

Being better informed

FS regulatory, accounting and audit bulletin

*PwC FS Regulatory
Centre of Excellence*

January 2012

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EBA reports on bank
recapitalisation

Select Committee reports
on Financial Services Bill

FSA Mortgage Market
Review

More EC help for SMEs

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Introduction

Welcome to the January 2012 edition of “*Being better informed*”, our monthly *FS regulatory, accounting and audit bulletin*, which aims to keep you up to speed with significant developments and their implications across all the financial services sectors.



Laura Cox
Lead Partner
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EU and UK regulators celebrated the end of 2011 by clearing their desks and filling our in-boxes with a surge of new consultations, reports and guidance, just as we were heading out the door for a well-earned holiday.

The sovereign debt crisis situation continued to cause concerns during December, with the EBA releasing its Recommendation and final results of bank recapitalisation. The EBA found that many EU banks are still vulnerable and that market conditions remain frail. The banks will be required to build up exceptional and temporary capital buffers against sovereign debt exposure and to increase their Core Tier 1 capital to 9% of risk weighted assets by June 2012. The European Systemic Risk Board (ESRB) urged banks to follow through with committed and timely implementation of the EBA’s recommendation at its meeting on 22 December 2012. A number of banks are seeking to raise capital already, but in very tough market conditions.

The Basel Committee advanced its banking reform initiatives in December, with a consultation on revised Core

Principles for Effective Banking Supervision emphasising the supervision of globally systematic firms and the international regulatory coordination this requires. The Committee also revised their Principles for the Supervision of Financial Conglomerates on the back of recent amendments to the Financial Conglomerates Directive. And earlier in the month they released a consultation on the Effectiveness of Internal Audit Functions.

Finally, HM Treasury offered us a ray of hope for the UK financial services industry. The draft Finance Bill 2012 contains revisions to the Controlled Foreign Corporations tax regime (CFC) – changes which would improve the tax position of many financial services firms and make the UK a more competitive place to do business.

Looking ahead, we anticipate that 2012 will be a busy year for regulators, with a challenging regulatory change agenda both here and abroad. ESMA published an extensive work programme for 2012 in December, with EBA following suit in early January. In the UK, the PRA and

the FCA have begun to take shape as units within the FSA, and with the Financial Services Bill progressing, will be gearing up to assume their responsibilities in 2013.

For our financial institutions, regulatory change looks likely to drive strategic realignment and structural changes over the next several years. December saw the Government confirming its intentions to follow through on the ICB’s recommendations to ring-fence retail banks. The SEC’s Volker rule proposals under the Dodd-Frank Act are causing both US and non-US banks and asset managers with US operations to look closely at the future of their group relationships. These and other regulatory changes will see many institutions re-thinking their long-term strategies in 2012.

Best wishes for a Happy New Year.



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We recommend you go directly to the FS sector / topic of your interest by clicking in the **active links** within the table of contents.



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Regulation

Capital and liquidity

EBA publishes recommendation and final result of recapitalisation plan

The capital shortfall at major EU banks is 8% higher than originally thought, according to the latest assessment from the EBA, 'Recommendation and final results of bank recapitalisation plan,' released on 8 December 2011.

The EBA recommends that, in aggregate, major EU banks need to raise 114.7 billion euros as an exceptional and temporary capital buffer against sovereign debt exposures and to ensure that Core Tier 1 capital ratio reaches 9% of risk weighted assets by the end of June 2012. The EBA tests indicate that approximately one-third of the banks sampled need stronger capital reserves to meet the June 2012 deadline.

Banks in Italy and Spain will need to raise significantly more capital, while French banks have already built-up sufficient reserves to buffer against potential sovereign bond write-downs according to the EBA. German banks have a capital shortfall of 13.1 billion euros which is three times what was originally estimated in October, although is relatively small in

proportion to the size of its banking system. In contrast, banks in the Ireland, Luxembourg, Sweden, UK and six other countries appear to require no additional capital under these tests.

The EBA warned banks that deleveraging could be used only in part to achieve its capital targets and only in cases where assets had been transferred to a third party (and not simply discontinued), to ensure that lending in the real economy is not reduced or impaired as a result of the additional capital requirements.

EBA consults on CRD III technical amendments in CP48, CP49

The EBA released two consultations on 30 November 2011: CP48 relating to Stressed Value at Risk (VaR) and CP49 relating to an Incremental Default and Migration Risk Capital Charge (IRC) in the trading book, respectively, in response to amendments made to CRD III (2010/76/EC) which came into force on 1 January 2012.

Both consultations relate to various mathematical modelling approaches used by banks to measure and estimate the impact on capital of future losses in the trading book — with the view to assisting banks and regulators in assessing and managing risk. The new guidelines would apply to institutions

using the Internal Model Approach for purposes of calculating their capital requirements for market risk in the trading book.

The first consultation attempts to rectify the failings of the 'normal' VaR model which was found to inadequately measure tail risk, a form of portfolio risk. The second consultation provides guidance on modelling approaches for the incremental risk capital charge (IRC) to determine the level of capital required for that component of market risk in the trading book.

The EBA's guidelines should not be viewed as a comprehensive set of rules but rather an additional guidance on the use of these modelling approaches. Both consultations close on **15 January 2012**.

EBA consults on CRD IV reporting standards in CP50

The EBA published consultation CP 50 'Draft Implementing Technical Standards Supervisory Reporting Requirements for Institutions' relating to the recast CRD and the Capital Requirements Regulation (CRR) proposals released on 20 July 2011. The draft standards would impose more harmonised reporting requirements (variable according to the size and complexity of activities undertaken) on

credit institutions. The consultation closes on **20 March 2012**.

EC extends state-aid rules

Due to increased tensions brought on by the sovereign debt crisis, the European Commission updated and extended its state-aid rules and accompanying support framework for banks in December.

The crisis regime was first adopted in 2008-2009 in the wake of the financial crisis. The Commission's Banking Communication, Recapitalisation Communication, Restructuring Communication and Impaired Assets Communication rules will now remain in place during 2012. Full text of all state aid communications is found on the Europa state aid webpage.

The Commission anticipates that future capital injections by Member States are more likely to take the form of shares bearing a variable remuneration, and has provided some clarification on the pricing rules for capital injections for authorities.

ESRB updates on its recent activities

At its December 2011 meeting, the ESRB provided an update on its views of the current EU financial situation and its recent activities. The ESRB reaffirmed the need for banks to strictly adhere to

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the EBA's recapitalisation criteria agreed last year to restore confidence to the fragile European financial system. The ESRB is continuing work on developing the basis for pan-European macro-prudential policy to deal with systemic risks, and is examining relevant EU legislative initiatives with a view to providing its macro-prudential perspectives on the establishment of the new regulatory framework.

The ESRB also identified a number of risks to financial stability stemming from volatility in US dollar funding markets and called on banks to manage their funding strategies carefully in 2012.

FSA proposes standardised regulatory prudent valuation returns

To address inconsistencies in firms' accounting approaches to the fair value of assets, the FSA is proposing to introduce the regulatory prudent valuation (RPV) return in CP11/30 'Proposed Regulatory Prudent Valuation Return'.

The FSA also believes that firms' annual reports do not provide sufficient information about the degree of uncertainty associated with valuing some assets, particularly derivatives, or about the differences between firms' prudent valuations for trading book

purposes and their fair valuations for accounting purposes.

The FSA has required UK banks and BIPRU 730k firms to produce quarterly reports detailing the differences between their prudent valuations for trading book purposes and the fair valuations used for accounting purposes in preparing firms' financial statements. Initially, the FSA permitted firms to use their own formats for these reports, but found that made comparisons between firms difficult. Therefore, the FSA is consulting on implementing a standardised RPV return.

Firms will have to show the net and gross balance sheets for a defined list of asset classes, together with the potential downside and upside that could exist through the inherent uncertainty in the valuation process. The consultation closes on **14 February 2012**.

Basel Committee consults on own credit risk adjustments to derivatives

The Basel Committee released a consultation 'Application of own credit risk adjustments to derivatives'. In calculating Common Equity Tier 1, Basel III requires banks to disregard any 'unrealised gains and losses in the fair value of liabilities that are due to changes in the bank's own credit risk.' The Basel Committee proposes that

debit valuation adjustments (DVAs) should be fully deducted in the calculation of Common Equity Tier 1. The consultation closes on **17 February 2012**.

Market structure

EC releases two SME finance initiatives

The EC published two proposals in December designed to provide greater access to capital for Europe's 23 million small and medium sized enterprises and companies (SMEs).

The EC is proposing a regulation to create a venture capital (VC) passport regime designed to accelerate both the growth and cross-border operation of VC funds. A fund category called European Venture Capital Fund (EVCF) would be created for VC funds of less than €500 million. Funds above this threshold would be required to comply with the Alternative Investment Fund Managers Directive (AIFMD).

Funds designated EVCF would have to comply with uniform portfolio composition and management requirements, as well as registration and simplified reporting requirements. The proposal would create a single rule book for marketing VC funds across the EU and facilitate wider allocation of VC capital across the EU.

The EC's second proposal sets out a new European Social Entrepreneurship Fund (ESEF) classification, to identify funds which invest in European social businesses and allow them to be marketed under this label across Europe. This proposal falls under both SME and the EC's Social Business Initiative, as access to capital is a significant challenge for social businesses.

The proposals released in December must be passed by the EU Parliament and Council and are subject to standard legislative implementation schedules, so relief under the proposals remains several years away.

Other Commission initiatives to improve SME finance include:

- measures to create special SME markets (MiFID II) and to increase transparency in trading of SME shares (Transparency Directive revisions);
- measures to reduce the costs and administrative burdens for SMEs by simplifying and reducing reporting requirements (Transparency and Prospectus Directives revisions); and
- accelerating the implementation of the Late Payments Directive in advance of the transposition deadline

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of March 2013, to reduce the costly burden of late payments which amount to some 1.1 trillion euros of delayed turnover for SMEs.

For further details of SME finance initiatives, see the Europa webpage [Helping SMEs access more finance](#).

Supervisory reforms

Basel Committee consults on revised core principles for bank supervision

The Basel Committee published a consultation '[Core Principles on Effective Banking Supervision](#)' to update its 1997 core principles for effective banking supervision (Principles). The proposal seeks to revise and merge the Principles with its related methodology document. The Principles are formulated by the Basel Committee, in conjunction with the IMF and the World Bank.

The proposed revisions would increase the number of principles and emphasise the supervision of systemically important financial institutions. The proposals also increase the emphasis on macro-prudential supervision, and strengthening the core principles on home-host relationships by requiring cooperation and coordination on crisis management and resolution for cross-

border banks. The consultation closes on **20 March 2012**.

Basel Committee consults on financial conglomerates supervision

The Basel Committee published a consultation '[Principles for the Supervision of Financial Conglomerates](#)' on 19 December 2011 to update its supervisory principles (Principles) for financial conglomerates. The Principles, created in 1999, provide national supervisors with a set of internationally agreed standards that support 'consistent and effective supervision' of financial conglomerates and are particularly targeted at firms with significant cross-border operations.

The consultation expands and supplements the 1999 Principles in areas such as supervisory powers and authority, supervisory responsibility, corporate governance and risk management. The consultation closes on **16 March 2012**.

This work complements the [Financial Conglomerates Directive](#) (2011/89/EU) (FCD) adopted in November 2011, which amended earlier EU Directives addressing the regulation of complex and cross-border banking and investment firm groups. The FCD seeks to close many of the loopholes in the previous EU regime and facilitate

appropriate supplementary supervision of financial entities in a financial conglomerate. It is expected to be transposed into national law by mid-2013. The amendments were agreed by the European Parliament and Council in June 2011 with little change from the EC's original text.

Joint Select Committee publishes report on Financial Services Bill

The UK Parliament's Joint Select Committee (Joint Select Committee) published its [report on the draft Financial Services Bill \(the Bill\)](#) on 19 December 2011. The Bill is the primary legislation which reforms the UK's regulatory structure following the financial crisis.

The report recommends that Government significantly amend the Bill to: clarify the objectives of the three new regulatory bodies, move forward the ICB's recommendation (to ring-fence retail business) during the 2012-13 parliamentary session, and make the Bank of England more accountable.

The Joint Select Committee's key recommendations include proposals that:

- the PRA should regulate market infrastructure (initially proposed to be within the FCA's role);

- the FCA should have greater powers to achieve its objective of promoting competitiveness;
- the Bank of England Court of Directors should be replaced by a supervisory board which includes expert members with prudential policy experience;
- the PRA should supervise more investment firms that engage in the re-hypothecation of client money and assets;
- the Bill should include measures on remuneration of executives and non-executives and introduce a concept of liability for executives and board members; and
- the Financial Policy Committee (FPC) should have equal status with the Monetary Policy Committee (MPC). FCP membership should be broader, containing a range of experts.

A summary of the report's recommendations is set out in chapter 6. The Bill was published in June 2011 and will be presented during the 2012-13 parliamentary session.

Government publishes ICB response

Concurrent to the Joint Select Committee Report release, George

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Osborne announced [‘The Government’s Response to the Independent Commission on Banking’](#) on 19 December, giving the Government’s views on the [ICB recommendations](#). The ICB recommendations propose safeguards to the banking system to avoid taxpayers bearing the costs of future bank failures.

The Government confirmed that it will implement the ICB’s proposals in full via both primary and secondary legislation. The Government plans to adopt legislation to ring fence retail banking activities within this Parliamentary session and will seek to implement changes regarding the loss absorbency of capital by 2019, in line with Basel III.

The Government will publish a White Paper in Q2 2012 containing further details of how the proposals will be implemented. The public comment period closes on **12 March 2012**.

FSA publishes report on Royal Bank of Scotland report published

The FSA published its long-awaited [report](#) on the causes of the 2008 near-collapse of the Royal Bank of Scotland (RBS) which required a £45.5 billion Government bailout. The report cites deficiencies in RBS’s management and the UK regulatory framework as causes, including weaknesses in the regulator’s

supervisory practices and management of globally significant firms.

The report also explains why the FSA’s Enforcement and Financial Crime Division concluded that there were insufficient grounds to bring enforcement actions against RBS and its management. Poor decisions, rather than criminal acts, were responsible for RBS’s near-collapse.

The report offers proposals on how to prevent a similar crisis, including:

- **Strict liability:** senior personnel of failed banks could be held ‘strictly liable’ for the consequences of their bad decisions. However Lord Turner, the FSA chairman, acknowledges in the report that a ‘strict liability’ standard ‘may prove impossible’ to implement due to legal complexities.
- **Pay clawbacks:** automatic, incentive-based penalties could be imposed on the heads of failed banks, as an alternative to imposing strict liability for poor decisions. This is already common practice in other jurisdictions.
- **Takeover approval:** large acquisitions by FSA-regulated firms should be subjected to supervisory approval, and should be approved only if a

bank’s capital base is ‘exceptionally strong’.

- **Success fees:** boards of FSA regulated firms should take independent advice on large acquisitions from an adviser whose fee is not linked to successfully completing the deal.

This report provides a post-mortem assessment of the FSA’s “light touch” approach to regulation which predominated prior to the crisis, and will add weight to the current Government’s efforts to make regulated firms more accountable to the FSA’s successor regulatory bodies.

Corporate governance

Basel Committee offers guidance on assessing internal audit effectiveness

The Basel Committee released a consultation paper providing [supervisory guidance](#) for assessing the effectiveness of internal audit functions at banks. The consultation outlines high-level principles underpinning expectations of internal audit functions in banks. An effective audit is where the internal audit team can ‘objectively evaluate the quality and effectiveness of banks’ internal controls, risk management systems and governance structures’. Independence, competence, integrity and sufficient experience are all

necessary conditions for effective internal audits.

The Basel Committee recommends that each bank should have an internal audit charter which sets out the ‘purpose, standing and authority’ of the internal audit function. The scope of the internal audit needs to be sufficiently wide to ensure that all activities are captured, including any outsourced activities. The audit charter should also outline the governance structures associated with the internal audit, clearly delineating the role and functions of the various parties involved, such as the board of directors, the audit committee and the head of internal audit.

The Basel Committee also recommends that regulatory supervisors interact regularly with banks’ internal auditors to discuss the risks highlighted by both parties, understand the mitigation measures taken by management to address perceived weaknesses, and monitor the effectiveness of these corrective actions.

The final principles relate to the supervisor’s role in assessing the internal audit function. The Basel Committee proposes that supervisors regularly assess the quality of the internal audit and be prepared to take informal or formal supervisory action to

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remedy any identified deficiencies. The consultation closes on **2 March 2012**.

FSA highlights non-executive director's role in avoiding retail conduct risks

The FSA published a draft guidance consultation GC11/30 'Non Executive Directors Conference: Delivering Fair Treatment for Consumers of Financial Services' on 7 December 2011. The guidance sets out what FSA expects from non-executive directors (NEDs) of regulated firms with respect to retail conduct risk (i.e. the risk that a firm may not treat its retail customers fairly and deliver appropriate outcomes).

The FSA recommends NEDs consider the following seven principles:

- business proposals must be aligned with the firm's strategy and be within its stated retail conduct risk appetite;
- the firm's culture should be such that it delivers good behaviours and outcomes, both prudentially and for customers;
- NEDs should have the right information to enable them to make robust decisions and if they feel they do not, then they should ask for it;
- the firm should have identified the risks that its customers are presented by its business;

- appropriate actions should be in place to mitigate and monitor such risks;
- the Board should support the identification and escalation of issues when problems arise and ensure appropriate resolution; and
- the business should learn from identified issues and draw out the wider implications.

The scenarios are based on real examples, some of which were cited in FSA Retail Conduct Risk Outlook March 2011.

HM Treasury consults on Bank Executives' Remuneration

HM Treasury published a consultation 'Bank Executive Remuneration Disclosure, Consultation on Draft Regulations' on 7 December 2011 containing a draft of the Financial Services Act 2010 (Executives' Remuneration Report) Regulations 2011. These proposals apply to banks with assets in excess of £50 billion.

The purpose of the Regulations is to improve bank bonus transparency, and would require large banks to disclose the remuneration of their eight highest paid senior executive officers. Executives on the main board of a UK bank are excluded from the proposals, because

their remuneration agreements must already be disclosed and no names or titles will be required in the disclosure.

This disclosure is designed as a tool for shareholders to hold senior management more accountable and to improve the balance between short-term performance and long-term risks. HM Treasury states that this initiative is part of its "ongoing commitment to introducing the most comprehensive disclosure regime of any major financial centre".

The consultation considers:

- the rationale behind executive remuneration disclosure, including the international context;
- at the definition of 'relevant banking institutions' to ensure that appropriate firms are within scope;
- how to define those executives in respect of whom disclosures should be made;
- what the content of executive remuneration reports should be; and
- other issues, including the timing of reports, the requirements for publication, board approval, and enforcement.

The initiative builds on agreements reached between the Government and the largest UK banks in February 2011 under Project Merlin, and a voluntary commitment by the four largest UK banks to make detailed remuneration disclosures for their five highest paid non-board executives.

The first disclosures will be required in 2012, covering calendar year 2011. The consultation closes on **14 February 2011**.

Mortgage Market Review

Mortgage market review moves forward

On 16 December 2011 the FSA published CP11/31 'Mortgage Market Review: Package of Reforms', proposals which form part of its comprehensive and ongoing review of the mortgage market. The FSA has significantly amended its original proposals following industry feedback over the last two years.

Fundamentally, FSA wants lenders to assess loan applications without assuming that house prices will rise. Lenders should also stress-test applicants' ability to cope with more difficult market conditions, to consider the effect of interest rates rises on overall product affordability.

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Other key features of the proposed future regime:

- lenders will have to verify income of every mortgage applicant;
- lenders will not have to consider in detail what borrowers spend but must take into account unavoidable bills, such as heating and council tax;
- interest-only mortgages can still be offered as long as borrowers have a credible plan to repay the capital
- some applicants, such as those consolidating other debts with a mortgage, will be required to obtain advice to ensure they understand the full implications and costs of this strategy; and
- existing borrowers will be unaffected; lenders will have the flexibility to provide new mortgages to some existing customers even where they do not meet the new affordability requirements.

The consultation closes on **30 March 2012**. The FSA is expected to make a decision on the final form of rules in summer 2012, with implementation following in 2013.



MiFID

ESMA consults on MiFID suitability requirements for investment advice and portfolio management

ESMA published a consultation 'Guidelines on Certain Aspects of the MiFID Suitability Requirements' on 22 December 2011 setting out draft guidelines for investment firms and national competent authorities on certain suitability requirements under the MiFID. This consultation relates to the current MiFID rules in force (not to

the MiFID II proposals published on 20 October 2011).

ESMA states that recent evidence and supervisory experience suggests firms are not complying consistently with the MiFID suitability requirement across the EEA, citing information gathering, assessment of client information, risk profiling, and record keeping practices as weak areas.

The CP closes for comment on **24 February 2012**. ESMA expect to publish its final guidelines in Q2 2012.

ESMA publishes final guidelines on highly automated trading

ESMA published its final report 'Guidelines on Systems and Controls in an Automated Trading Environment for Trading Platforms, Investment Firms, and Competent Authorities' on 22 December 2011. The guidelines create a comprehensive regime for the operation of electronic trading systems by trading venues and brokers. They will apply to the automated trading of all MiFID financial instruments.

The guidelines address three areas:

- regulated markets and multilateral trading facilities (MTF) that operate electronic trading systems;
- investment firms using electronic trading systems, including trading algorithms, to deal on their own accounts or execute orders for clients;
- investment firms providing direct market access or sponsored access to clients as part of their order execution service.

ESMA published a consultation paper in July 2011, and held an open hearing in

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September 2011. The final guidelines contain few changes from the consultation proposals, although ESMA has clarified some areas including that the guidelines apply to trading any MiFID financial instrument in an automated environment, not just equity instruments.

The guidelines will become effective one month after publication by national regulators on their websites, although ESMA expects market participants to comply **from 1 May 2012**.

ESMA consults on MiFID compliance for investment firms

ESMA published a consultation ‘Guidelines on Certain Aspects of the MiFID Compliance Function Requirements’ on 22 December 2011. This consultation seeks to assist firms and regulators in making investment firms’ compliance functions more prominent. ESMA states that the financial crisis highlighted the need for investment firms to provide better and tighter monitoring and risk management, including managing reputational risk, and to have a more comprehensive and proactive compliance strategy.

Article 13 of MiFID and Article 6 of the MiFID Implementing Directive 2006/76/EC set out the compliance

requirements for investment firms; the guidelines are designed to help firms increase the effectiveness of their responsibilities for these functions. The consultation seeks to “enhance clarity and foster convergence in the implementation of the MiFID organisational requirements relating to certain aspects of the compliance function”. The consultation contains:

- draft guidelines for firms on compliance monitoring, reporting and advising;
- draft guidelines for firms on the organisational requirements of the compliance function: standards of effectiveness, permanence and independence, and the interaction between compliance and other risk functions; and
- proposed approaches for competent authorities reviewing compliance functions.

The consultation closes on **24 February 2012**. ESMA expect to publish its final guidelines in Q2 2012.

ECON holds MiFID II/MiFIR public hearing

ECON held a public hearing on 5 December 2011 to discuss the key objectives of the draft directive and

regulation published on 20 October 2011 designed to replace MiFID.

The hearing was lead by Marcus Ferber, lead Rapporteur for MiFID II, and attended by a panel of industry experts. Ferber also released a questionnaire in November to canvas industry opinion prior to commencement of EU legislative negotiations. Responses to the questionnaire are due by **13 January 2012**.

Controversial topics raised in the hearing included:

- High frequency trading. The discussion focussed on the distinction between market makers which are liquidity providers and mere trend followers and questioned whether the obligation to provide liquidity should apply across the board.
- OTF. Views were mixed on whether separate regulation of OTFs is necessary. Trading captured by OTFs could be accommodated instead under systematic internalisation (SI) or as a subset of the MTFs classification.
- Product intervention. Panelists expressed different views about when it is appropriate for supervisors to

intervene, citing concerns about pre-offering intervention.

- Inducements. Panelists felt a full ban was not beneficial as certain inducement arrangements can lower portfolio management costs.
- Independent advice. Panelists commented that, if the ban of inducements is introduced, under certain circumstances advice should be categorised as “fee based advice” and not “independent advice”.
- Execution-only rules/complex products. Panelists criticised the proposed split of UCITS into complex/non-complex categories, noting that the distinction was not relevant or appropriate to retail trading in some national retail markets.
- OTC trading. Panelists believed that a legally enforceable definition of OTC trading needs to be agreed.
- Position limits on commodity derivatives. The Panel gave a mixed response, with some suggesting that a derogation should exist for commodity firms placing hedge trades. Others noted that it would be unfair to allow only some market participants a derogation for hedging.

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The first ECON debate to discuss the MiFID II draft legislation is scheduled for **13 February 2012**.

Retail Distribution Review *FSA publishes progress report on RDR professionalism requirements*

The FSA published a research report on 6 December 2011 detailing retail investment advisers' progress in achieving the professional requirements under RDR. These requirements will be mandatory when RDR is implemented on 31 December 2012.

The FSA surveyed retail investment advisers and calculated how many advisers plan to leave the profession before RDR implementation. The report estimates that the number of retail investment advisers in summer 2011 was down 7.9% on the previous year. The FSA will use the findings to inform its communications and supervisory strategy for RDR.

The FSA plans to carry out further research in 2012 and 2013 to monitor retail investment advisers' progress towards complying with other RDR requirements and to understand how advisers are adapting after RDR is operational.

Prospectus Directive

ESMA and FSA consult on Prospectus Directive changes

Both ESMA and the FSA (acting jointly with HM Treasury) published consultation papers on the Prospectus Directive Amending Directive 2010/73/EC (Amending Directive) on 13 December 2011.

The ESMA CP 'Technical Advice on Possible Delegated Acts Concerning the Prospectus Directive as amended by Directive 2010/73/EU' sets out technical advice in two areas of the Amending Directive: the consent to use a prospectus in a retail cascade (the sale of securities to retail investors via financial intermediaries, most common to the sale of certain debt securities) and the review of the Prospectus Regulation.

The comment period closes on **6 January 2012**, in time for ESMA to deliver its formal advice to the Commission by 29 February 2012. ESMA will consult further on technical advice for possible delegated acts concerning: the equivalence of third country markets, liability regimes, and convertible bonds.

The FSA released CP 11/28 'UK Implementation of Amending Directive 2010/73/EU' on 13 December 2011. UK

implementation will require amendments to FSMA and the Prospectus Rules in the FSA Handbook (PR).

The FSA proposals include the extension of current employee share scheme exemptions to benefit non-EEA companies with EEA employees, replacing references in FSMA and PRU to "qualified investors" with new client definitions from the Amending Directive and including prospectus requirements relating to a retail cascade. The CP does not cover any areas which are being addressed in ESMA consultation. The comment period closes on **13 March 2012**.

Tax

HM Treasury consults on improvements to the controlled foreign corporation tax regime

The Treasury published the draft Finance Bill 2012 for consultation on 6 December 2011. While the consultation includes a number of significant proposals, the proposed change to the controlled foreign companies (CFC) tax regime is of particular interest to financial services firms.

The proposals on the taxation of foreign profits are expected to be "game changing" and will help the UK to

become a more attractive place for financial services firms to locate their headquarters. In particular the Government has followed a territorial approach, whereby foreign profits are not taxed but profits attributable to UK activities are taxed. The draft legislation is complex and it remains to be seen whether it can really achieve the stated aim of reducing the compliance burden.

The new regime aims to target only those circumstances that result in artificial diversion of UK profits, i.e. only profits generated in connection with UK people function, resulting from non-arm's length transactions which generate a substantial additional tax value. Other situations will either be outside the scope of the regime or exempt. There are currently no insurance-specific or banking-specific exemptions, nor a General Purpose Exemption.

Financial services traders, banks and insurers, are treated under the same principles as non-financial companies, save that trading finance profits can also be brought into account in determining the CFC charge to the extent that they are generated by "excess free capital" or "excess free assets".

For more details see PwC's analysis "Tax reforms will put UK in the map".

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The consultation period closes on **10 February 2012** and then the bill is expected to be published following the March/April 2012 budget.

Consumer protection

Increased prominence for deposit protection measures

Banks and building societies may be required to display information detailing deposit protection arrangements in their branches and on websites, posters, stickers and banners, as part of a series of measures set out by the FSA in CP11/29 'Deposit Protection: Raising Consumer Awareness'.

The FSA is seeking to improve depositors' understanding of the availability and limits of the depositor protection scheme — which was raised to £85,000 per individual account in 2011 — and various other protections afforded under UK law.

Consumer awareness of deposit protection supports not just investor protection, but market confidence and financial stability. The financial crisis exposed that most consumers were unaware of the FSCS. A widespread lack of consumer awareness of compensation schemes increases the risk of a "run" on a deposit taker, as seen during the Northern Rock's collapse in 2007.

Financial crime

FSA publishes financial crime guide

The FSA published PS11/15 'Financial Crime: A Guide for Firms', on 9 December 2011, setting out its final policy position, new guidance and examples of best practice.

Following feedback on the initial consultation CP11/12, The FSA clarified that the guide is not binding and should not be used as a tick-box exercise by firms (or supervisors) to measure a firm's compliance. The guide complements the existing JMLSG guidance on preventing money laundering and combating terrorist funding. The financial crime guide took immediate effect on **9 December 2011**.

BBA publish Bribery Act 2010 guidance

The BBA published 'The Bribery Act 2012: Guide on compliance – practical implementation issues for the banking sector' on 20 December 2011. The guide sets out the key issues for the UK banking sector to consider in implementing the Bribery Act 2010 (the Bribery Act) and presents new guidance material prepared by the BBA.

The guide provides an overview of the Bribery Act, a comparison of bribery and anti-corruption obligations, the Six

Principles for bribery prevention published by the MoJ, and the BBA's new guidance on MoJ Principles 2-6.

This guide is designed to supplement firms understanding of the Bribery Act and guidance issued in 2011 by the MOJ. The BBA publication was developed in consultation with the BBA Financial Crime Working Party and various Government agencies, including the MoJ.

The BBA plans to undertake further work in 2012 on wider bribery and corruption risks, including issues relating to corrupt PEPs.

Dodd-Frank

The regulatory agenda under the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 (Dodd-Frank Act) made advances in December:

- The SEC also extended the comment period for a proposed rule prohibiting certain conflicts of interest for firms creating and distributing asset-backed securities from 19 December 2011 to **13 January 2012**.
- The CFTC was busy in December, publishing final rules on reporting and record-keeping requirements for swaps, including requirements for electronic reporting to a registered swap data repository. The CFTC also extended implementation of certain provisions of the Commodity Exchange Act (CEA) driven by the Dodd-Frank Act from 31 December 2011 to **16 July 2012**.
- Finally, the FRB issued a proposal to implement enhanced prudential standards for large bank holding companies (BHCs) with assets over \$50bn and non-bank finance companies (NBFCs) that are supervised by the FRB. The treatment of foreign systemically important financial institutions (SIFIs) and Savings and Loan Holding Companies (SLHCs) is not dealt with in this proposal and will instead be dealt with in separate rules issued at a later date. The
- The SEC extended the deadline for comment on the controversial "Volcker rule" from 13 January to **13 February 2012**, following the request by 121 Members of Congress for an extension due to the complexity and the length of the proposal. Dan Ryan, Chairman of PwC's US Financial Services Advisory practice, commented recently on Volker rule compliance issues in a four-part CNBC interview.

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consultation ends on **31 March, 2012**.

Other regulatory

ESMA publishes final CRA technical standards

ESMA published four sets of regulatory technical standards (RTS) on 22 December 2011 relating to the Regulation on Credit Rating Agencies, Regulation (1060/2009).

- The first two RTS relate to the form, content and presentation of data/information which has to be reported and disclosed to relevant supervisory authorities by credit rating agencies (CRAs) and information for registration and certification of CRAs (see ESMA/2011/464 and ESMA/2011/462).
- The third is concerned with the information for registration and certification of CRAs (ESMA/2011/463).
- The last RTS relates to assessment of compliance of CRAs methodologies with the Regulation (ESMA/2011/461).

ESMA has not strayed from its remit of delivering 'technical' regulatory standards in each of the different areas,

but it sweetens the pill by producing clear and concise assessments of the costs and benefits of the choices it has made.

ESMA has submitted the RTS to the EC and, assuming no concerns arise, the EC will then endorse the RTS and they will become delegated acts.

Covered bond regime changes finalised

HM Treasury and the FSA published The Regulated Covered Bonds (Amendment) Regulations 2011 (Regulations) amending the existing regulated covered bond (RCB) regime in the UK and a related Policy Statement (PS11/16), following a joint consultation last April. The amendments bring the UK regime more in line with regimes in other Member States.

Issuers will be required to declare whether a RCB is backed by a range of assets classes or by a single asset class. The Regulations require minimum over-collateralisation of 8% and that the interest payments of the assets backing the RCB must always be at least equal to the interest payable. The FSA may require further over-collateralisation of RCB based on stress testing results.

RCB issuers will also be required to formally appoint an asset pool monitor, who report to the FSA on the issuer's

compliance with the Regulations and FSA rules. The changes will be effective from **1 January 2013**.

The FSA also published updated forms for RCB issuers on the FSA website and has issued a guidance consultation (GC11/31) 'Thematic Overview: Regulated Covered Bond Regime' on 16 December 2011. This reviews the production and content of management information produced by RCB issuers, the appropriateness of their systems and controls and the interaction of the asset pool monitor's report with the firms' annual compliance confirmation requirements. The guidance consultation closes on **27 January 2012**.

FSCS projects compensation costs for 2011/12

The FSCS published its half year review in the Outlook newsletter on 15 December 2011.

The FSCS's latest projection of compensation costs for 2011/12 does not make happy reading for firms in the investment intermediation and home finance intermediation sectors. The FSCS estimates that it may have to raise an interim levy on the investment intermediation sector due to higher than expected compensation costs with

Keydata, Wills and Co and other stock broking firm failures.

The FSCS charged a previous interim levy of £326 million at the beginning of 2011, and currently estimates the additional shortfall to be about £40 million. A final decision on whether to impose an interim levy has not yet been reached. The home finance intermediation sector is facing increased claims relating to mortgage advice. The final liabilities for fund managers and investment intermediaries for the 2010/11 levies are still not known because a number of issues still remain outstanding.

The only good news is for those in the general insurance sector where there may be a surplus due to lower than expected compensation costs.

The FSA announced that the FSCS funding will be reviewed in the first half of 2012. For many industry participants this cannot come soon enough.

FSA publishes quarterly consultation paper

The FSA published CP11/27 'Quarterly Consultation No. 31' on 6 December 2011. The CP proposes miscellaneous amendments to the FSA Handbook. These amendments include:

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- clarifying the liquidity rules in BIPRU;
- implementing the Department for Work and Pensions' rules that abolish the option to contract out of the state second pension;
- changing the form and scope of director's certificates and reports by auditors for employer's liability registers (ELR) and to the content of ELRs in some areas;
- changing the information disclosure requirements in ICOBS as a result of the implementation of Solvency II in the UK;
- changing guidance in MAR;
- clarifying reporting requirements to facilitate better data quality in the Supervision manual;
- allowing all non-UCITS retail schemes to be set up as feeder funds into certain master funds; and
- changing the qualification standards that advisers have to meet under RDR.

Comments on the CP must be received by **6 February 2012**.

FSA fines increase

The FSA issued a number of large fines during December.

The FSA levied its largest ever retail-related fine of £10.5 million on HSBC, due to inappropriate advice and sales practices by one of its subsidiaries, NHFA Limited (NHFA), on products sold to elderly customers. HSBC estimates it will also have to compensate NHFA customers with a further £39.3 million.

The FSA fined Integrated Financial Arrangements plc, which runs Transact, one of the largest wrap platforms in the UK, £3.5 million for client money breaches occurring between 1 December 2001 and 30 June 2010. The FSA believes that client money would have been at risk during this period if the firm had become insolvent.

The FSA has also fined Combined Insurance Company of America (CICA) £2.8 million "for failing to embed fully a culture that ensured its customers were treated fairly". The FSA found that CICA breached FSA Principle 3 (management and control) and Principle 6 (customers' interests) by failing to manage effectively its sales processes, claims handling and complaints handling to ensure the fair treatment of its customers.

In each case the firms received a 30% reduction by agreeing an early settlement. The size of these fines

demonstrates FSA's commitment to imposing large fines as a hallmark of its "credible deterrence" enforcement strategy.



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Accounting¹

The future of UK GAAP

Firms reporting under UK GAAP will be impacted by the UK Accounting Standards Board (ASB) project on the Future of UK GAAP.

Under the ASB's current proposals, existing UK GAAP will be rescinded and current UK GAAP reporters will have the option of reporting under either a new Financial Reporting Standard for Medium-sized Entities (FRSME) or IFRS. A reduced disclosure framework is proposed for subsidiaries. Firms currently applying the Financial Reporting Standard for Small Entities (FRSSE) will be able to continue to do so.

The implementation date for these changes is likely to be **1 January 2015**. However, comparatives will be required for 2014. See [link](#) for details of monthly developments.

¹ This section includes accounting developments with a direct or potential impact on the financial services industry only. For a complete update on accounting developments in the UK visit http://www.pwc.co.uk/eng/services/ifrs_service.s.html

At their meeting on 15 December 2011, the ASB approved for issue, subject to drafting amendments, the Financial Reporting Exposure Drafts which contains these proposals which will be published for formal consultation.

Accounting publications

Year-end accounting reminders - December 2011

This PwC publication relates to IFRS reporting requirements prepared as at 31 December 2011. It highlights the topical issues to consider; the new standards and interpretations that apply at this date; and the new IFRS standards and IFRICs that are published but effective at late dates, and hence have to be disclosed by IFRS reporters.

Year-end accounting reminders – UK GAAP - December 2011

This PwC publication relates to UK GAAP reporting requirements as at 31 December 2011. It highlights some accounting hot topics that may impact December 2011 year ends, as well as new UK GAAP standards applicable to 31 December 2011 year-ends.

IFRS News

Our December 2011/January 2012 edition of IFRS news includes articles on:

- new revenue exposure draft - An overview of the IASB and FASB's re-exposed proposals on revenue from contracts with customers, plus where to find industry-specific guidance;
- amendments to the application guidance in IAS 32 to clarify some of the requirements for offsetting financial assets and financial liabilities in the statement of financial position;
- this month's Board activity – A leasing update, IFRS 9 new effective date and IFRS 10 transition proposals.

Revenue recognition

PwC's webcast on the re-exposed proposals for revenue recognition covers:

- objective,
- revenue recognition model, and
- re-exposure and request for comment.

[Click here](#) to view the webcast.

The 'Straight away' series

The PwC 'Straight away' series provides updates on the latest accounting developments and answers key questions on the impacts. Guidance in December includes:

Straight away 75 'Belarus enters hyperinflation'

This 'Straight away' explains why Belarus is now hyperinflationary and the consequences for financial reporting.

Straight away 76 'IASB/FASB leasing redeliberations - December 2011'

This looks at the recent tentative decisions taken by the IASB/FASB on:

- cancellable leases and
- rental income recognition for investment properties

Straight away 77, 'IASB delays IFRS 9 effective date'

The IASB published an amendment to IFRS 9, 'Financial instruments'. This amendment delays the effective date to annual periods beginning on or after 1 January 2015 (previously 1 January 2013). The amendment also modifies the relief from restating prior periods. As part of this relief, the Board published an amendment to IFRS 7, 'Financial instruments: Disclosures', to require additional disclosures on transition from IAS 39 to IFRS 9.

Straight away 78 'IASB clarifies offsetting requirements and requires new converged disclosures'

The IASB issued amendments to the application guidance in IAS 32, 'Financial instruments: Presentation',

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that clarify some of the requirements for offsetting financial assets and financial liabilities on the balance sheet.

However, the clarified offsetting requirements for amounts presented in the statement of financial position continue to be different from US GAAP. As a result, the IASB has also published an [amendment to IFRS 7, 'Financial instruments: Disclosures'](#), reflecting the joint requirements with the FASB to enhance current offsetting disclosures. These new disclosures are intended to facilitate comparison between entities that prepare IFRS financial statements and those that prepare financial statements in accordance with US GAAP.

[Straight away 79 'IASB proposes amendments to transition guidance in IFRS 10'](#)

The IASB proposed changes to the transition requirements in IFRS 10, 'Consolidated financial statements', in the exposure draft (ED) ['Transition guidance – Proposed amendments to IFRS 10'](#). The ED provides further guidance on a new term, 'date of initial application'. The date of initial application is the first day of the annual period in which IFRS 10 is adopted. Entities adopting IFRS 10 assess control at the date of initial application and

adjust the comparative figures accordingly. The ED also provides transition guidance for investees that were disposed of during the comparative period.

This change is expected to apply for annual periods beginning after 1 January 2013, consistent with IFRS 10. The comment period ends **21 March 2012**.

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Asset Management

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Regulation

Capital and liquidity

EC extends state-aid rules

Due to increased tensions brought on by the sovereign debt crisis, the European Commission updated and extended its state-aid rules and accompanying support framework for banks in December.

The crisis regime was first adopted in 2008-2009 in the wake of the financial crisis which commenced with the collapse of Lehman Brothers. The Commission's Banking Communication, Recapitalisation Communication, Restructuring Communication and Impaired Assets Communication rules will now remain in place during 2012. Full text of all state aid communications is found on the Europa state aid webpage.

The Commission anticipates that future capital injections by Member States are more likely to take the form of shares bearing a variable remuneration, and has provided some clarification on the pricing rules for capital injections for authorities.

ESRB updates on its recent activities

At its December 2011 meeting, the ESRB provided an update on its views of the

current EU financial situation and its recent activities. The ESRB reaffirmed the need for banks to strictly adhere to the EBA's recapitalisation criteria agreed last year to restore confidence to the fragile European financial system. The ESRB is continuing work on developing the basis for pan-European macro-prudential policy to deal with systemic risks, and is examining relevant EU legislative initiatives with a view to providing its macro-prudential perspectives on the establishment of the new regulatory framework.

The ESRB also identified a number of risks to financial stability stemming from volatility in US dollar funding markets and called on banks to manage their funding strategies carefully in 2012.

EBA consults on CRD III technical amendments in CP48, CP49

The EBA released two consultations on 30 November 2011: CP48 relating to Stressed Value at Risk (VaR) and CP49 relating to an Incremental Default and Migration Risk Capital Charge (IRC) in the trading book, respectively, in response to amendments made to CRD III (2010/76/EC) which came into force on 1 January 2012.

Both consultations relate to various mathematical modelling approaches

used by banks to measure and estimate the impact on capital of future losses in the trading book — with the view to assisting banks and regulators in assessing and managing risk. The new guidelines would apply to institutions using the Internal Model Approach for purposes of calculating their capital requirements for market risk in the trading book.

The first consultation attempts to rectify the failings of the 'normal' VaR model which was found to inadequately measure tail risk, a form of portfolio risk. The second consultation provides guidance on modelling approaches for the incremental risk capital charge (IRC) to determine the level of capital required for that component of market risk in the trading book.

The EBA's guidelines should not be viewed as a comprehensive set of rules but rather an additional guidance on the use of these modelling approaches. Both consultations close on **15 January 2012**.

EBA consults on CRD IV reporting standards in CP50

The EBA published consultation CP 50 'Draft Implementing Technical Standards Supervisory Reporting Requirements for Institutions' relating to the recast CRD and the Capital

Requirements Regulation (CRR) proposals released on 20 July 2011.

The draft standards would impose more harmonised reporting requirements (which vary according to the size and complexity of activities undertaken) on credit institutions. The consultation closes on **20 March 2012**.

FSA proposes standardised regulatory prudent valuation returns

To address inconsistencies in firms' accounting approaches to the fair value of assets, the FSA is proposing to introduce the regulatory prudent valuation (RPV) return in CP11/30 'Proposed Regulatory Prudent Valuation Return'.

The FSA also believes that firms' annual reports do not provide sufficient information about the degree of uncertainty associated with valuing some assets, particularly derivatives, or about the differences between firms' prudent valuations for trading book purposes and their fair valuations for accounting purposes.

The FSA has required UK banks and BIPRU 730k firms to produce quarterly reports detailing the differences between their prudent valuations for trading book purposes and the fair valuations used for accounting purposes in

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preparing firms' financial statements. Initially, the FSA permitted firms to use their own formats for these reports, but found that made comparisons between firms difficult. Therefore, the FSA is consulting on implementing a standardised RPV return.

Firms will have to show the net and gross balance sheets for a defined list of asset classes, together with the potential downside and upside that could exist through the inherent uncertainty in the valuation process. The consultation closes on **14 February 2012**.

Basel Committee consults on own credit risk adjustments to derivatives

The Basel Committee released its consultation 'Application of own credit risk adjustments to derivatives'. In calculating Common Equity Tier 1, Basel III requires banks to disregard any 'unrealised gains and losses in the fair value of liabilities that are due to changes in the bank's own credit risk.' The Basel Committee proposes that debit valuation adjustments (DVAs) should be fully deducted in the calculation of Common Equity Tier 1. The consultation closes on **17 February 2012**.

Market structure

EC releases two SME finance initiatives

The published two proposals in December designed to provide greater access to capital for Europe's 23 million small and medium sized enterprises and companies (SMEs).

The EC is proposing a regulation to create a venture capital (VC) passport regime designed to accelerate both the growth and cross-border operation of VC funds. A fund category called European Venture Capital Fund (EVCF) would be created for VC funds of less than €500 million. Funds above this threshold would be required to comply with the Alternative Investment Fund Managers Directive (AIFMD).

Funds designated EVCF would have to comply with uniform portfolio composition and management requirements, as well as registration and simplified reporting requirements. The proposal would create a single rule book for marketing VC funds across the EU and facilitate wider allocation of VC capital across the EU.

The EC's second proposal sets out a new European Social Entrepreneurship Fund (ESEF) classification, to identify funds which invest in European social businesses and allow them to be

marketed under this label across Europe. This proposal falls under both SME and the EC's Social Business Initiative, as access to capital is a significant challenge for social businesses.

The proposals released in December must be passed by the EU Parliament and Council and are subject to standard legislative implementation schedules, so relief under the proposals remains several years away:

- measures to create special SME markets (MiFID II) and to increase transparency in trading of SME shares (Transparency Directive revisions);
- measures to reduce the costs and administrative burdens for SMEs by simplifying and reducing reporting requirements (Transparency and Prospectus Directives revisions); and
- accelerating the implementation of the Late Payments Directive in advance of the transposition deadline of March 2013, to reduce the costly burden of late payments which amount to some 1.1 trillion euros of delayed turnover for SMEs.

For further details of SME finance initiatives, see the Europa webpage Helping SMEs access more finance.

Supervisory reforms

Basel Committee consults on financial conglomerates supervision

The Basel Committee published a consultation 'Principles for the Supervision of Financial Conglomerates' on 19 December 2011 to update its supervisory principles (Principles) for financial conglomerates. The Principles, created in 1999, provide national supervisors with a set of internationally agreed standards that support 'consistent and effective supervision' of financial conglomerates and are particularly targeted at firms with significant cross-border operations.

The consultation expands and supplements the 1999 Principles in areas such as supervisory powers and authority, supervisory responsibility, corporate governance and risk management. The consultation closes on **16 March 2012**.

This work complements the Financial Conglomerates Directive (2011/89/EU) (FCD) adopted in November 2011, which amended earlier EU Directives addressing the regulation of complex and cross-border banking and investment firm groups. The FCD seeks to close many of the loopholes in the previous EU regime and facilitate appropriate supplementary supervision

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of financial entities in a financial conglomerate. It is expected to be transposed into national law by mid-2013. The amendments were agreed by the European Parliament and Council in June 2011 with little change from the EC's original text.

Joint Select Committee publishes report on Financial Services Bill

The UK Parliament's Joint Select Committee (Joint Select Committee) published its report on the draft Financial Services Bill (the Bill) on 19 December 2011. The Bill is the primary legislation which reforms the UK's regulatory structure following the financial crisis.

The report recommends that Government significantly amend the draft Bill to: clarify the objectives of the three new regulatory bodies, move forward the ICB's recommendation (to ring-fence retail business) during the 2012-13 parliamentary session, and make the Bank of England more accountable.

The Joint Select Committee's key recommendations include proposals that:

- the PRA should regulate market infrastructure (initially proposed to be within the FCA's role);

- the FCA should have greater powers to achieve its objective of promoting competitiveness;
- the Bank of England Court of Directors should be replaced by a supervisory board which includes expert members with prudential policy experience;
- the PRA should supervise more investment firms that engage in the re-hypothecation of client money and assets;
- the Bill should include measures on remuneration of executives and non-executives and introduce a concept of liability for executives and board members; and
- the Financial Policy Committee (FPC) should have equal status with the Monetary Policy Committee (MPC). FCP membership should be broader, containing a range of experts.

A summary of the report's recommendations is set out in chapter 6. The Bill was published in June 2011 and will be presented during the 2012-13 parliamentary session.

Government publishes ICB response

Concurrent to the Joint Select Committee Report release, George

Osborne announced 'The Government's Response to the Independent Commission on Banking' on 19

December, giving the Government's views on the ICB recommendations. The ICB recommendations propose safeguards to the banking system to avoid taxpayers bearing the costs of future bank failures.

The Government confirmed that it will implement the ICB's proposals in full via both primary and secondary legislation. The Government plans to adopt legislation to ring fence retail banking activities within this Parliamentary session and will seek to implement changes regarding the loss absorbency of capital by 2019, in line with Basel III.

The Government will publish a White Paper in Q2 2012 containing further details of how the proposals will be implemented. The public comment period closes on **12 March 2012**.

FSA publishes report on Royal Bank of Scotland report published

The FSA published its long-awaited report on the causes of the 2008 near-collapse of the Royal Bank of Scotland (RBS) which required a £45.5 billion Government bailout. The report cites deficiencies in RBS's management and the UK regulatory framework as causes, including weaknesses in the regulator's

supervisory practices and management of globally significant firms.

The report also explains why the FSA's Enforcement and Financial Crime Division concluded that there were insufficient grounds to bring enforcement actions against RBS and its management. Poor decisions, rather than criminal acts, were responsible for RBS's near-collapse.

The report offers proposals on how to prevent a similar crisis, including:

- **Strict liability:** senior personnel of failed banks could be held 'strictly liable' for the consequences of their bad decisions. However Lord Turner, the FSA chairman, acknowledges in the report that a 'strict liability' standard 'may prove impossible' to implement due to legal complexities.
- **Pay clawbacks:** automatic, incentive-based penalties could be imposed on the heads of failed banks, as an alternative to imposing strict liability for poor decisions. This is already common practice in other jurisdictions.
- **Takeover approval:** large acquisitions by FSA-regulated firms should be subjected to supervisory approval, and should be approved only if a

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bank's capital base is 'exceptionally strong'.

- Success fees: boards of FSA regulated firms should take independent advice on large acquisitions from an adviser whose fee is not linked to successfully completing the deal.

This report provides a post-mortem assessment of the FSA's "light touch" approach to regulation which predominated prior to the crisis, and will add weight to the current Government's efforts to make regulated firms more accountable to the FSA's successor regulatory bodies.

Corporate governance

FSA highlights non-executive director's role in avoiding retail conduct risks

The FSA published a draft guidance consultation GC11/30 'Non Executive Directors Conference: Delivering Fair Treatment for Consumers of Financial Services' on 7 December 2011. The guidance sets out what FSA expects from non-executive directors (NEDs) of regulated firms with respect to retail conduct risk (i.e. the risk that a firm may not treat its retail customers fairly and deliver appropriate outcomes).

The FSA recommends NEDs consider the following seven principles:

- business proposals must be aligned with the firm's strategy and be within its stated retail conduct risk appetite;
- the firm's culture should be such that it delivers good behaviours and outcomes, both prudentially and for customers;
- NEDs should have the right information to enable them to make robust decisions and if they feel they do not, then they should ask for it;
- the firm should have identified the risks that its customers are presented by its business;
- appropriate actions should be in place to mitigate and monitor such risks;
- the Board should support the identification and escalation of issues when problems arise and ensure appropriate resolution; and
- the business should learn from identified issues and draw out the wider implications.

The scenarios are based on real examples, some of which were cited in FSA Retail Conduct Risk Outlook March 2011.

MiFID

ESMA consults on MiFID suitability requirements for investment advice and portfolio management

ESMA published a consultation 'Guidelines on Certain Aspects of the MiFID Suitability Requirements' on 22 December 2011 setting out draft guidelines for investment firms and national competent authorities on certain suitability requirements under the MiFID. This consultation relates to the current MiFID rules in force (not to the MiFID II proposals published on 20 October 2011).

ESMA states that recent evidence and supervisory experience suggests firms are not complying consistently with the MiFID suitability requirement across the EEA, citing information gathering, assessment of client information, risk profiling, and record keeping practices as weak areas.

The CP closes for comment **on 24 February 2012**. ESMA expect to publish its final guidelines in Q2 2012.

ESMA publishes final guidelines on highly automated trading

ESMA published its final report 'Guidelines on Systems and Controls in an Automated Trading Environment for Trading Platforms, Investment Firms,

and Competent Authorities' on 22 December 2011. The guidelines create a comprehensive regime for the operation of electronic trading systems by trading venues and brokers. They will apply to the automated trading of all MiFID financial instruments.

The guidelines address three areas:

- regulated markets and multilateral trading facilities (MTF) that operate electronic trading systems;
- investment firms using electronic trading systems, including trading algorithms, to deal on their own accounts or execute orders for clients; and
- investment firms providing direct market access or sponsored access to clients as part of their order execution service.

ESMA published a consultation paper in July 2011, and held an open hearing in September 2011. The final guidelines contain few changes from the consultation proposals, although ESMA has clarified some areas including that the guidelines apply to trading any MiFID financial instrument in an automated environment, not just equity instruments.

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The guidelines will become effective one month after publication by national regulators on their websites, although ESMA expects market participants to comply **from 1 May 2012**.

ESMA consults on MiFID compliance for investment firms

ESMA published a consultation 'Guidelines on Certain Aspects of the MiFID Compliance Function Requirements' on 22 December 2011. This consultation seeks to assist firms and regulators in making investment firms' compliance functions more prominent. ESMA states that the financial crisis highlighted the need for investment firms to provide better and tighter monitoring and risk management, including managing reputational risk, and to have a more comprehensive and proactive compliance strategy.

Article 13 of MiFID and Article 6 of the MiFID Implementing Directive 2006/76/EC set out the compliance requirements for investment firms; the guidelines are designed to help firms increase the effectiveness of their responsibilities for these functions. The consultation seeks to "enhance clarity and foster convergence in the implementation of the MiFID organisational requirements relating to

certain aspects of the compliance function". The consultation contains:

- draft guidelines for firms on compliance monitoring, reporting and advising;
- draft guidelines for firms on the organisational requirements of the compliance function: standards of effectiveness, permanence and independence, and the interaction between compliance and other risk functions;
- proposed approaches for competent authorities reviewing compliance functions.

The consultation closes on **24 February 2012**. ESMA expect to publish its final guidelines in Q2 2012.

ECON holds MiFID II/MiFIR public hearing

ECON held a public hearing on 5 December 2011 to discuss the key objectives of the draft directive and regulation published on 20 October 2011 designed to replace MiFID.

The hearing was lead by Marcus Ferber, lead Rapporteur for MiFID II, and attended by a panel of industry experts. Ferber also released a questionnaire in November to canvas industry opinion prior to commencement of EU

legislative negotiations. Responses to the questionnaire are due by **13 January 2012**.

Controversial topics raised in the hearing included:

- High frequency trading. The discussion focussed on the distinction between market makers which are liquidity providers and mere trend followers and questioned whether the obligation to provide liquidity should apply across the board.
- OTF. Views were mixed on whether separate regulation of OTFs is necessary. Trading captured by OTFs could be accommodated instead under systematic internalisation (SI) or as a subset of the MTFs classification.
- Product intervention. Panelists expressed different views about when it is appropriate for supervisors to intervene, citing concerns about pre-offering intervention.
- Inducements. Panelists felt a full ban was not beneficial as certain inducement arrangements can lower portfolio management costs.
- Independent advice. Panelists commented that, if the ban of

inducements is introduced, under certain circumstances advice should be categorised as "fee based advice" and not "independent advice".

- Execution-only rules/complex products. Panelists criticised the proposed split of UCITS into complex/non-complex categories, noting that the distinction was not relevant or appropriate to retail trading in some national retail markets.
- OTC trading. Panelists believed that a legally enforceable definition of OTC trading needs to be agreed.
- Position limits on commodity derivatives. The Panel gave a mixed response, with some suggesting that a derogation should exist for commodity firms placing hedge trades. Others noted that it would be unfair to allow only some market participants a derogation for hedging.

The first ECON debate to discuss the MiFID II draft legislation is scheduled for **13 February 2012**.

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Retail Distribution Review

FSA publishes progress report on RDR professionalism requirements

The FSA published a research report on 6 December 2011 detailing retail investment advisers' progress in achieving the professional requirements under RDR. These requirements will be mandatory when RDR is implemented on 31 December 2012.

The FSA surveyed retail investment advisers and calculated how many advisers plan to leave the profession before RDR implementation. The report estimates that the number of retail investment advisers in summer 2011 was down 7.9% on the previous year. The FSA will use the findings to inform its communications and supervisory strategy for RDR.

The FSA plans to carry out further research in 2012 and 2013 to monitor retail investment advisers' progress towards complying with other RDR requirements and to understand how advisers are adapting after RDR is operational.

Prospectus Directive

ESMA and FSA consult on Prospectus Directive changes

Both ESMA and the FSA (acting jointly with HM Treasury) published

consultation papers on the Prospectus Directive Amending Directive 2010/73/EC (Amending Directive) on 13 December 2011.

The ESMA CP 'Technical Advice on Possible Delegated Acts Concerning the Prospectus Directive as amended by Directive 2010/73/EU' sets out technical advice in two areas of the Amending Directive: the consent to use a prospectus in a retail cascade (the sale of securities to retail investors via financial intermediaries, most common to the sale of certain debt securities) and the review of the Prospectus Regulation.

The comment period closes on **6 January 2012**, in time for ESMA to deliver its formal advice to the Commission by 29 February 2012. ESMA will consult further on technical advice for possible delegated acts concerning: the equivalence of third country markets, liability regimes, and convertible bonds.

The FSA released CP 11/28 'UK Implementation of Amending Directive 2010/73/EU' on 13 December 2011. UK implementation will require amendments to FSMA and the Prospectus Rules in the FSA Handbook (PR).

The FSA proposals include the extension of current employee share scheme exemptions to benefit non-EEA companies with EEA employees, replacing references in FSMA and PRU to "qualified investors" with new client definitions from the Amending Directive and including prospectus requirements relating to a retail cascade. The CP does not cover any areas which are being addressed in ESMA consultation. The comment period closes on **13 March 2012**.

Tax

HM Treasury consults on improvements to the controlled foreign corporation tax regime

The Treasury published the draft Finance Bill 2012 for consultation on 6 December 2011. While the consultation includes a number of significant proposals, the proposed change to the controlled foreign companies (CFC) tax regime is of particular interest to financial services firms.

The proposals on the taxation of foreign profits are expected to be "game changing" and will help the UK to become a more attractive place for financial services firms to locate their headquarters. In particular the Government has followed a territorial approach, whereby foreign profits are

not taxed but profits attributable to UK activities are taxed. The draft legislation is complex and it remains to be seen whether it can really achieve the stated aim of reducing the compliance burden.

The new regime aims to target only those circumstances that result in artificial diversion of UK profits, i.e. only profits generated in connection with UK people function, resulting from non-arm's length transactions which generate a substantial additional tax value. Other situations will either be outside the scope of the regime or exempt. There are currently no insurance-specific or banking-specific exemptions, nor a General Purpose Exemption.

Financial services traders, banks and insurers, are treated under the same principles as non-financial companies, save that trading finance profits can also be brought into account in determining the CFC charge to the extent that they are generated by "excess free capital" or "excess free assets".

For more details see PwC's analysis "Tax reforms will put UK in the map".

The consultation period closes on **10 February 2012** and then the bill is expected to be published following the March/April 2012 budget.

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Financial crime

FSA publishes financial crime guide

The FSA published PS11/15 'Financial Crime: A Guide for Firms', on 9 December 2011, setting out its final policy position, new guidance and examples of best practice.

Following feedback on the initial consultation CP11/12, The FSA clarified that the guide is not binding and should not be used as a tick-box exercise by firms (or supervisors) to measure a firm's compliance. The guide complements the existing JMLSG guidance on preventing money laundering and combating terrorist funding. The financial crime guide took immediate effect on **9 December 2011**.

Dodd-Frank

The regulatory agenda under the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 (Dodd-Frank Act) made advances in December:

- The SEC extended the deadline for comment on the controversial "Volcker rule" from 13 January to **13 February 2012**, following the request by 121 Members of Congress for an extension due to the complexity and the length of the proposal. Dan Ryan, Chairman of

PwC's US Financial Services Advisory practice, commented recently on Volker rule compliance issues in a four-part CNBC interview.

- The SEC also extended the comment period for a proposed rule prohibiting certain conflicts of interest for firms creating and distributing asset-backed securities from 19 December 2011 to **13 January 2012**.
- The CFTC was busy in December, publishing final rules on reporting and record-keeping requirements for swaps, including requirements for electronic reporting to a registered swap data repository. The CFTC also extended implementation of certain provisions of the Commodity Exchange Act (CEA) driven by the Dodd-Frank Act from 31 December 2011 to **16 July 2012**.
- Finally, the FRB issued a proposal to implement enhanced prudential standards for large bank holding companies (BHCs) with assets over \$50bn and non-bank finance companies (NBFCs) that are supervised by the FRB. The treatment of foreign systemically important financial institutions (SIFIs) and Savings and Loan Holding Companies (SLHCs) is not

dealt with in this proposal and will instead be dealt with in separate rules issued at a later date. The consultation ends on **31 March, 2012**.

Other regulatory

ESMA publishes final CRA technical standards

ESMA published four sets of regulatory technical standards (RTS) on 22 December 2011 relating to the Regulation on Credit Rating Agencies, Regulation (1060/2009).

- The first two RTS relate to the form, content and presentation of data/information which has to be reported and disclosed to relevant supervisory authorities by credit rating agencies (CRAs) and information for registration and certification of CRAs (see ESMA/2011/464 and ESMA/2011/462).
- The third is concerned with the information for registration and certification of CRAs (ESMA/2011/463).
- The last RTS relates to assessment of compliance of CRAs methodologies with the Regulation (ESMA/2011/461).

ESMA has not strayed from its remit of delivering 'technical' regulatory standards in each of the different areas, but it sweetens the pill by producing clear and concise assessments of the costs and benefits of the choices it has made.

ESMA has submitted the RTS to the EC and, assuming no concerns arise, the EC will then endorse the RTS and they will become delegated acts.

Covered bond regime changes finalised

HM Treasury and the FSA published The Regulated Covered Bonds (Amendment) Regulations 2011 (Regulations) amending the existing regulated covered bond (RCB) regime in the UK and a related Policy Statement (PS11/16), following a joint consultation last April. The amendments bring the UK regime more in line with regimes in other Member States.

Issuers will be required to declare whether a RCB is backed by a range of assets classes or by a single asset class. The Regulations require minimum over-collateralisation of 8% and that the interest payments of the assets backing the RCB must always be at least equal to the interest payable. The FSA may require further over-collateralisation of RCB based on stress testing results.

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RCB issuers will also be required to formally appoint an asset pool monitor, who report to the FSA on the issuer's compliance with the Regulations and FSA rules. The changes will be effective from **1 January 2013**.

The FSA also published updated [forms](#) for RCB issuers on the FSA website and has issued a guidance consultation (GC11/31) '[Thematic Overview: Regulated Covered Bond Regime](#)' on 16 December 2011. This reviews the production and content of management information produced by RCB issuers, the appropriateness of their systems and controls and the interaction of the asset pool monitor's report with the firms' annual compliance confirmation requirements. The guidance consultation closes on **27 January 2012**.

Fund factsheets are changing

The FSA published a guidance consultation [GC11/29](#) 'Proposed update to distributor-influenced fund factsheets' on 5 December 2011 to revise its current guidance. Distributor-influenced funds are those created or adapted by a product provider for clients of a particular distributor. This guidance will be relevant to product providers, distributors and platforms involved with these types of funds.

The proposed changes reflect the FSA's view of how such funds should be distributed after the implementation of RDR. The updated factsheets make clear that the FSA believes that distributors should not receive a fee derived from the annual management charge for their involvement in a fund governance committee. The FSA also states that it will be difficult for a distributor to recommend a distributor-influenced fund and remain independent under RDR.

The FSA requests comments by **30 January 2012**.

UK launches protected cell regime for open-ended investment companies

The [Open-Ended Investment Companies \(Amendment\) Regulations 2011](#) were published in December, implementing the protected cell regime in the UK for open-ended investment companies with sub-funds (umbrella OEICs).

The amended Regulations are effective from 21 December 2011. The FSA Board also passed amendments the Collective Investment Schemes Sourcebook on 21 December 2011. Firms have until 21 December 2013 to implement changes to their umbrella OEICs to convert them to protected cells.

FSCS projects compensation costs for 2011/12

The FSCS published its half year review in the [Outlook](#) newsletter on 15 December 2011.

The FSCS's latest projection of compensation costs for 2011/12 does not make happy reading for firms in the investment intermediation and home finance intermediation sectors. The FSCS estimates that it may have to raise an interim levy on the investment intermediation sector due to higher than expected compensation costs with Keydata, Wills and Co and other stock broking firm failures.

The FSCS charged a previous [interim levy](#) of £326 million at the beginning of 2011, and currently estimates the additional shortfall to be about £40 million. A final decision on whether to impose an interim levy has not yet been reached. The home finance intermediation sector is facing increased claims relating to mortgage advice. The final liabilities for fund managers and investment intermediaries for the 2010/11 levies are still not known because a number of issues still remain outstanding.

The only good news is for those in the general insurance sector where there

may be a surplus due to lower than expected compensation costs.

The FSA [announced](#) that the FSCS funding will be reviewed in the first half of 2012. For many industry participants this cannot come soon enough.

FSA publishes quarterly consultation paper

The FSA published CP11/27 '[Quarterly Consultation No. 31](#)' on 6 December 2011. The CP proposes miscellaneous amendments to the FSA Handbook. These amendments include:

- clarifying the liquidity rules in BIPRU;
- implementing the Department for Work and Pensions' rules that abolish the option to contract out of the state second pension;
- changing the form and scope of director's certificates and reports by auditors for employer's liability registers (ELR) and to the content of ELRs in some areas;
- changing the information disclosure requirements in ICOBS as a result of the implementation of Solvency II in the UK;
- changing guidance in MAR;

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- clarifying reporting requirements to facilitate better data quality in the Supervision manual;
- allowing all non-UCITS retail schemes to be set up as feeder funds into certain master funds; and
- changing the qualification standards that advisers have to meet under RDR.

Comments on the CP must be received by **6 February 2012**.

FSA fines increase

The FSA issued a number of large fines during December.

The FSA levied its largest ever retail-related fine of £10.5 million on HSBC, due to inappropriate advice and sales practices by one of its subsidiaries, NHFA Limited (NHFA), on products sold to elderly customers. HSBC estimates it will also have to compensate NHFA customers with a further £39.3 million.

The FSA fined Integrated Financial Arrangements plc, which runs Transact, one of the largest wrap platforms in the UK, £3.5 million for client money breaches occurring between 1 December 2001 and 30 June 2010. The FSA believes that client money would have

been at risk during this period if the firm had become insolvent.

The FSA has also fined Combined Insurance Company of America (CICA) £2.8 million “for failing to embed fully a culture that ensured its customers were treated fairly”. The FSA found that CICA breached FSA Principle 3 (management and control) and Principle 6 (customers' interests) by failing to manage effectively its sales processes, claims handling and complaints handling to ensure the fair treatment of its customers.

In each case the firms received a 30% reduction by agreeing an early settlement. The size of these fines demonstrates FSA’s commitment to imposing large fines as a hallmark of its “credible deterrence” enforcement strategy.

Accounting²

The future of UK GAAP

Firms reporting under UK GAAP will be impacted by the UK Accounting Standards Board (ASB) project on the Future of UK GAAP.

Under the ASB’s current proposals, existing UK GAAP will be rescinded and current UK GAAP reporters will have the option of reporting under either a new Financial Reporting Standard for Medium-sized Entities (FRSME) or IFRS. A reduced disclosure framework is proposed for subsidiaries. Firms currently applying the Financial Reporting Standard for Small Entities (FRSSE) will be able to continue to do so.

The implementation date for these changes is likely to be **1 January 2015**. However, comparatives will be required for 2014. See link for details of monthly developments.

² This section includes accounting developments with a direct or potential impact on the financial services industry only. For a complete update on accounting developments in the UK visit http://www.pwc.co.uk/eng/services/ifrs_service_s.html

At their meeting on 15 December 2011, the ASB approved for issue, subject to drafting amendments, the Financial Reporting Exposure Drafts which contains these proposals which will be published for formal consultation.

Accounting publications

Year-end accounting reminders - December 2011

This PwC publication relates to IFRS reporting requirements prepared as at 31 December 2011. It highlights the topical issues to consider; the new standards and interpretations that apply at this date; and the new IFRS standards and IFRICs that are published but effective at late dates, and hence have to be disclosed by IFRS reporters.

Year-end accounting reminders – UK GAAP - December 2011

This PwC publication relates to UK GAAP reporting requirements as at 31 December 2011. It highlights some accounting hot topics that may impact December 2011 year ends, as well as new UK GAAP standards applicable to 31 December 2011 year-ends.

IFRS News

Our December 2011/January 2012 edition of IFRS news includes articles on:

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- new revenue exposure draft - An overview of the IASB and FASB's re-exposed proposals on revenue from contracts with customers, plus where to find industry-specific guidance;
- amendments to the application guidance in IAS 32 to clarify some of the requirements for offsetting financial assets and financial liabilities in the statement of financial position; and
- this month's Board activity – A leasing update, IFRS 9 new effective date and IFRS 10 transition proposals.

Revenue recognition

PwC's webcast on the re-exposed proposals for revenue recognition covers:

- objective,
- revenue recognition model, and
- re-exposure and request for comment.

[Click here](#) to view the webcast.

The 'Straight away' series

The PwC '[Straight away](#)' series provides updates on the latest accounting developments and answers key questions on the impacts. Guidance in December includes:

[Straight away 75 'Belarus enters hyperinflation'](#)

This 'Straight away' explains why Belarus is now hyperinflationary and the consequences for financial reporting.

[Straight away 76 'IASB/FASB leasing redeliberations - December 2011'](#)

This looks at the recent tentative decisions taken by the IASB/FASB on:

- cancellable leases and
- rental income recognition for investment properties

[Straight away 77, 'IASB delays IFRS 9 effective date'](#)

The IASB published an [amendment](#) to IFRS 9, 'Financial instruments'. This amendment delays the effective date to annual periods beginning on or after 1 January 2015 (previously 1 January 2013). The amendment also modifies the relief from restating prior periods. As part of this relief, the Board published an amendment to IFRS 7, 'Financial instruments: Disclosures', to require additional disclosures on transition from IAS 39 to IFRS 9.

[Straight away 78 'IASB clarifies offsetting requirements and requires new converged disclosures'](#)

The IASB issued [amendments](#) to the application guidance in IAS 32, 'Financial instruments: Presentation',

that clarify some of the requirements for offsetting financial assets and financial liabilities on the balance sheet.

However, the clarified offsetting requirements for amounts presented in the statement of financial position continue to be different from US GAAP. As a result, the IASB has also published an [amendment to IFRS 7, 'Financial instruments: Disclosures'](#), reflecting the joint requirements with the FASB to enhance current offsetting disclosures. These new disclosures are intended to facilitate comparison between entities that prepare IFRS financial statements and those that prepare financial statements in accordance with US GAAP.

[Straight away 79 'IASB proposes amendments to transition guidance in IFRS 10'](#)

The IASB proposed changes to the transition requirements in IFRS 10, 'Consolidated financial statements', in the exposure draft (ED) '[Transition guidance – Proposed amendments to IFRS 10](#)'. The ED provides further guidance on a new term, 'date of initial application'. The date of initial application is the first day of the annual period in which IFRS 10 is adopted. Entities adopting IFRS 10 assess control at the date of initial application and

adjust the comparative figures accordingly. The ED also provides transition guidance for investees that were disposed of during the comparative period.

This change is expected to apply for annual periods beginning after 1 January 2013, consistent with IFRS 10. The comment period ends **21 March 2012**.

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Regulation

Solvency II

Solvency II is a fundamental review of the prudential regulatory requirements for the European insurance industry. The framework of the new regime is set out in the [Solvency II Directive](#) which is expected to apply to insurers from 1 January 2014.

Omnibus II developments

The Omnibus II Directive will amend Solvency II to:

- set its implementation date;
- specify the areas of, and timing for, further Solvency II legislation;
- incorporate new powers given to the EIOPA; and
- make a number of other technical amendments.

The first reading of Omnibus II proposals has been delayed by a month to **24 January 2012**. The European Parliament plenary session is currently scheduled to follow on **17 April 2012**. (See [COD/2011/0006](#))

EIOPA proposes additional quantitative financial stability reporting templates

In December 2011, EIOPA published a [consultation](#) regarding quantitative

financial stability reporting templates. This consultation sets out proposals for additional reporting requirements addressing financial stability, which will apply to large insurance groups and insurers (those with balance sheets in excess of €6 billion). These requirements build on EIOPA's November 2011 proposals which apply to all insurers. The additional proposals require more detailed quarterly reporting, including quarterly reporting of the SCR which may be calculated on a simplified basis.

The consultation period closes on **20 February 2012**.

Non-Life and health NSLT Calibration: Joint Working Group Report

In delivering its advice for Level 2 measures, CEIOPS committed to carry out a comprehensive revision of the calibration of the premium and reserve risk factors in the non-life and health non-SLT underwriting risk module of the SCR standard formula in the framework of QIS5.

To consider the most appropriate calibration methods and to derive recommendations, EIOPA established a Joint Working Group (JWG) including representatives from AMICE, Groupe Consultatif, CEA and the CRO Forum as

well as observers from the European Commission.

Following a comprehensive review, this month EIOPA published a [report](#) on behalf of the JWG setting out the final recommendations for the calibration of premium and reserve risk factors in the non-life and health non-SLT underwriting risk module of the SCR standard formula. In some cases (e.g. motor vehicle liability, MAT), the revised calibrations are less onerous than those tested at QIS5 whereas for other lines of business (e.g. workers' compensation) they are more onerous. The revised calibrations are now being considered by the European Commission for inclusion in the draft Implementing Measures.

ABI advises on catastrophe modelling

The ABI published a [report](#) entitled 'Industry Good Practice for Catastrophe Modelling'. This is a guide to managing catastrophe models as part of an internal model under Solvency II.

HM Treasury consults on implementing Solvency II

HM Treasury has commenced a [consultation](#) on their proposed amendments to make UK legislation compliant with Solvency II, which will provide the powers necessary for the FSA to implement Solvency II. The

consultation period closes on **15 February 2012**.

In [CP11/27](#) Quarterly Consultation, the FSA has set out various amendments to the disclosure requirements in the Insurance: Conduct of Business sourcebook (ICOBS) as a result of the implementation of Solvency II.

FSA speech on what to expect over the coming months

This [speech](#) by Julian Adams, the FSA's Director of Insurance, looks at the FSA's approach to dealing with the ongoing policy uncertainty surrounding Solvency II. In particular, he addressed:

- the FSA's approach to firms wishing to use their Solvency II work to meet the current individual capital adequacy standards (ICAS) requirements;
- the basis on which applications for internal models should be submitted; and
- Group supervision, particularly in relation to colleges of supervisors and the importance of this forum in decision making for regulated firms and groups with cross-border operations.

He also emphasised the importance of firms understanding and responding to

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the ongoing consultations from the FSA, HM Treasury and EIOPA, to have the opportunity to influence the development of policy and the regulatory approach to implementation.

Where to go for more information

PwC's Solvency II UK web pages are available at www.pwc.co.uk/solvencyII.

Capital and liquidity

Biannual Financial Stability Report published by EIOPA

EIOPA published its biannual report on the financial stability of the insurance and occupational pension fund sectors in the EEA. The report concludes that:

- The industry continues to face risks originating from high concentrations of exposures to sovereigns and banks. These risks were more pronounced than during the first half of 2011. The risks stemming from exposures to sovereign and banking debt as well as the macroeconomic outlook are the main factors, and these may jeopardise the financial stability of the insurance and occupational pension sectors going into 2012.
- Results of the low-yield stress test show that the insurance industry would be negatively affected if yields remained low for a prolonged period

of time, based on two interest rate scenarios. Eight insurance companies failed the first scenario and four firms failed the second. The solvency position of the industry, on average, would also be adversely affected by a prolonged period of low yields.

- Reinsurers faced above average losses due to the significant natural catastrophes that took place in the period. Life insurers may be subject to the risk of insufficient liquidity, arising from catastrophic events, or higher than expected policy lapses, requiring an unexpected high amount of invested assets to be liquidated at a relatively short notice.
- The financial turmoil has in general not affected the occupational pensions sector as severely as some other financial sectors. However, the crisis has had an impact on pension funds, primarily in their role as institutional investors, and also has had a substantial negative impact on consumer confidence.

Market Structure

Basel Committee consults on financial conglomerates supervision

The Basel Committee published a consultation 'Principles for the

Supervision of Financial Conglomerates' on 19 December 2011 to update its supervisory principles (Principles) for financial conglomerates. The Principles, created in 1999, provide national supervisors with a set of internationally agreed standards that support 'consistent and effective supervision' of financial conglomerates and are particularly targeted at firms with significant cross-border operations.

The consultation expands and supplements the 1999 Principles in areas such as supervisory powers and authority, supervisory responsibility, corporate governance and risk management. The consultation closes on **16 March 2012**.

This work complements the Financial Conglomerates Directive (2011/89/EU) (FCD) adopted in November 2011, which amended earlier EU Directives addressing the regulation of complex and cross-border banking and investment firm groups. The FCD seeks to close many of the loopholes in the previous EU regime and facilitate appropriate supplementary supervision of financial entities in a financial conglomerate. It is expected to be transposed into national law by mid-2013. The amendments were agreed by the European Parliament and Council in

June 2011 with little change from the EC's original text.

Joint Select Committee publishes report on Financial Services Bill

The UK Parliament's Joint Select Committee (Joint Select Committee) published its report on the draft Financial Services Bill (the Bill) on 19 December 2011. The Bill is the primary legislation which reforms the UK's regulatory structure following the financial crisis.

The report recommends that Government significantly amend the draft Bill to: clarify the objectives of the three new regulatory bodies, move forward the ICB's recommendation (to ring-fence retail business) during the 2012-13 parliamentary session, and make the Bank of England more accountable.

The Joint Select Committee's key recommendations include proposals that:

- the PRA should regulate market infrastructure (initially proposed to be within the FCA's role);
- the FCA should have greater powers to achieve its objective of promoting competitiveness;

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- the Bank of England Court of Directors should be replaced by a supervisory board which includes expert members with prudential policy experience;
- the PRA should supervise more investment firms that engage in the re-hypothecation of client money and assets;
- the Bill should include measures on remuneration of executives and non-executives and introduce a concept of liability for executives and board members; and
- the Financial Policy Committee (FPC) should have equal status with the Monetary Policy Committee (MPC). FCP membership should be broader, containing a range of experts.

A summary of the report's recommendations is set out in chapter 6. The Bill was published in June 2011 and will be presented during the 2012-13 parliamentary session.

FSA publishes report on Royal Bank of Scotland report published

The FSA published its long-awaited report on the causes of the 2008 near-collapse of the Royal Bank of Scotland (RBS) which required a £45.5 billion Government bailout. The report cites

deficiencies in RBS's management and the UK regulatory framework as causes, including weaknesses in the regulator's supervisory practices and management of globally significant firms.

The report also explains why the FSA's Enforcement and Financial Crime Division concluded that there were insufficient grounds to bring enforcement actions against RBS and its management. Poor decisions, rather than criminal acts, were responsible for RBS's near-collapse.

The report offers proposals on how to prevent a similar crisis, including:

- **Strict liability:** senior personnel of failed firms could be held 'strictly liable' for the consequences of their bad decisions. However Lord Turner, the FSA chairman, acknowledges in the report that a 'strict liability' standard 'may prove impossible' to implement due to legal complexities.
- **Pay clawbacks:** automatic, incentive-based penalties could be imposed on the heads of failed firms, as an alternative to imposing strict liability for poor decisions. This is already common practice in other jurisdictions.
- **Takeover approval:** large acquisitions by FSA-regulated firms should be

subjected to supervisory approval, and should be approved only if a bank's capital base is 'exceptionally strong'.

- **Success fees:** boards of FSA regulated firms should take independent advice on large acquisitions from an adviser whose fee is not linked to successfully completing the deal.

This report provides a post-mortem assessment of the FSA's "light touch" approach to regulation which predominated prior to the crisis, and will add weight to the current Government's efforts to make all regulated firms more accountable to the FSA's successor regulatory bodies.

Corporate governance *FSA highlights non-executive director's role in avoiding retail conduct risks*

The FSA published a draft guidance consultation GC11/30 'Non Executive Directors Conference: Delivering Fair Treatment for Consumers of Financial Services' on 7 December 2011. The guidance sets out what FSA expects from non-executive directors (NEDs) of regulated firms with respect to retail conduct risk (i.e. the risk that a firm may not treat its retail customers fairly and deliver appropriate outcomes).

The FSA recommends NEDs consider the following seven principles:

- business proposals must be aligned with the firm's strategy and be within its stated retail conduct risk appetite;
- the firm's culture should be such that it delivers good behaviours and outcomes, both prudentially and for customers;
- NEDs should have the right information to enable them to make robust decisions and if they feel they do not, then they should ask for it;
- the firm should have identified the risks that its customers are presented by its business;
- appropriate actions should be in place to mitigate and monitor such risks;
- the Board should support the identification and escalation of issues when problems arise and ensure appropriate resolution; and
- the business should learn from identified issues and draw out the wider implications.

The scenarios are based on real examples, some of which were cited in FSA Retail Conduct Risk Outlook March 2011.

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Retail Distribution Review

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The FSA plans to carry out further research in 2012 and 2013 to monitor retail investment advisers' progress towards complying with other RDR requirements and to understand how advisers are adapting after RDR is operational.

Tax

HM Treasury consults on improvements to CFC regime

The Treasury publishes the [draft Finance Bill 2012](#) for consultation on 6

December 2011. The proposals of more interest to financial services firms are the proposed changes to the foreign profits taxation regime and a complete rewrite of the life tax regime.

Corporate tax reform – Controlled Foreign Companies (CFC) regime

The proposals on the taxation of foreign profits are “game changing” and will help the UK to become a more attractive place for financial services firms to locate their headquarters. In particular the Government has followed a territorial approach, whereby foreign profits will not be taxed but profits attributable to UK activities are taxed. The draft legislation is complex and it remains to be seen whether it can really achieve the stated aim of reducing the compliance burden.

The new regime aims to target only those circumstances that result in artificial diversion of UK profits, i.e. only profits generated in connection with UK people function, resulting from non-arm's length transactions which generate a substantial additional tax value. Other situations will either be outside the scope of the regime or exempt. There are currently no insurance-specific or banking-specific exemptions, nor a General Purpose Exemption.



Financial services traders, banks and insurers, are treated under the same principles as non-financial companies, save that trading finance profits can also be brought into account in determining the CFC charge to the extent that they are generated by “excess free capital” or “excess free assets”.

For more details see PwC's analysis [“Tax reforms will put UK in the map”](#).

Life insurance tax regime proposals

The [draft Finance Bill 2012](#) contains over [100 pages](#) on the taxation of

companies carrying on long-term insurance business. These provisions amount to a rewrite of the existing legislation, which has been the subject of formal and informal consultation since 2009. For those close to this process the draft published for consultation on 6 December does not contain many surprises. Its primary focus is to simplify the life tax regime by basing it on the statutory accounts and bringing it more in line with other companies, while also aligning the tax position more closely

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with the commercial reality of companies' businesses.

Many insurers will welcome these changes and the industry has worked closely with HMRC and HM Treasury in developing this new regime. However, not all will view the changes positively; there will be winners and losers. This is the first time that the industry has seen the whole package of changes and companies will need time to assess the overall impact. It is important that life insurers begin the process of assessing the impact of the proposed rules. A number of variables come into play, such as loss profile, apportionment fractions, differences in FSA and accounting recognition of profit, which will determine the impact of the new rules on individual firms. The proposed changes will also require significant changes to life insurers' tax compliance and reporting systems and processes.

The "simplified" legislation remains complex and much work remains to be done to ensure that the detailed provisions will work as intended. Industry agreement has not yet been reached in a number of important areas, and therefore the consultation process will continue.

The consultation period closes on **10 February 2012**, with the Bill expected

to be published following the next March/April 2012 budget.

Financial Crime

FSA publishes financial crime guide

The FSA published PS11/15 '[Financial Crime: A Guide for Firms](#)', on 9 December 2011, setting out its final policy position, new guidance and examples of best practice.

Following feedback on the initial consultation [CP11/12](#), The FSA clarified that the guide is not binding and should not be used as a tick-box exercise by firms (or supervisors) to measure a firm's compliance. The guide complements the existing JMLSG guidance on preventing money laundering and combating terrorist funding. The financial crime guide took immediate effect on **9 December 2011**.

Other regulatory

FSA consults on employers' liability registers and other issues

On 6 December 2011, the FSA issued CP 11/27 '[Quarterly Consultation no. 31](#)', to consult on rule changes to clarify the requirements regarding directors' statements and auditors' reports over employee liability registers (ELRs) and to make other changes to the requirements.

Insurers should already have in place systems and controls to enable them to maintain their ELRs in accordance with the FSA's rules. Now that the FSA have set out their proposed reporting requirements, insurers may wish to critically reassess the adequacy of those systems and controls and consider what additional processes need to be put in place to support the directors' statement on ELRs. Insurers should also engage with their auditors to discuss the scope and timing of work to be performed.

Overall, these requirements are likely to be quite onerous and time consuming, particularly in the first year of application. Our [Hot Topic publication *Employers' liability insurance registers – meeting the FSA's requirements*](#) discusses these issues in more detail.

In addition to the changes to ICOBS and ELRs discussed above, [CP11/27](#) proposes amendments to:

- implement the Department for Work and Pensions rule that will abolish the option to contract out of the state second pension (S2P);
- clarify the data reporting requirements in the Supervision Manual to facilitate better data quality. These changes relate to firms subject to CRD, firms with

permission to carry on the regulated activity of managing investments, firms completing some or all of the Retail Mediation Activities Return and Lloyds' Managing Agents and Wholesale London Market Insurance Companies; and

- change the qualification standards that advisers have to meet as part of the RDR.

The FSA requires comments by **6 February 2012**.

HM Treasury consultation and EC Guidelines published on ECJ gender ruling

In March 2011 the ECJ ruled that insurers could not use gender as a risk factor which results in different premiums and benefits for men and women, with effect from 21 December 2012. In June 2011 HM Treasury issued a statement setting out the Government's initial response to the ECJ's decision.

The Government has published a [consultation document](#) on its proposed approach to implementing the judgment into law and its views on how insurers can use gender as a risk factor in the light of the judgment.

Of particular interest is how the proposals deal with policies that

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straddled the 21 December effective date for the ECJ ruling. The consultation states:

"The Government's view is that ...[for] ... any new contracts ... entered into on or after 21 December 2012 ... the use of gender as a risk factor should not result in individual differences in premiums and benefits for men and women. However, any contracts with gender-sensitive pricing of premiums or benefits concluded before 21 December 2012 can, in the Government's view, continue unchanged after that date."

A key to the practical application of this policy decision will be the determination of what is, and is not, a 'new contract'. In this regard the consultation advises:

"Within the UK, the usual principles of contract law, as applied by the courts in the field of insurance, will determine when a new contract has been formed. Although it will depend on the circumstances of the case, a renewal will almost certainly create a new contract, but a review of a contract under its terms is less likely to do so. Similarly, case law will usually determine when an existing contract with a client is deemed to continue in situations of corporate restructurings or merger."

The consultation closes on **1 March 2012**.

On 22 December 2011, the European Commission published its guidelines (and an associated press release) on the interpretation of the ECJ's ruling, to facilitate compliance with the ruling at a national level. Consistent with the Government's interpretation, these guidelines clarify that the ruling applies only to new contracts concluded from 21 December 2012. However, the guidelines indicate that the concept of a new contract should be applied consistently throughout the EU - which is arguably in conflict with the Government's position that the usual principles of contract law will apply.

Under the European Commission's guidelines the following are new contracts:

- contracts concluded for the first time as from 21 December 2012;
- agreements between insurer and insured to extend contracts concluded before 21 December 2012 which would otherwise have expired.

However, the following do not give rise to new contracts:

- the automatic extension of a pre-existing contract, if no notice is given

by a certain deadline, under the terms of that pre-existing contract;

- the adjustments made to individual elements of an existing contract, such as premium changes, on the basis of predefined parameters, where the consent of the policy-holder is not required;
- taking out, by the policyholder, of top-up or follow-on policies (e.g. an increase of the amount invested through a life insurance product) whose terms were pre-agreed in contracts concluded before 21 December 2012, provided the policyholder unilaterally decided to take out the policy; and
- the transfer of an insurance portfolio from one insurer to another.

FSCS projects compensation costs for 2011/12

The FSCS published its half year review in the *Outlook* newsletter on 15 December 2011.

The FSCS's latest projection of compensation costs for 2011/12 does not make happy reading for firms in the investment intermediation and home finance intermediation sectors. The FSCS estimates that it may have to raise an interim levy on the investment intermediation sector due to higher than

expected compensation costs with Keydata, Wills and Co and other stock broking firm failures.

The FSCS charged a previous interim levy of £326 million at the beginning of 2011, and currently estimates the additional shortfall to be about £40 million. A final decision on whether to impose an interim levy has not yet been reached. The home finance intermediation sector is facing increased claims relating to mortgage advice. The final liabilities for fund managers and investment intermediaries for the 2010/11 levies are still not known because a number of issues still remain outstanding.

The only good news is for those in the general insurance sector where there may be a surplus due to lower than expected compensation costs.

The FSA announced that the FSCS funding will be reviewed in the first half of 2012. For many industry participants this cannot come soon enough.

EIOPA publications

Report on Financial Literacy and Education Initiatives by Competent Authorities

Report on pre-enrolment information to pension plan members

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[Press release](#) calling for paradigm shift in consumer protection

PwC's European financial updates

See PwC's [European financial regulation updates](#) for further developments.

Updates in December include:

- [Breaking free from the eurozone's liquidity trap](#)
- [Preparing contingency plans on the eurozone crisis](#)
- [EC publishes work 2012 programme](#)
- [Capital, capital, capital](#)
- [Assessing the effectiveness of internal audit functions](#)
- [EIOPA highlights consumer protection issues](#)
- [FSA reports on the failure of RBS](#)

Accounting³

IASB insurance contracts project

The IASB is working alongside the FASB to develop a harmonised IFRS rules for insurance contracts. The IASB's [work plan](#) includes details of the project timetable as of 20 December 2011. A review draft or revised exposure draft (ED) is currently scheduled for the first half of 2012.

The IASB and FASB boards (the Boards) made progress on a number of issues at their December joint meeting (see [PwC summary](#)):

- Both Boards have now tentatively agreed to adjust the measurement of contracts with policyholder participation features that depend on underlying items to reflect how the underlying items are measured.
- The Boards agreed that the obligation for contracts with

This section includes accounting developments with a direct or potential impact on the financial services industry only. For a complete update on accounting developments in the UK visit http://www.pwc.co.uk/eng/services/ifrs_service.s.html

policyholder participation features should include amounts that are due to policyholders as a group, even where the amounts have not yet been allocated to specific policyholders.

- The Boards agreed that options and guarantees embedded in insurance contracts should be measured using a current, market consistent, expected value approach.
- Under the premium allocation approach, the Boards agreed that incurred claims should be discounted where the effect of discounting is material. However, claims expected to be paid within twelve months will not require discounting.
- The Boards discussed extensively the unit of account for measurement of the risk adjustment, but did not reach agreement on a number of matters that will be discussed at future meetings. However, they did agree on a modified definition of portfolio of insurance contracts and a majority of Board members agreed with the staff proposal not to prescribe the unit of account for calculating the risk adjustment.
- Similarly, although the Boards discussed onerous contracts, they deferred several issues to later

meetings. However, they did agree on a definition and scope for onerous contracts.

The IASB has published a [podcast](#) reporting on developments in the Insurance Project following the Boards' joint meeting on 13-16 December 2011.

The IASB's [webpage](#) reports on the Boards' joint tentative decisions. The webpage is designed to help interested parties evaluate the impact of those decisions on the forthcoming standard. On 21 December 2011 the IASB published an updated [summary](#) of how the proposals in the exposure draft (ED) Insurance Contracts would change as a result of the Boards' tentative decisions. In addition, the webpage contains working drafts of revised wordings implementing some of the tentative decisions made.

For more information see our [webpage](#) on this project.

The future of UK GAAP

Firms reporting under UK GAAP will be impacted by the UK Accounting Standards Board (ASB) project on the [Future of UK GAAP](#).

Under the ASB's current proposals, existing UK GAAP will be rescinded and current UK GAAP reporters will have

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the option of reporting under either a new Financial Reporting Standard for Medium-sized Entities (FRSME) or IFRS. A reduced disclosure framework is proposed for subsidiaries. Firms currently applying the Financial Reporting Standard for Small Entities (FRSSE) will be able to continue to do so.

The implementation date for these changes is likely to be **1 January 2015**. However, comparatives will be required for 2014. See [link](#) for details of monthly developments.

At their meeting on 15 December 2011, the ASB approved for issue, subject to drafting amendments, the Financial Reporting Exposure Drafts which contains these proposals which will be published for formal consultation.

Accounting publications

Year-end accounting reminders - December 2011

This PwC [publication](#) relates to IFRS reporting requirements prepared as at 31 December 2011. It highlights the topical issues to consider; the new standards and interpretations that apply at this date; and the new IFRS standards and IFRICs that are published but effective at late dates, and hence have to be disclosed by IFRS reporters.

Year-end accounting reminders – UK GAAP - December 2011

This PwC [publication](#) relates to UK GAAP reporting requirements as at 31 December 2011. It highlights some accounting hot topics that may impact December 2011 year ends, as well as new UK GAAP standards applicable to 31 December 2011 year-ends.

PwC updated illustrative IFRS insurance accounts available

PwC published an updated version of its [Illustrative IFRS consolidated financial statements for insurers](#). This publication provides an illustrative set of consolidated financial statements, prepared in accordance with IFRS, for a fictional multinational insurance group. This publication is based on the requirements of IFRS standards and interpretations applicable to financial years beginning on or after 1 January 2011.

PwC updated illustrative insurance UK GAAP accounts available

PwC published updated versions of:

- [Proforma Gen](#) - Illustrative general insurance group annual report prepared under UK GAAP (31 December 2011); and
- [Proforma Life](#) - Illustrative life insurance group annual report

prepared under UK GAAP (31 December 2011).

These pro formas have been prepared as at 31 December 2011 and reflect the accounting requirements at that date. The reports can be used by preparers, reviewers and users of insurers' financial statements.

These illustrative annual reports are a practical guide to UK accounting law and best practice for insurers preparing their financial statements in accordance with the requirements of The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 relating to insurers and the ABI Statement of Recommended Practice on Accounting for Insurance Business.

The illustrative annual report considers the requirements of relevant accounting standards, Urgent Issues Task Force Abstracts and other UK GAAP requirements. The suggested disclosure throughout is intended for guidance only, and will not be applicable to all groups or companies.

IFRS News

Our December 2011/January 2012 edition of [IFRS news](#) includes articles on:

- new revenue exposure draft - An overview of the IASB and FASB's re-

exposed proposals on revenue from contracts with customers, plus where to find industry-specific guidance;

- amendments to the application guidance in IAS 32 to clarify some of the requirements for offsetting financial assets and financial liabilities in the statement of financial position;
- this month's Board activity – A leasing update, IFRS 9 new effective date and IFRS 10 transition proposals.

Revenue recognition

PwC's webcast on the re-exposed proposals for revenue recognition covers:

- objective,
- revenue recognition model, and
- re-exposure and request for comment.

[Click here](#) to view the webcast.

The 'Straight away' series

The PwC 'Straight away' series provides updates on the latest accounting developments and answers key questions on the impacts. Guidance in December includes:

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Straight away 75 'Belarus enters hyper-inflation'

This 'Straight away' explains why Belarus is now hyperinflationary and the consequences for financial reporting.

Straight away 76 'IASB/FASB leasing redeliberations - December 2011'

This looks at the recent tentative decisions taken by the IASB/FASB on:

- cancellable leases and
- rental income recognition for investment properties

Straight away 77, 'IASB delays IFRS 9 effective date'

The IASB published an amendment to IFRS 9, 'Financial instruments'. This amendment delays the effective date to annual periods beginning on or after 1 January 2015 (previously 1 January 2013). The amendment also modifies the relief from restating prior periods. As part of this relief, the Board published an amendment to IFRS 7, 'Financial instruments: Disclosures', to require additional disclosures on transition from IAS 39 to IFRS 9.

Straight away 78 'IASB clarifies offsetting requirements and requires new converged disclosures'

The IASB issued amendments to the application guidance in IAS 32, 'Financial instruments: Presentation',

that clarify some of the requirements for offsetting financial assets and financial liabilities on the balance sheet.

However, the clarified offsetting requirements for amounts presented in the statement of financial position continue to be different from US GAAP. As a result, the IASB has also published an amendment to IFRS 7, 'Financial instruments: Disclosures', reflecting the joint requirements with the FASB to enhance current offsetting disclosures.

These new disclosures are intended to facilitate comparison between entities that prepare IFRS financial statements and those that prepare financial statements in accordance with US GAAP.

Straight away 79 'IASB proposes amendments to transition guidance in IFRS 10'

The IASB proposed changes to the transition requirements in IFRS 10, 'Consolidated financial statements', in the exposure draft (ED) 'Transition guidance – Proposed amendments to IFRS 10'. The ED provides further guidance on a new term, 'date of initial application'. The date of initial application is the first day of the annual period in which IFRS 10 is adopted. Entities adopting IFRS 10 assess control at the date of initial application and

adjust the comparative figures accordingly. The ED also provides transition guidance for investees that were disposed of during the comparative period.

This change is expected to apply for annual periods beginning after 1 January 2013, consistent with IFRS 10. The comment period ends **21 March 2012**.

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Calendars

Open consultations

Closing date for responses	Paper	Institution
10/01/2012	RDR adviser charging and Solvency II disclosures (CP 11/25)	FSA
11/01/2012	Retail Product Development and Governance - Structured Products Review (GC 11/27)	FSA
13/01/2012	Payment protection productions (GC 11/26)	
13/01/2012	MiFID Questionnaire	ECONFIN
15/01/2012	Draft Guidelines on Stressed Value At Risk (Stressed VaR) (CP 48)	EBA
15/01/2012	Draft Guidelines on the Incremental Default and Migration Risk Charge (IRC) (CP 49)	EBA
16/01/2012	Distribution of retail investments: RDR Adviser Charging – treatment of legacy assets (CP 11/26)	FSA
18/01/2012	NED's role in delivering fair treatment for financial customers (GC 11/30)	FSA
20/01/2012	Guidelines on Own Risk and Solvency Assessment	EIOPA

Closing date for responses	Paper	Institution
20/01/2012	Narrative Public Disclosure & Supervisory Reporting, Predefined Events and Processes for Reporting & Disclosure	EIOPA
20/01/2012	Quantitative reporting templates	EIOPA
23/01/2012	Traded Life Policy Investments (GC 11/28)	FSA
27/01/2012	Regulated Covered Bond Regime (GC 11/31)	FSA
27/01/2012	Packaged bank accounts: New ICOBS rules for the sale of non-investment insurance contracts (CP11/20)	FSA
30/01/2012	Update to distributor funds fact sheet (GC 11/29)	FSA
31/01/2012	Guidelines on Complaints-Handling by Insurance Undertakings	EIOPA
06/02/2012	Quarterly consultation (QCP11/27)	FSA
06/02/2012	Regulatory fees and levies: Policy Proposals for 2012/13– Chapter 2 (CP11/21)	FSA
06/02/2012	ICOBS 8.4 amendment (claims handling employers liability insurance) (CP11/27)	FSA
13/02/2012	Volcker rule	SEC

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Closing date for responses	Paper	Institution
14/02/2012	Regulatory prudent valuation (RPV) return (CP11/30)	FSA
14/02/2012	Financial Services Act 2010 (Executives' Remuneration Report) Regulations 2011	HM Treasury
15/02/2012	Transposition of Solvency II, part I (CP 11/22)	FSA
15/02/2012	Solvency II and linked long insurance business (CP 11/23)	FSA
17/02/2012	Application of <u>own credit risk adjustments</u> to derivatives	BCBS
17/02/2012	Definition of <u>capital disclosure requirements</u>	BCBS
24/02/2012	<u>Guidelines</u> on certain aspects of the MiFID I compliance function requirements	ESMA
24/02/2012	<u>Guidelines</u> on certain aspects of the MiFID suitability requirements	ESMA
29/02/2012	<u>Materiality</u> in financial reporting	ESMA
02/03/2012	Banks' internal audit function	BCBS
13/03/2012	UK implementation of Amending Directive 2010/73/EU - Simplifying the EU Prospectus and Transparency Directives (CP11/28)	
16/03/2012	Principles for the supervision of <u>financial conglomerates</u>	BCBS

Closing date for responses	Paper	Institution
20/03/2012	<u>Core principles</u> for effective banking supervision	BCBS
30/03/2012	Mortgage market review (CP11/31)	FSA

Forthcoming publications in 2012

Date	Topic	Type	Institution
<i>Accounting</i>			
Q1 2012	Future of UK GAAP – Re exposure	Consultation paper	ASB
Q2 2012	<u>Insurance Contracts Standard</u> – re-exposure / review draft	Consultation paper	IASB
<i>Capital and Liquidity</i>			
Q1 2012	EBA CRD Common Reporting Application	Consultation paper	FSA
Q1-Q4 2012	CRD IV	76 regulatory technical standards, 32 implementing technical standards and 20 guidelines	EBA
<i>Client Money</i>			
Q1 2012	Client Assets sourcebook	Policy statement	FSA

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Date	Topic	Type	Institution
Q1 2012	Protecting with-profits policyholders	Policy statement	FSA
<i>Data Protection</i>			
Q1 2012	Data Protection Directive (95/46/EC) revision	Legislative proposals	EC
<i>Financial crime, security and market abuse</i>			
Q4 2012	MAD Review	Technical advice/ guidelines	ESMA
TBC 2012	Securities Law Directive	Legislative proposals	EC
TBC 2012	Third Anti-Money Laundering Directive	Legislative proposals	EC
TBC 2012	Financial Conglomerates Directive (revision)	Legislative proposals	EC
<i>Insurance</i>			
Q2 2012	Revision of the <u>Insurance Mediation Directive</u> (2002/92/EC) (IMD)	Legislative proposals	EC
Q3 2012	Institutions for Occupational Retirement Provision	Legislative proposals	EC
<i>Market Infrastructure</i>			
Q1 2012	Auctioning of greenhouse gas emission allowances	Consultation paper	FSA

Date	Topic	Type	Institution
Q1 2012	Regulation short selling and certain aspects of credit default swaps	Technical advice/ standards/ guidelines	ESMA
Q1 2012	PRIPs	Legislative proposals	EC
Q2 2012	UCITS V	Legislative proposals	ESMA
Q3 2012	OTC Derivatives, CCP Requirements, Trade Repositories and CCP Interoperability (EMIR)	Technical advice/ standards/ guidelines	ESMA
Q4 2012	AIFMD	Technical standards	ESMA
Q4 2012	CRA III Regulation	Technical advice	ESMA
Q4 2012	MiFID II	Technical advice/ guidelines	ESMA
Q4 2012	MiFID I-financial consumer protection	Guidelines	ESMA
Q4 2012	MiFID I- supervisory convergence	Guidelines	ESMA
Q4 2012	PRIPS	Technical standards	ESMA
Q4 2012	Prospectus Directive	Technical advice	ESMA
Q4 2012	Revision of the Transparency Directive	Discussion papers	ESMA
Q4 2012	Social Investment Funds	Technical advice	ESMA

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Date	Topic	Type	Institution
Q4 2012	Venture Capital	Technical advice	ESMA
Q4 2012	UCITS	Technical standards	ESMA
Q4 2012	UCITS V	Technical advice	ESMA
TBC 2012	Investor Guarantee schemes- revision	Legislative proposals	EC
TBC 2012	Closed-out netting	Legislative proposals	EC
Recovery and Resolution			
Q1 2012	Recovery and Resolution Plans	Policy statement	FSA
Q2 2012	Implementing ICB proposals	White Paper	HM Treasury
Q1 2012	EU framework for Recovery and Resolution Plans	Legislative proposals	EC
Q3 2012	EU framework for Recovery and Resolution Plans	Technical advice	EBA
RDR			
Q1 2012	Accredited Bodies	Feedback statement	FSA
Solvency II			
Q1 2012	Draft Level 2 delegated acts published	Level 2 text	EC
Q2 2012	Transposition of Solvency	Feedback statement	FSA

Date	Topic	Type	Institution
II- Part 1			
Q2 2012	Solvency II and linked long-term insurance business	Policy statement	FSA
Q4 2012	Solvency Level 3 measures finalised	Level 3 text	EC
Supervision, governance and reporting			
Q1 2012	Remuneration- EBA Data Collection	Consultation paper	FSA
Q3 2012	Corporate reporting	Guidelines/ recommendations	ESMA
Q4 2012	Storage of regulated information at ESMA	Discussion paper	ESMA
Q4 2012	Supervisory convergence	Discussion paper	ESMA
Q4 2012	Revision of Enforcement Standards	Consultation paper	ESMA
Q4 2012	Corporate Governance (proxy advisors, empty voting)	Discussion paper(s)	ESMA
Q4 2012	Remuneration and supervisory co-operation arrangements	Guidelines/ recommendations	ESMA

Main sources: [ESMA 2012 work programme](#); [EBA 2012 work programme](#); [EC 2012 work programme](#); [FSA policy development update \(Issue 142\)](#)

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Implementation dates for key reforms

Application Date	Topic	Institution
<i>Accounting</i>		
01/01/2015	<u>The Future of UK GAAP</u>	ASB
<i>Capital and Liquidity</i>		
20/01/2012	Submission of <u>plans</u> for recapitalisation exercise by EU banks	EBA
30/06/2012	EU banks required to raise <u>capital</u> above 9% of RWAs	EBA
01/01/2013	<u>CRD III</u> Directive- main capital requirements	EC
01/01/2014	<u>CRD IV</u> Directive	EC
01/01/2013	<u>Basel III</u> capital requirements phased-in	BCBS
01/01/2015	<u>Basel III</u> liquidity capital ratio requirements phased-in	BCBS
01/01/2016	<u>Basel III</u> conservation buffer phased-in	BCBS
01/01/2016	Additional capital requirements for <u>G-SIFIs</u> phased-in	FSB
01/01/2018	<u>Basel III</u> net stable funding ratio	BCBS
01/01/2019	<u>Basel III</u> - full implementation	BCBS

Application Date	Topic	Institution
01/01/2019	Full implementation of additional capital requirements for <u>G-SIFIs</u>	FSB
<i>Dodd-Frank</i>		
21/07/2012	Volcker Rule	SEC
<i>Financial crime, security and market abuse</i>		
09/12/2011	<u>Financial Crime Guide</u>	FSA
Q4 2014*	<u>Markets Abuse Directive</u> (revision)	EC
<i>Solvency II</i>		
Q2 2012 to mid-2013	Internal Model submissions for <u>FSA</u> approval	FSA
01/01/2014	<u>Solvency II</u>	EC
<i>Market infrastructure</i>		
21/12/11	<u>Protected cell regime</u>	FSA
01/01/2012	UK's regulated <u>covered bond regime</u>	HMT/FSA
01/05/2012	Compliance with <u>guidelines</u> on highly automated trading environments	ESMA
01/11/2012	<u>Regulation</u> on short-selling	EC
01/01/2013	Regulation on OTC Derivatives, central counterparties and trade repositories (<u>EMIR</u>)	EC

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Application Date	Topic	Institution	Application Date	Topic	Institution
22/07/2013	<u>AIFMD</u>	EC	31/12/2012	<u>Common Reporting (COREP)</u>	EBA
Q1 2014*	<u>UCITS V</u>		<i>Tax</i>		
Q4 2014*	<u>MiFID II</u> - phased-in		01/01/2012	UK Bank <u>levy</u> increases to 0.088%	HM Treasury
<i>RDR</i>					
31/12/2012	RDR regime- all changes	FSA			
<i>Recovery and Resolution</i>					
Q2 2012*	Firms required to submit initial <u>RRP</u> , focusing on the recovery plan and the first 2 elements of the <u>resolution plan</u>	FSA			
Q2 2012*	Firms required to submit a <u>client assets resolution pack</u>	FSA			
Q1 2013*	Firms to develop the <u>barriers</u> to resolution element of their RRP	FSA			
Q1 2013*	Firms to <u>submit regular RRP</u> s according to supervision cycle	FSA			
01/01/2019	Full implementation of UK retail <u>ring-fence regime</u>	FSA			
<i>Supervision, governance and reporting</i>					
01/01/2012	Revised guidelines on financial reporting (<u>FINREP</u>)	EBA			

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PwC insights

Cross FS

What next for the Eurozone? Potential outcomes for 2012



Monetary expansion through a liquidity injection from the European Central Bank, orderly defaults for the most indebted countries, Greek exit and a new currency bloc have been outlined as four potential outcomes of the Eurozone crisis in a PwC report "What next for the Eurozone - Possible scenarios for 2012". The report analyses each of these scenarios and outlines the outcomes of each in terms of the potential Eurozone inflation and GDP impact over the medium term.

Expect surprises next year. We are currently experiencing unprecedented levels of uncertainty in the Eurozone. The potential political and economic outcomes emerging from the Eurozone crisis in 2012 are disparate, although all share a similar theme. A harsh adjustment to a new fiscal reality will be unavoidable, regardless of the path politicians decide to follow.

This publication is essential reading to understand the difficult choices faced by policy makers in the new year and the impacts of various scenarios.

► [Link to publication](#)

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Banking

Too big to share: Balancing efficiency and self-sufficiency



The publication of the Independent Commission on Banking has identified the need for banks to “ring fence” services. In developing their models, banks need to strike a balance between the desires of regulators and the need for commercially viable solutions.

Will this force banks to break up their shared services and sacrifice the savings? How can banks balance operational efficiency and entity self-sufficiency?

Find out how this will affect your business in our latest insight.

► [Link to publication](#)

The trillion dollar question: Can bail-in capital bail out the banking industry?



Bail-in capital is central to the regulatory reform of banks, and can help to restore confidence in the industry. The Basel Committee on Banking Supervision have announced that all non-core equity capital instruments would have to have a bail-in feature from 1 January 2013.

Regulators and banks now have just one year to make this complex regulation workable, and banks that do it well will have greater competitive advantage over other institutions.

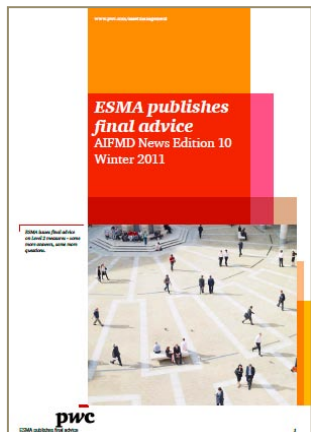
The regulatory environment for banks is undoubtedly complex. In PwC's latest publication, we examine the challenges and practical issues that need to be addressed before bail-in capital can become a reality.

► [Link to publication](#)

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Asset Management

AIFMD News: AIFMD final advice published



On 16th November, the European Securities and Markets Authority published its final advice to the European Commission on possible implementing measures (also known as the Level 2 measures) under the Alternative Investment Fund Managers Directive.

The objective of this Newsbrief is to re-visit some of these issues by updating our original commentary on the consultation papers in our last Newsbrief, and to generally remind readers of the "bigger picture" which has now been further informed by the "little details".

In our view, it is these details which have the potential to cause the most concern, and which therefore cannot be ignored by industry – asset managers and service providers alike - when it comes to preparing their AIFMD solutions.

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Why a joined-up approach tackles regulation's fundamental challenges



It is easy to take the view that the different regulations being imposed on the asset management industry are just a matter for compliance. After all, this has always been the case before.

Yet the wave of regulations coming from the US, Europe and Asia are fundamental to the sector's future growth prospects and profitability.

Find out more about why a holistic approach to the regulatory changes which are happening worldwide will help you to arrive at strategic and efficient solutions.

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Insurance

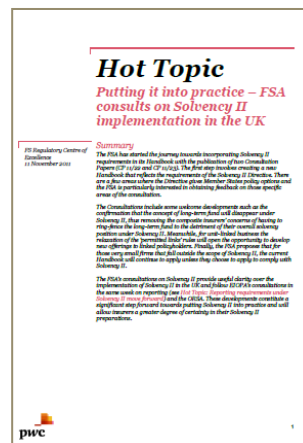
Risk of delay: Getting Pillar 3 on track



With supervisors likely to require extensive transitional disclosure in 2013 and getting ready for full reporting in 2014 set to demand a huge step up in data, systems and governance, preparing for Solvency II disclosure (Pillar 3) can't be put off any longer. Meeting the reporting demands will require organisational involvement and understanding far beyond Solvency II project teams. Boards should be involved from the outset, getting used to the disclosure, aligning it with their own management information and using it to help run the business. It is also important to build Pillar 3 into any decisions over process re-engineering and operational design so it becomes sustainable and enhances value. So how can you get Pillar 3 on track, who should be involved and what are the potential bottlenecks to be overcome?

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Putting Solvency II into practice - FSA consults on Solvency II implementation in the UK



The FSA has started the journey towards incorporating Solvency II requirements in its Handbook with the publication of two Consultation Papers (CP 11/22 and CP 11/23). The first step involves creating a new Handbook that reflects the requirements of the Solvency II Directive.

The Consultations include some welcome developments such as the confirmation that the concept of long-term fund will disappear under Solvency II and the relaxation of the 'permitted links' rules for unit-linked business. There are a few areas where the Directive gives Member States policy options and the FSA is particularly interested in obtaining feedback on those specific areas of the consultation.

Here we discuss these latest developments, Member State options and the FSA's proposed response for the UK.

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A step forward for Solvency II reporting requirements



EIOPA have made some significant decisions on quantitative reporting measures in response to stakeholders' concerns. Here we discuss implications, areas of uncertainty and the deadlines.

Latest proposals from EIOPA provide insurers with a largely stabilised package of quantitative reporting requirements. This should give sufficient certainty for insurers to move their reporting work-streams forward as they prepare for implementation.

On 8 November 2011 EIOPA published its draft proposals on qualitative and quantitative reporting ('the proposals') under Solvency II. These proposals define the content and format of insurers' Solvency II reporting both on a private basis to their supervisors and for public reporting to all stakeholders. This represents an important milestone in the development of the Solvency II regime.

The proposals are open for comment until 20 January 2012 and EIOPA plans to finalise reporting requirements in the summer of 2012. Whilst there remain a small number of areas of uncertainty these proposals follow an intensive period of informal consultations where EIOPA gathered stakeholder feedback and revised its proposed requirements.

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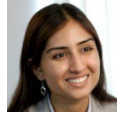
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Glossary

ABI	Association of British Insurers	FSCS	Financial Services Compensation Scheme
AMICE	Association of Mutual Insurers and Insurance Cooperatives	FSMA	Financial Services and Markets Act 2000
ASB	UK Accounting Standards Board	GAAP	Generally Accepted Accounting Principles
Basel Committee	Basel Committee of Banking Supervisors	HMRC	Her Majesty's Revenue & Customs
BBA	British Bankers' Association	IASB	International Accounting Standards Board
BIPRU	Prudential Sourcebook for Banks Building Societies and Investment Firms (FSA Handbook)	ICB	Independent Commission on Banking
CEA	European Insurance and Reinsurance Federation	ICOBS	Insurance Conduct of Business Sourcebook (FSA Handbook)
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors	IFRS	International Financial Reporting Standards
CFTC	Commodities Futures Trading Commission	JMLSG	Joint Money Laundering Steering Committee
EBA	European Banking Authority	MAR	Market Conduct Sourcebook (FSA Handbook)
EC	European Commission	Member States	Countries which are members of the European Union
ECJ	European Court of Justice	MIFID	Markets in Financial Instruments Directive 2004/39/EC
ECON	European Parliament Committee on Economic and Monetary Affairs	MoJ	Ministry of Justice
EEA	European Economic Area	MTF	Multilateral Trading Facility
EIOPA	European Insurance and Occupations Pension Authority	OTF	Organised Trading Facility
ESMA	European Securities and Markets Authority	PEP	Politically Exposed Person
FASB	US Financial Accounting Standards Board	PRA	Prudential Regulatory Authority
FCA	Financial Conduct Authority	QIS5	Quantitative Impact Study 5 (Solvency II)
FRB	Federal Reserve Board	RDR	Retail Distribution Review
FSA	Financial Services Authority	SCR	Solvency Capital Requirement
		SEC	US Securities and Exchange Commission

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