
- much of the UK/German wording from the previous compromise in relation to third countries has now been incorporated into the current text.

The Hungarian Presidency has also published a further text of its compromise proposal dated 6 June 2011 on EMIR in advance of a meeting of the Committee of Permanent Representatives (COREPER) on 8 June 2011. It follows earlier compromise proposals previously published by this Presidency.

The vote on EMIR in the European Parliament plenary is now scheduled to take place during the July session. Indications are that this will be a first reading unless agreement can be reached between Parliament and Council. If the measure goes to a second reading this could potentially extend the timetable by a further six months.

Polish EU Presidency's Priorities Published

On 1 July 2011, Poland will take over the EU's six-month rotating Presidency. The Polish Presidency has identified its main priorities, focusing on 'European integration as the source of growth', a 'secure Europe', and a 'Europe benefiting from openness'. Amongst other things, the Polish Presidency has indicated that it intends to:

- support actions and proposals to improve the regulation and supervision of financial markets, as well as drafting the principles of crisis management;
- work on improving economic governance in the EU;
- work to foster economic growth through further development of the internal market and using the EU's budget for building a competitive Europe; and
- work on improving the conditions for small and medium sized enterprises (SMEs), with special focus on their access to capital.

ESMA and Japan FSA Sign Exchange of Letters on CRA Supervision and Information-Sharing

On 6 June 2011, the European Securities and Markets Authority ("ESMA") announced that, on 1 June 2011, it and the Financial Services Agency of Japan exchanged letters regarding supervision and information-sharing of credit rating agencies, the purpose of which is to establish a mechanism for co-operation on cross-border CRAs. This will create conditions for the exchange of information between authorities and the procedures relating to the co-ordination of supervisory activities.

(This is the first co-operation agreement signed by ESMA and a supervisory authority of a third country in this area and is a consequence of the revision of the Credit Rating Agency Regulation (*1060/2009/EC*) published in the Official Journal of the European Union on 31 May 2011.)

New Indicative Dates for European Commission Legislative Proposals on MAD and MiFID Revisions

On 8 June 2011, the European Commission advised that it expects to adopt its legislative proposals on revisions to the Markets in Financial Instruments Directive (*2004/39/EC*) ("MiFID") and the Market Abuse Directive (*2003/6/EC*) ("MAD") in October 2011.

(The Commission had previously indicated that it would adopt its MiFID and MAD revision legislative proposals in July 2011.)

BCBS Documentation on Basel III Implementation Monitoring

On 9 June 2011, the Bank for International Settlements ("BIS") published information on the work carried out by the Basel Committee on Banking Supervision ("BCBS") on monitoring the impact of Basel III.

In December 2010, the BCBS finalised the text for the key aspects of the Basel III reforms. The BCBS is now monitoring the impact of the reforms agreed in December 2010 on a sample of banks. (The deadline for participating banks to submit end-December 2010 data is 15 June 2011.)

The BCBS has also made available the following documents relating to this monitoring exercise:

- ***Basel III implementation monitoring workbook:*** the BCBS has made this workbook available for information purposes only and participating banks should use the workbook obtained from their respective national supervisory agency to submit their returns;
- ***Instructions for Basel III implementation monitoring:*** (dated 20 May 2011), which provides general information for banks on the scope of the exercise, as well as specific instructions on how to complete the workbook; and
- ***Frequently asked questions on Basel III implementation monitoring:*** (dated 27 May 2011) which provides answers to technical and interpretive questions raised by supervisors and banks during the monitoring process and includes FAQs relating to issues arising from the Basel III leverage ratio and liquidity requirements.

The BCBS intends to publish in due course its official response to interpretation of certain aspects of the Basel III text, including FAQs on the definition of capital and further FAQs on leverage and liquidity issues.

The BCBS intends to repeat the monitoring exercise semi-annually, with reporting dates at the end of December and at the end of June.

Venture Capital Funds: EU Commission Consultation

Venture capital provides equity finance to companies that are generally very small and young, often innovative start-ups, with strong growth potential. This type of investment, which often takes the form of temporary stakes in the capital of the companies, entails high risk since the returns are linked to the success of newly created companies. For this reason venture capital also provides important non-financial support to these companies, including consultancy services, financial advice, marketing strategy, training, etc. Venture capital is an important source of financing and support for innovative SMEs that encounter difficulties in accessing bank loans or listing on stock exchanges.

In June 2011, the European Commission launched a consultation on new EU rules for venture capital funds. The consultation document outlines what could be the broad contours of a European passport that would be made available to venture capital funds so that they would be able to raise capital freely throughout the EU from professional investors and invest in innovative SMEs. Once the passport had been obtained (on registration in one EU member state), the fund manager could then operate throughout the EU without having to register in each member state where it wanted to raise capital, as is often the case today.

The EU Commission asks if the passport system used under the Alternative Investment Fund Managers Directive (the "AIFMD") could be tailor-made for the industry. Whilst the AIFMD covers venture capital funds, the Commission notes that the directive requires a far stricter compliance regime that is necessary, since these funds are unlikely to pose systematic risk to the financial system or create specific investor protection concerns. The consultation says that funds could obtain a similar "passport" simply by requesting a European registration with their national authority, or the European Securities and Markets Authority ("ESMA"). This would then allow them to forego a series of administrative obligations when the fund expands into other European countries. However, the Commission acknowledges that this would not solve the problem of funds being taxed in the multiple jurisdictions in which they are operating.

The European Commission asks for views by 10 August 2011. The results of the consultation will then serve as a basis for an initiative on EU rules for venture capital. Legislation to implement the changes could be put forward before the end of 2011.

Prospectus Directive: ESMA Consultation on Technical Advice to European Commission

The Prospectus Directive sets out the initial disclosure obligations for issuers of securities that are offered to the public or admitted to trading on a regulated market in the EU. It provides a passport for issuers that enables them to raise capital across the EU on the basis of a single prospectus. Following a lengthy review and consultation process by the Commission, the Prospectus Directive (2003/71/EC) (the "PD") has been amended after Directive 2010/73/EU came into force on 31 December 2010. In January 2011, the European Commission published its requests to ESMA for advice on possible delegated acts concerning the Prospectus Directive as amended by Directive 2010/73/EU.

The European Securities and Markets Authority ("ESMA") has now published a consultation paper in relation to the EU Commission's request for technical advice on possible delegated acts concerning the Prospectus Directive as amended by Directive 2010/73/EU dealing with:

- the format of the final terms to the base prospectus (Article 5(5));
- the format of the summary of the prospectus and detailed content and specific form of the key information to be included in the summary (Article 5(5));
- proportionate disclosure regime (Article 7);
- equivalence of third-country financial markets (Article 4(1));
- the consent to use a prospectus in a retail cascade (Articles 3 and 7);
- review of the provisions of the Prospectus Regulations (Articles 5 and 7); and
- a comparative table of the liability regimes applied by the Member States in relation to the PD.

ESMA has invited comments on the consultation paper by 15 July 2011. (The advice is due to be delivered to the Commission by 30 September 2011.)

Taxation: Commission Requests Poland to Amend Discriminatory Tax Legislation for Foreign Investment and Pension Funds

On 16 June 2011, the European Commission announced that it has formally requested Poland to amend its tax legislation which discriminates against investment funds and pension funds from other EU countries and countries of the European Economic Area (EEA). Under Polish tax legislation, domestic investment funds and pension funds are exempted from corporate income tax. However, funds established outside Poland can only benefit from this exemption under certain conditions which are not applied to Polish funds. Such discriminatory provisions are in breach of EU law, which requires that all tax exemptions should be granted equally to resident and non-resident taxpayers.

Despite corrective measures taken by Poland in November 2010 in response to a previous request, the Commission considers that Poland is still not fulfilling its obligations under Articles 56 and 63 (freedom to provide services and free movement of capital) of the Treaty on the Functioning of the EU and Articles 36 and 40 of the European Economic Area Agreement.

As a result of this discrimination, investment and pension funds based in other EU countries and in the EEA are placed at a disadvantage compared to their Polish-based counterparts and Polish citizens are therefore liable to enjoy less choice of pension and investment funds.

The Commission's request takes the form of an additional reasoned opinion (the second step of EU infringement proceedings). In the absence of a satisfactory response within two months, the Commission may refer Poland to the European Court of Justice.

UK Regulatory Developments

AIMA's Guide to Institutional Investors' Views and Preferences on Hedge Fund Operational Infrastructures

At the end of May 2011, the Alternative Investment Management Association ("AIMA") published a guide to institutional investors' views and preferences regarding hedge fund operational infrastructures, in which AIMA outlines investor views, expectations and preferences regarding operational and organisational issues, which are increasingly the focus of due diligence reviews and discussion between investors and investment managers.

FSA Clarification on RDR Passporting Issues

On 3 June 2011, the FSA published its second newsletter relating to its retail distribution review ("RDR") which includes a section on passporting issues. This seeks to clarify when a firm passporting under the Markets in Financial Instruments Directive (2004/39/EC) ("MiFID") or the Insurance Mediation Directive (2002/92/EC) ("IMD") is within the scope of the RDR rules or the rules of their home state. The newsletter states that:

- firms passporting on a branch basis will be subject to the FSA's Conduct of Business sourcebook (COBS) and consequently RDR rules such as the scope of advice and adviser charging; and
- firms passporting on a services basis will be subject to their home state's rules on conduct of business and training and competence. (This means that they will not be subject to the FSA's RDR training and competence requirements, such as holding relevant qualifications or ongoing continuing professional development).

The newsletter also notes that not all investment products will fall within the scope of MiFID and the IMD. This means that firms passporting into the UK seeking to provide pension advice, for example, will require a top up permission and will be subject to the FSA rules.

Private Equity: Good Practice Reporting by Portfolio Companies

On 6 June 2011, the Guidelines Monitoring Group published guidance to help private equity owned portfolio companies to comply with the Walker Guidelines. The guidance aims to improve transparency and disclosure in reporting by highlighting good practice examples.

The three broad areas of portfolio company disclosures which the guideline covers are:

- the Walker Guidelines themselves;
- the business review (required by the Companies Act 2006); and
- an enhanced business review.

In respect of each of these areas, the guidance sets out the minimum requirements for basic compliance, a summary of good practice and examples of company disclosures.

Tax Transparent Funds

In the 2011 Budget 2011 it was announced that the Government will legislate to introduce a Tax Transparent Fund vehicle (“TTF”) from 2012, with consultation in June 2011 on the regulatory and tax aspects of the regime. In its press release earlier this month on the UCITS IV item later in this update, HM Treasury have confirmed that since the 2011 Budget the Government has been working with interested parties to establish the areas for consideration and examine the legislative changes that may be required and that following this initial work the Government is clear that the legislation to introduce TTFs should be principally a separate set of regulations to establish the appropriate regulatory status of the TTF, rather than clauses in the Finance Bill 2012 (as using that approach will allow an extended period for consultations with the funds industry). The Government will now engage with industry over the coming months on the design of the TTF and will consult formally on draft regulations **in late 2011**. The necessary legislation will enter into force by Summer 2012, subject to appropriate parliamentary procedure.

The Government’s main objective remains to ensure that UK funds can benefit from pan-European asset pooling, such as master feeder structures under UCITS IV, which will allow for economies of scale, reduce costs and increase returns for investors. In addition, the Government will now engage with industry working groups to develop proposals in the following workstreams (and then issue the formal consultation on the draft regulations in late 2011):

- structure;
- tax;
- technical legal considerations; and
- commercial design/promotion.

Working groups for these areas are now being formed from the different parts of the asset management industry, the FSA and other Government departments. The Government intends to engage proactively with stakeholders on the areas set out above, through roundtable meetings, seminars and workshops, and will also consider meeting a wide range of stakeholders bi-laterally on the introduction of the TTF, the timing, format and venue for such meetings being informed by stakeholder interest.

FSA Secures High Court Orders Against Unauthorised Land Banks

On 8 June 2011, the FSA announced that it had succeeded in securing a High Court order for the winding up of one unauthorised land bank and the continuation of a world-wide injunction against another unauthorised land bank, which had been marketing plots of land as an investment opportunity and operating an unauthorised collective investment scheme. (Whilst the FSA does not regulate land as an investment, it does regulate the operation of CISs).

In the past 18 months, the FSA has secured seven injunctions against unauthorised land banks. In its recent Quarterly consultation (no 29), it has proposed amendments to the Perimeter Guidance manual (PERG) to clarify its existing guidance in relation to property investment clubs and land investment schemes.

Home Office Plan for National Crime Agency: Financial Services Implications

On 8 June 2011, the Home Office published its plan for the creation of a new National Crime Agency (“NCA”), responsible for tackling serious crime which will replace the Serious Organised Crime Agency (SOCA). The NCA will comprise four distinct commands, one of which will be the Economic Crime Command.

The government will also establish an economic crime co-ordination board, comprised of key agencies concerned with tackling economic crime. The board is intended to have a strong role in driving better co-ordination of cases and aligning resources across agencies. The government intends to have the full elements of this board in place and operating by autumn 2011.

The government intends to introduce legislation to establish the NCA by spring 2012, with the aim of the NCA becoming fully operational by December 2013.

The announcement of the plan appears to confirm reports that the government has abandoned its plan to establish a separate Economic Crime Agency. In its May 2011 coalition programme the government stated that this agency would take over the work undertaken in this area by the Serious Fraud Office (the “SFO”), the FSA and the OFT. In December 2010, the government confirmed that the FSA, and its successors, would retain its role as a criminal prosecutor. It appears that the SFO and OFT will also now retain their existing roles relating to financial crime.

The plan states that the Home Office will review "in due course" what the appropriate relationship should be between the Economic Crime Command and the SFO, the FSA and the OFT.

Draft Regulations Implementing UCITS IV

On 13 June 2011, the government published in draft the regulations implementing the UCITS IV Directive (*2009/65/EC*) ("UCITS IV") into UK legislation and regulation. If they are approved by Parliament, they will be made and come into force on 1 July 2011. They will be known as the Undertakings for Collective Investment in Transferable Securities Regulations 2011 ("the UCITS Regulations").

The government has also published an explanatory memorandum to accompany the draft regulations, which amongst other things, contains a transposition table which sets out how each provision of UCITS IV is to be implemented into domestic law (including through amendments to the Financial Services and Markets Act 2000 ("FSMA"), the UCITS Regulations and new FSA rules) and which authority (FSA or HM Treasury) is to be responsible for carrying this out.

HM Treasury has indicated that changes to the FSA rules will be published in the near future. It also states that the European Commission's legislative proposal on UCITS depositaries and remuneration (known as "UCITS V") is expected in early 2012.

Government Consults on Amending Money Laundering Regulations 2007

On 7 June 2011, HM Treasury published its response to its review of the Money Laundering Regulations 2007 (*SI 2007/2157*) ("the Regulations"), together with an impact assessment.

HM Treasury launched its review of the Regulations in 2009. Although the review found that the Regulations and their implementation are broadly effective and proportionate, the response sets out HM Treasury's proposals for improving the Regulations further (by strengthening the risk-based approach). The proposals are intended to give businesses greater confidence to focus compliance on their highest risk areas, and to discourage the tick-box approach taken by some businesses. The proposals include:

- removing some or all of the existing criminal penalties under the Regulations: under these penalties, in theory, responsible individuals within firms could face prosecution in they fail to have adequate systems in place;
- removing the current distinction between Parts 1 and 2 of Schedule 3 to the Regulations in relation to professional bodies that may be relied on for customer due diligence checks;
- allowing OFT supervised retail lenders who purchase debt from other such lenders to rely on the customer due diligence checks previously performed by the seller;
- lifting the burdens on some very small businesses by introducing a general exclusion (for example, for businesses with below EUR15,000 VAT-exclusive turnover per annum), or reducing the requirements placed on such businesses; and
- a number of minor amendments to update the Regulations.

HM Treasury explains that the proposals should have the overall effect of reducing the costs of the Regulations on businesses.

Comments can be made on the proposals, and the impact assessment, until 30 August 2011. Subject to final decisions, HM Treasury anticipates that any adopted legislative changes will come into effect in 2012.

FSA "Dear CEO" Letter Following Wealth Management Review

On 14 June 2011, the FSA published a *"Dear CEO" letter* sent to the chief executive officers ("CEO") of firms in the wealth management sector.

In the letter, the FSA explains that it recently reviewed the suitability of client portfolios in a sample of 16 firms in the sector, which provide advisory or discretionary investment management services, predominantly to retail clients. From the review, the FSA identified "significant, widespread failings" which it is concerned may also be prevalent in firms outside the sample. The FSA found that:

- 14 out of the 16 firms reviewed were judged to pose a high or medium-high risk of detriment to their customers, based on the number of client files which had a high risk of unsuitability or where the suitability could not be determined;

- 79% of the files reviewed had a high risk of unsuitability or the suitability could not be determined; and
- 67% of the files reviewed were not consistent with one or more of: the firm's house models; the client's documented attitude to risk; and the client's investment objectives.

The FSA expects firms to take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable. The FSA is concerned, following the review, that there is an unacceptable risk of customers of wealth management firms experiencing unfavourable outcomes. It advises that although the underlying drivers of poor outcomes have not been a major focus of its work to date, the failings it has seen may point to deficiencies in the management and control of firms.

The FSA asks the CEOs to acknowledge that they have read and understood the letter, and have considered the implications for their firms. It expects all wealth management firms to meet, and be able to demonstrate that they meet, its suitability requirements. The CEOs are advised to review a sample of their firms' files if this has not been done recently. If any of the CEOs indentify problems, the FSA expects them to have regard to Principle 6 of its Principles for Businesses ("PRIN") and consider whether they ought to act on their own initiative in relation to any customers who may have suffered detriment or been potentially disadvantaged.

The FSA has requested responses by 9 August 2011. However, it states in the letter that it is not limited from investigating or taking any action against any firm either before this date or afterwards. The FSA has indicated that it is involved in ongoing regulatory action with the firms in the sample. Some of the firms involved have already put in place major rectification programmes. The FSA also advises that wealth management businesses can expect to see suitability as a continuing and increasing supervisory focus.

FSA Updates Guide to the EU and its Legislative Processes

On 15 June 2011, the FSA published an update of its brief guide to the EU and its legislative processes, originally published in November 2008 and which provides an overview of:

- the European Union ("EU");
- the EU institutions;
- EU legislation, case law and the legislative process;
- the new EU supervisory architecture;
- the regulatory and supervisory bodies in the UK; and
- key EU terms and acronyms.

HM Treasury White Paper and Draft Parliamentary Bill of the New UK Regulatory Structure

On 16 June 2011, HM Treasury published a paper, "A new approach to financial regulation: the blueprint for reform", which includes the white paper on its proposals for reforms to the UK financial services regulatory structure and a draft of the Financial Services Bill, the primary legislation which will bring the reforms into effect.

The draft Bill contains the core provisions for the government's structural reforms, including the measures necessary to establish the new regulatory bodies: the Financial Policy Committee (the "FPC"), the Prudential Regulation Authority (the "PRA") and the Financial Conduct Authority (the "FCA"). The Bill largely amends existing legislation, and will make extensive changes to the Financial Services and Markets Act 2000 ("FSMA"), as well as to the Bank of England Act 1998 and the Banking Act 2009. The Government intends to publish a consolidated version of FSMA, showing the proposed amendments to be made by the Bill, as soon as possible.

Pre-legislative scrutiny of the Bill is expected to begin shortly as soon as Parliament has established a scrutiny committee. The government aims to introduce the Bill formally into Parliament before the end of 2011, although the timing will depend on the duration of pre-legislative scrutiny in Parliament and the length of time taken by the government in considering the scrutiny committee's recommendations.

The paper also sets out government's current policy on the reforms and a further consultation on specific aspects of the new structure.

The deadline for responses to the Treasury's consultation is 8 September 2011.

Near-Final Draft FSA Handbook Rules and Guidance Implementing UCITS IV

On 20 June 2011, the FSA published a draft of the UCITS IV Directive Instrument 2011. The draft instrument sets out near-final rules and guidance for the FSA Handbook to implement those provisions of the UCITS IV Directive *(2009/65/EC)* for which the FSA is responsible.

It will be recalled that the FSA and HM Treasury consulted on their proposals for UK implementation of UCITS IV in a joint consultation paper, published in December 2010. In April 2011, in chapter 9 of its quarterly consultation (No 28) (CP11/7), the FSA consulted on further Handbook amendments. A summary table in the draft instrument identifies significant changes from the version published for consultation in the December 2010 consultation paper. However, changes of lesser significance (such as to ensure consistent terminology and clear language) have not been highlighted.

The FSA must now be granted the necessary statutory powers under the Undertakings for Collective Investment in Transferable Securities Regulations 2011, which were laid before Parliament on 13 June 2011 and, if approved, will come into force on 1 July 2011. The FSA board will then be invited to make the final rules and guidance. Following that, the FSA will publish a policy statement summarising feedback to its consultation proposals and explaining any changes made. The final version of the instrument will be included as an annex to the policy statement.

The FSA has published the draft instrument at this stage to assist firms and others who need to prepare for the UK implementation of UCITS IV. It does not expect the final rules and guidance to differ in any significant way from the near-final version.

Chancellor of the Exchequer Endorses ICB Retail Banking Proposals in Mansion House Speech

HM Treasury has published the speech delivered by George Osborne, Chancellor of the Exchequer, at the Mansion House on 15 June 2011.

In his speech, Mr Osborne endorses the following proposals of the Independent Commission on Banking (the "ICB"), which were set out in its interim report of 11 April 2011:

- bail-in instead of bail-out, so that private investors, not taxpayers, bear the losses if risks go badly; and
- ring-fencing of high street banks to make them safer and to protect their vital services to the economy if things go wrong.

The ICB is due to publish its final report and recommendations to the government on 12 September 2011.

FSA Announces £54m Payment Scheme of CF Arch Cru Investors

On 21 June 2011, the FSA announced the voluntary establishment of a £54 million payment scheme for investors in two FSA-approved non-UCITS retail schemes ("NURS"): the CF Arch cru Investment Funds (the "Investment Fund") and the CF Arch cru Diversified Funds (the "Diversified Funds").

Dealings in the Arch cru Funds were suspended on 13 March 2009 owing to insufficient liquidity to meet anticipated redemption requests in relation to one of the Investment Fund's sub-funds and the Arch cru Funds' other five sub-funds. Partial distributions, totally £54 million, were made to investors in February, July and December 2010.

The FSA has agreed the payment scheme with Capita Financial Managers Limited ("CFM"), the authorised corporate director of the Arch cru Funds, BNY Mellon Trust & Depositary (UK) Limited, the depositary of the Investment Fund, and HSBC, the depositary of the Diversified Fund. Each firm will make voluntary contributions to establish the scheme. Full details of the way the scheme will operate are being finalised, but essentially it will be used to make payments to eligible investors in the Arch cru Funds and will enable them to reclaim a substantial part of their investment. Investors will have the choice as to whether to accept an offer of payment from the scheme. If they accept, it will be in full and final settlement of any claims or other remedies against the firms. The FSA and the Financial Ombudsman Services (the "FOS") will be discussing the scheme with a view to the FOS following the scheme rules when considering investor complaints to the FOS concerning the Arch cru Funds.

The FSA describes the scheme is a fair and reasonable outcome, which is in the best interest of the investors and welcomes the certainty it provides and the acceleration of the return of value to investors. With the distributions already paid to investors and the value of the remaining assets of the Arch cru Funds (£113.1 million (the Investment Fund) and £35.8 million (the Diversified Fund) as at 31 March 2011), investors who accept will receive a total sum which represents a significant proportion of their investment. This is currently estimated to be on average approximately 70% of the published net asset value of the Arch cru Funds as at the suspension of dealings in March 2009, namely £225.5 million (the Investment Fund) and £107.8 million (the Diversified Fund).

CFM will be administering the scheme and, by no later than 31 August 2011, will contact those investors invested in the Arch cru Funds as at 31 May 2011 to provide them with further information on the scheme and the application process. It has published an update on its website summarising the FSA's announcement and indicating that the FSA will, in due course, publish a statement of its findings in relation to the CFM's role regarding the Arch cru Funds. According to the update, the FSA will not be imposing a financial penalty on CFM. A letter sent to Arch cru Fund investors, dated 21 June 2011, is also available on CFM website.

The FSA is currently considering the role of other parties in relation to the Arch cru Funds.

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